Issue № 32
October 2013

GANADO
ADVOCATES

INSURANCE AND PENSION LAW NEWSLETTER

IN THIS ISSUE

CONTRIBUTORS

Dr Matthew Bianchi
Dr Matthew Brincat
Dr Elizabeth Ganado
Dr Elaine Magri
Dr Stephanie Cassar
Dr Beppe Sammut
Dr Clement Mifsud Bonnici
Dr Mark Caruana Scicluna

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 markets;
(ii) Latest developments in relation to the Solvency II Directive;
(iii) Legislative and licensing updates;
(iv) Selected court judgments;
(v) Focus in relation to third pillar schemes in Malta; and
(vi) Analysis of the use of PCCs as an alternative under Solvency II.

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

INSURANCE & PRIVATE PENSIONS TEAM

PRE-BUDGET 2014 CONSULTATION

THIRD PILLAR PENSIONS

The Government recently launched the pre-budget 2014 consultation document. The document marks the Government's launch of the consultation period that starts in September and keeps going till the Budget. In his presentation, the Minister of Finance the Honorable Prof. Edward Scicluna explained that tax payers will be encouraged to start contributing towards their pensions since the Government plans to introduce the so-called third pillar pension in the next Budget.

ASSETS HELD BY MALTESE INSURANCE COMPANIES GROWING

According to the European Central Bank insurance companies in Malta are seeing an increase in their total assets under management. In fact, insurance companies in Malta have seen their assets grow from €1.36bn in 2008 to €1.98bn in 2012. This is comforting news for the Maltese local market as, notwithstanding the current uncertainty in relation to the implementation of the Solvency II Directive, insurance business in Malta continues to grow.

WEF GLOBAL COMPETITIVENESS REPORT FOR 2012-2013

The World Economic Forum has published its annual Global Competitiveness Report for 2013 to 2014. Malta performed noticeably well, ranking 41st out of 148 countries, stepping up six places from last year's ranking

IMD2 FURTHER DELAYED BY THE EUROPEAN PARLIAMENT

On the 12th July of 2013, it was confirmed that the review of the Insurance Mediation Directive ("IMD2") by the European Parliament would be postponed to November 2013, as opposed to the 21st of October. This was confirmed through an update to the European Parliament's procedure file.

EIOPA CHAIRMAN'S SPEECH REGARDING THE IORP DIRECTIVE

On the 5th of September 2013, EIOPA Chairman Mr. Gabriel Bernardino delivered a speech at the Terminsstart Pension Conference in Stockholm. Mr. Bernardino explained that EIOPA had advised the European Council to aim at three main objectives when reviewing the IORP Directive, which are sustainability, strong governance and full transparency. He informed those attending that, upon assessment of the Quantitative Impact Study carried out, it became clear that the future European regulatory regime should be market consistent and risk-based.

Mr. Bernardino explained that aim of conducting a long term guarantees assessment was to provide a basis for final agreement on the Solvency II framework. From this assessment, certain principles emerged, on the basis of which EIOPA made some suggestions of what to include and what to exclude. Bernardino also called for EIOPA's mandate to be extended further, to be able to carry out its work better.

LIST OF GLOBAL SYSTEMATICALLY IMPORTANT INSURERS

On the 18th of July 2013, International Association of Insurance Supervisors and the Financial Stability Board both issued press releases confirming that nine global systematically important insurers had been identified. The association also proposed that an assessment methodology and policy measures be put in place for such systematically important insurers. In the same press release, the Financial Stability Board confirmed that enhanced group-wide supervision would commence immediately for the identified global systematically important insurers.

EIOPA PUBLISHES FINAL GUIDELINES ON SOLVENCY II

On the 27th of September 2013, EIOPA issued final guidelines for the preparation of Solvency II. These guidelines were finalized following the public consultation period which ended on the 19th of June 2013 and following which over 4000 comments were received. EIOPA declared that the aim behind the guidelines were to significantly increase preparedness of national supervisors and insurers for Solvency II once it is implemented. The guidelines foresee a gradual application through 'phasing-in' provisions.

In its press release, EIOPA confirmed that it is the national authorities who are to decide how best to incorporate the guidelines into their national regulatory and supervisory framework. Here, the MFSA is required (within two months of the issuance of the guidelines) to report to EIOPA regarding their compliance or intention to comply with the same guidelines and is required to submit a progress report to EIOPA on the guidelines' implementation by February 2014.

