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GANADO
ADVOCATES

INSURANCE AND PENSION LAW NEWSLETTER

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INTRODUCTION

Dear All,

We are pleased to enclose our latest **Insurance & Pension Law Newsletter** which the Insurance and Pensions Team at GANADO Advocates has been publishing on a quarterly basis for the last decade or so. Over the years, GANADO Advocates has built a very strong and capable team of lawyers and other professionals with specialisation and depth in most aspects of insurance and private pensions law.

As we all witness both regulatory developments (on a European and Maltese level) in both insurance and private pensions, it is imperative to keep up with the wave of change and to keep well informed of such changes. The aim of this newsletter is to share ongoing developments with you as they arise from time to time and it will serve as an update on what is happening in the insurance and pensions markets. This newsletter is targeted at directors, managers and senior officers of insurance and reinsurance undertakings, captives, cell companies, managers, brokers and other insurance intermediaries, retirement scheme administrators, occupational pension schemes as well as service providers to such regulated entities, including legal counsel and asset managers.

In particular, the newsletter will include:

- (i) Recent news on the local and European insurance and pensions market;
- (ii) Latest developments in relation to the Solvency II Directive;
- (iii) Legislative and licensing updates;
- (iv) Selected court updates;
- (v) Analysis of the newly issued Reinsurance SPV Draft Regulations;
- (vi) Review of the EIOPA Solvency II Interim Measures; and
- (vii) Focus in relation to the current local pensions market.

We trust that you will find this issue of the Newsletter to be of interest.

**INSURANCE &
PRIVATE PENSIONS TEAM**

MFSA ISSUES DRAFT RSPV REGULATIONS

On 31st May 2013 the MFSA published a consultation note and draft regulations (the “RSPV Regulations”) permitting the establishment of Reinsurance Special Purpose Vehicles (“RSPVs”) in Malta. A copy of the consultation note and draft regulations can be obtained by [clicking here](#).

The draft regulations proposed to be issued under the Insurance Business Act (Cap. 403, Laws of Malta) contain provisions regarding the authorisation and governance, and solvency and regulatory reporting by RSPVs. RSPVs have been explicitly recognised by European Union legislation since the Reinsurance Directive and will continue to be recognised under Solvency II.

The consultation period ran until the 17th June, 2013.

CONSUMER PROTECTION FOR THIRD-PILLAR RETIREMENT PRODUCTS

The European Commission issued a consultative document on consumer protection in third-pillar retirement products with the aim of identifying the specific problems encountered by consumers in third-pillar retirement products and whether voluntary codes coordinated at the EU level or certification schemes could improve consumer protection. Stakeholders have been invited to submit their responses to the consultative document by the 19th July, 2013.

The consultative document can be accessed [here](#).

GANADO ADVOCATES REPLIES TO MFSA CONSULTATION DOCUMENT ON RSPVs

On the 17th of June 2013 GANADO Advocates filed its feedback and proposals to the consultation document issued by the MFSA on the 31st of May 2013 in relation to the establishment and regulation of RSPVs in Malta. GANADO has welcomed the publication of draft rules for the authorisation and regulation of RSPVs, and considers this positive step forward for Malta as it should render Malta a serious candidate for alternative risk transfer structures and RSPVs. In its feedback GANADO proposed that the definition of the legal entity that may be used for the purposes of an RSPV be extended to include protected cell companies and incorporated cell companies (including protected cells and incorporated cells), that the time-frame for the establishment of an RSPV be reduced from 6 months to a shorter time-frame, that certain governance requirements be relaxed, and that several provisions of the Securitisation Act be applicable for any RSPVs established in terms of the RSPV Regulations.

GANADO and the industry are waiting for the final regulations to be issued by the MFSA.

MARSP COMMENTS ON THE MFSA DRAFT PENSIONS RULES

MARSP has welcomed the issue of the draft pensions rules as a step in the right direction for clarifying the various roles and responsibilities of the parties involved in Maltese pension schemes as well as laying the path for proper regulation of personal pensions rules. During the call for consultation, MARSP submitted its comments and feedback on the proposed draft pension rules, including further clarification on the roles of investment managers in a particular retirement scheme as well as amendments to the proposed programmed withdrawal arrangements, member directed schemes and the investment restrictions of a personal retirement scheme.

GANADO'S INSURANCE TEAM LECTURES ON CHANGES TO THE INSURANCE MEDIATION DIRECTIVE

On the 10th and 17th June 2013, the Institute of Legal Studies organised a course on the proposed Insurance Mediation Directive II, the purpose of which was to highlight the changes which the European Commission proposed to be made to the first Insurance Mediation Directive. The course focused on the regulatory and legal changes that insurance intermediaries and insurance companies in Malta will become subject to once the second Insurance Mediation Directive comes into force.