According to EIOPA Chairman Gabriel Bernardino "These Guidelines are a key step in order to ensure that preparation will be done in a consistent manner for the benefit of the internal market, industry and consumers".

LLOYD'S PRESS RELEASE

Concerns have been raised by the Society of Lloyd's as to the implementation date of the Solvency II Directive. On the 22nd of July 2013, the Society of Lloyd's issued a press release stating that it would be unlikely that the Solvency II Directive will be implemented prior to 1st January 2016. In the Society's view, it is possible that a second 'quick fix' Directive may be required later on in 2013 to clarify the implementation date of the same directive.

PRELIMINARY RULING – GABOR CSONKA ET. RE: MOTOR VEHICLE INSURANCE-AUTHORISED BODY

In this preliminary ruling, the persons involved had taken out an insurance policy and needed to make a claim. However, they had to pay their own costs, rather than them being paid by the insurer since the insurer had become insolvent. The question referred was whether the body that was to be set up covered cases were although drivers were insured, the insurance companies were insolvent.

The Courts noted that article 3(1) of the First Directive 84/5/EEC of 30 December 1983 states that "each Member State shall… take all appropriate measures to ensure that civil liability in respect of the use of vehicles…is covered by insurance". The Court further noted that Article 4 of the Second Council Directive authorises the setting up of a body with the task of providing compensation for damage to property by an unidentified vehicle or by an uninsured vehicle.

The Court held that the Directives must be interpreted as not including such obligations for the body, since the body was only to be used in cases of last resort, were the obligations under Article 3(1) of the First Directive had not been satisfied.

WALTER ENDRESS VS ALLIANZ LEBENSVERSICHER-UNGS-AG RE: LIFE ASSURANCE – CANCELLATION OF CONTRACT – PROVIDING NECESSARY INFORMATION

In this case the German Courts considered that Article 15 of the Second Life Assurance Directive allows for a period in which to cancel a contract concluded for life assurance within a stipulated time. It further noted that Article 31 of the Third Directive sets out that before concluding such a contract, the insurer must provide all necessary information and that Article 5a of the VVG (German Law of insurance) states that the right to object (or to cancel) such a contract expires one year after payment of the first premium.

The question referred to the Court was whether such a rule in German law was precluded by the Directives mentioned, that is, whether an insurer could omit giving customers information about their right to cancel the contract and then disallow them from cancelling after payment of the premium. The Court answered in the affirmative, saying that since the customer is the weaker party in the contractual relationship, it would be unfair and against European Union law to allow insurers to forfeit their obligation of giving all necessary information about cancellation of the contract and then use this omission as an excuse for not allowing customers to cancel such a contract.

OVERVIEW OF EIOPA'S QUANTATIVE IMPACT ASSESSMENT

Following a call from the European Commission, the European Insurance and Occupational Pensions Authority (EIOPA) conducted a quantative impact assessment (the "QIS") on Institutions for Occupational Retirement Provision ("IORPs"). The study was commissioned for stakeholders to better understand the quantative impact of the different options for the holistic balance sheet approach. Results were collected from 7 countries, these being Belgium, Germany, Ireland, Netherlands, Norway, Sweden and the United Kingdom with nearly 100 IORPs completing the QIS exercise. The QIS analysed the impact of EIOPA's advice on IORPs that provide defined benefit or hybrid schemes and does not include in the scope those IORPs that solely provide pure DC schemes. The QIS exercise was a first attempt at testing the holistic balance sheet approach, aiming to make prudential balance sheets of IORPs comparable and transparent across Europe. As Europe faces the challenge of providing its citizens with adequate, sustainable and secure pensions, a market-consistent valuation of balance sheets provides stakeholders with an objective and transparent view of the financial situation of IORPs.

To view the entire article please click **here**.

LEGISLATIVE UPDATES

Legal Notice 183 of 2013

INSURANCE BUSINESS (SUPPLEMENTARY SUPERVISION OF INSURANCE AND REINSURANCE UNDERTAKINGS IN AN INSURANCE GROUP) (AMENDMENT) REGULATIONS, 2013

Click **here**

Legal Notice 184 of 2013

INSURANCE BUSINESS (ASSETS AND LIABILITIES) (AMENDMENT) REGULATIONS, 2013

Click **here**

RECENT MFSA AUTHORISATIONS & LICENCES

LICENCES ISSUED

Insurance Undertakings

Licence issued to R & Q Insurance (Malta) Ltd to carry on business of insurance and reinsurance in thirteen classes of the general business.

Protected Cells

Approval of Cell A18 as a cell of White Rock Insurance (Europe) PCC Ltd to carry on business of insurance.