NEW EIOPA CONSULTATION ON GUIDELINES FOR INSURANCE INTERMEDIARIES COMPLAINTS- HANDLING

On the 5th April 2013 EIOPA launched a public consultation on guidelines on complaints-handling by insurance intermediaries. The guidelines generally lay down high-level principles which insurance intermediaries should abide by when handling complaints and aim at creating a level playing field and ensuring fair treatment of complaints by insurance intermediaries across the EU. The guidelines are also supplemented by more detailed examples of best practices by insurance intermediaries in handling complaints.

The consultative document can be accessed [here](#).

GANADO'S INSURANCE TEAM LECTURES ON THE SOLVENCY II INTERIM MEASURES

On the 25th and 27th of June, the Institute of Legal Studies ran a two day course to discuss the changes that will take place should the Solvency II Interim Measures issued by EIOPA be fully implemented in their current form. ILS invited specialists from the local insurance industry to share their knowledge regarding these interim measures and the Solvency II Directive. Such speakers included persons from GANADO Advocates, Marsh Management Services Malta Limited and PwC Malta. The purpose of the course was to offer local re/insurers (and insurance managers that manage local re/insurers) the opportunity to learn more about these interim measures and for them to ascertain how prepared they are in order to be in compliance with the interim measures should they come into force at the beginning of 2014.

SOLVENCY II UPDATE

While the implementation of the Solvency II Directive has been postponed till 2016 (possibly even 2017 considering the delays encountered in relation to the Omnibus II Directive), EIOPA has issued draft interim measures and guidelines on the 27th of March 2013. These were up for consultation until the 19th of June 2013. EIOPA intends to subsequently publish the final Guidelines in October 2013 with an implementation date for all Member States commencing on the 1st of January 2014. If the guidelines are approved by EIOPA in October 2013, then national authorities will have three months to implement the guidelines into their national regulatory and supervisory framework. If approved, these Guidelines will be binding on re/insurance undertakings authorised throughout the EU by the beginning of 2014.

RECENT INSURANCE & PENSIONS JUDGMENTS

CASE C-424/11

FORD PENSION FUND TRUSTEES LTD AND OTHERS vs COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

The request has been made in proceedings between Wheels Common Investment Fund Trustees Ltd and others and the Commissioners for Her Majesty's Revenue and Customs concerning the latter's refusal to exempt fund management services supplied to Wheels Common Investment Fund Trustees Ltd and others from value added tax. The ECJ ruled that a common investment fund does not constitute a "special investment fund" under Article 135(1)(g) of Council Directive 2006/112/EC or its predecessor provision in Article 13(B) (d)(6) of the Sixth VAT Directive (77/388/EEC). These Articles exempt from VAT "the management of special investment funds as defined by Member States".

CASE C-398/11

MR HOGAN AND OTHERS vs MINISTER FOR SOCIAL AND FAMILY AFFAIRS, IRELAND, ATTORNEY GENERAL

The Irish High Court requested the ECJ to deliver a ruling in relation to the interpretation of Article 1 and Article 8 of Directive 2008/94/EC of the European Parliament and of the Council on the protection of employees in the event of the insolvency of their employer. In terms of the Directive, Member States were required to ensure that adequate measures were taken to protect the interest of current and past employees at the date of the onset of the employer's insolvency in respect rights entitling such employees to old age benefits and occupation pension scheme outside statutory social security schemes. The ECJ ruled that the Irish Government did not take the necessary measures in implementing these protective measures. The matter will now return to the Irish courts for further judgment.

THE SOLVENCY II INTERIM MEASURES: IS THE MARKET READY?

While the implementation date for the Solvency II Directive is still uncertain (1st January 2016 is the current implementation date, however it is possible that this be postponed to early 2017), EIOPA has issued interim measures and guidelines which are to be adopted by competent authorities (including the MFSA) from the 1st of January 2014. This means that certain provisions of the Solvency II Directive will be implemented by the MFSA and will therefore apply to local re/insurers come the beginning of 2014. Consequently, the local insurance market faces a sturdy task in order to be compliant with these requirements by the 1st January 2014 deadline, as they will have to implement a proper and effective system of governance, implement the key functions, invest in line with the 'prudent person principle', and carry on their own risk and solvency assessment. As a result of these interim measures, local re/insurers will see a sizeable increase in their reporting requirements, whether to the MFSA or to the general public. The question is whether local re/insurers are aware of the changes that are upon them once these interim measures are in force, and whether they have fully grasped the implications that these changes may have on their undertaking.

This article was also published in the Times Business Weekly on the 20th June 2013.

To view the entire article click [here](#).

MFSA ISSUES REPORT ON THE STANDARD FORMULA EXERCISE

On the 30th of April 2013, the MFSA issued a report on the 2012 MFSA Standard Formula Exercise for Solvency II. This report summarises the results of the calculation of the standard formula for re/insurance undertakings that participated in the 2012 MFSA standard formula exercise. The purpose of this exercise was to assess the level of preparedness of re/insurance undertakings licensed by the MFSA for the Solvency II Pillar I requirements. In terms of the report "the detailed

LEGISLATIVE UPDATES

Legal Notice 152 of 2013
INCOME TAX ACT
(CAP. 123) - HIGHLY
QUALIFIED PERSONS
(AMENDMENT)
RULES, 2013

31st May 2013

Legal Notice 159 of 2013
DOUBLE TAXATION
RELIEF (TAXES
ON INCOME)
(RUSSIAN FEDERATION)
ORDER, 2013

18th June 2013

Legal Notice 60 of 2013
DOUBLE TAXATION
RELIEF (TAXES
ON INCOME) (THE
REPUBLIC OF TURKEY)
ORDER, 2013

21st June 2013

review conducted will result in a stronger validation of the solvency ratio, a deeper understanding of the risk profile of the undertakings and reduce any inconsistencies in the future". In terms of the report, the MFSA is of the view that certain re/insurance undertakings seem to be more prepared than others and that there is still a lot of work to be done in order for these undertakings to be prepared for the Pillar I requirements and the standard formula calculation.

To view the entire article click [here](#).

INSURANCE SECURITISATION: MALTA'S RSPV REGULATIONS AT A GLANCE

Malta's financial services regulator, the MFSA, published for consultation in May 2013 a draft version of the Reinsurance Special Purpose Vehicle (RSPV) Regulations. The draft RSPV Regulations provide for the authorisation and regulation of RSPVs, being special purpose vehicles that assume risks from a ceding undertaking and which fully fund their exposure by means of a debt issue. The draft regulations mark the first attempt of a European regulator to lay down rules for the authorisation and supervision of RSPVs in line with recommendations made by EIOPA on the subject in the run up to the implementation of the Solvency II Directive. The publication of the draft RSPV Regulations was followed by a two-week consultation process that ended on the 17th June 2013. We understand that the MFSA is now in the process of digesting all feedback received during the consultation period and will be publishing its feedback shortly.

To view the entire article click [here](#).

RECENT MFSA AUTHORISATIONS & LICENCES

CONVERTED & EXTENDED LICENCES

TRUSTEES & FIDUCIARIES

Extension of licence issued to FACT Services Limited to include acting as an administrator of private foundations.

INSURANCE

Insurance Brokers

Approval for the conversion of Ark Insurance Management (Malta) Limited into a cell company, Ark Insurance Management PCC Ltd, in terms of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2010.

Approval for the conversion of Genghis Insurance Limited into a cell company, Genghis Insurance PCC Limited, in terms of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2010.

TRUSTEES & FIDUCIARIES

Authorisation issued to Forteq Limited to act as a trustee and to provide other fiduciary services including acting as an administrator of private foundations.

INSURANCE

Insurance Manager - Cell

Approval of Novins Cell as a cell of Ark Insurance Management PCC Ltd to carry on insurance intermediaries activities.

PENSIONS

Asset Managers

Certificate of Registration issued to LCF Edmond de Rothschild Asset Management (C.I.) Limited.

Retirement Schemes

Certificate of Registration issued to Pioneer Retirement Scheme.
Certificate of Registration issued to Voyager Retirement Scheme.
Certificate of Registration issued to US Voyager Retirement Scheme.
Certificate of Registration issued to The Rinella Retirement Benefit Scheme.

CANCELLED & SURRENDERED LICENCES

INSURANCE

Insurance Brokers

Surrender of licence issued to FPC Investment Consultants Limited.

EU CONSULTATION FOR A SINGLE MARKET FOR PERSONAL PENSIONS

In July 2012, the European Commission requested EIOPA to provide technical advice on regulations and consumer protection measures needed to create a single market in the sector of personal pension products; both defined contribution and defined benefit. Last February EIOPA set-up a Task Force on Personal Pensions; the task force published a discussion paper to obtain stakeholders' feedback at the initial stages of consultation. Following the conclusion of the consultation, EIOPA will provide the European Commission with advice on the legislative changes required in the areas of prudential law and protection of personal pension plan holders. Interested parties are invited to participate in this discussion paper and contribute any insights and submit their comments by 16th August 2013.

To view the entire article click [here](#).

TIME TO ACT ON PENSIONS

Various pensions commissions and pensions working committees commissioned by the Government over the past few years have made damning projections of the pensions system. The latest Pensions Working Group report suggests that the only real remedy is the immediate introduction of a mandatory second pillar pension system flanked by incentives for a voluntary third pillar pension structure. This article gives an insight into the regulatory and legal framework of the pension system in Malta whilst encouraging the Government together with the regulatory authority to introduce the much anticipated third pillar schemes.

This article was also published in the Times of Malta on the 1st April 2013.

To view the entire article click [here](#).

We trust that this issue of **Insurance & Pension Law Newsletter** was of interest to our readers, however, should you have any queries or suggestions to make, please feel free to contact:

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We will be pleased to hear from you.

Further should you wish to stop receiving the **Insurance & Pension Law Newsletter** please click **unsubscribe** on the email sending this newsletter, or by contacting mbianchi@ganoadvocates.com.

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This update is not intended to impart advice; readers are advised to seek confirmation of statements made herein before acting upon them. Specialist advice should always be sought on specific issues.