Approval of Lex Risk Solutions Cell as a cell of Jatco Insurance Brokers PCC Ltd to carry on insurance brokerage business.

Insurance Brokers

Lawsons Equity Ltd has been granted enrolment in the Brokers List.

Pensions - Asset Managers

Certificate of Registration issued to DPZ Capital Limited.

LICENCES EXTENDED OR CONVERTED

Extension of licence issued to Caversham Insurance (Malta) Ltd to carry on business of insurance in respect of two general business classes.

Conversion of Jatco Insurance Brokers Limited to a protected cell company.

PROVIDING THE BEST RECIPE FOR THIRD PILLAR PENSIONS

Much has been said about the current problems and issues in relation to the Maltese pension system. The public (First Pillar) pension system which we 'contribute' into by paying social security contributions has been criticized by all and sundry as being insufficient to provide a decent pension for any retiree. The introduction of a third pillar system in Malta should be a step in the right direction, as it should encourage Maltese residents to start saving for their future. Since a 'third pillar' pension is a privately funded pension scheme where contributions are voluntary made by private individual contributors, one of the principle ways of attracting such contributions to be placed into such schemes would be the introduction of favorable tax deductions or exemptions. It will come as no surprise therefore, that the principal obstacle for the participation by Maltese residents in third pillar schemes is the current taxation and fiscal system, which does not fall short of deterring any potential contributor from thinking about third pillar pensions as a solution to the scarcity of retirement income.

While the form of relief or deduction may vary (whether in the form of a fixed amount of contributions per annum or fixed percentage of the amount contributed), in light of the current economic situation, it is submitted that it may be more appropriate for Government to provide for relief or taxation which would create an immediate attraction for those contributing (such as an amount per annum which would be a deductible from ones taxed income), whilst at the same time reducing any tax loss to a minimum by leaning more on lesser tax rates linked with the profits and draw-downs from the scheme, so as to lessen the tax burden on the member of the scheme, once that member is indeed a pensioner. Fortunately, the regulatory and legal framework for third pillar pension structures in Malta is already present, as Malta has a vibrant and growing pension scheme industry in Malta with a considerable number of retirement schemes and retirement scheme administrators licensed and regulated by the MFSA.

Therefore, with the correct recipe in place the introduction of a third pillar scheme for Maltese residents should ultimately benefit Maltese residents wanting to improve their retirement income, the financial services industry and possibly, even the Government itself.

This article was also published in the Times Business Weekly on the 19th September 2013.

To view the entire article click **here**.

CELLING SOLVENCY II TO CAPTIVES

The use of cellular structures is widespread across the Maltese insurance and funds industry. Consequently, Malta is an attractive domicile to those market players looking for alternative structures that best satisfy their business needs. Malta is the only full EU member state that has legislation in place regulating the PCC structure, giving insurers the opportunity to create separate and segregated cells within a PCC while allowing them to write business directly throughout the EU by means of the single passport, and to reap the benefits of their business as if they were a separate legal entity.

The benefits of shared capital and common management of the PCC should become more relevant and evident once the Solvency II Directive is implemented. The use of the PCC should lead to substantially lower capital requirements for individual cells in terms of Pillar I of the same directive. In fact, while standalone insurers will be required to satisfy both the solvency capital requirement (SCR) and minimum capital requirement (MCR), cells will only be required to satisfy the SCR with no obligation for each individual cell to hold own funds to satisfy the MCR.

The PCC structure also offers economies of scale and scope in terms of Pillar II through the cost sharing that is present for all PCC and cell shareholders. Since the PCC is one single legal entity, the applicability of the system of governance provisions, the implementation of the key functions and the carrying out of the forward looking assessment of an undertaking's own risks (ORSA) may be carried out by the PCC as a whole and not by each individual cell. A similar approach can be taken in relation to the Pillar III reporting requirements, where most of the reporting is to be carried out by the PCC as a whole and not by each individual cell.

The PCC is being put forward as an advantageous alternative, offering a cost effective solution to the increased costs incurred as a result of the implementation of Solvency II, without sacrificing all of the benefits of enhanced corporate governance and a more risk-based approach under Solvency II.

This article was published in Issue 28 of the Captive Insurance Times.

To view the entire article please click **here**.

QUERIES & SUGGESTIONS

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:
Dr Matthew Bianchi at **mbianchi@ganadoadvocates.com** or
Dr Mathew Brincat at **mbrincat@ganadoadvocates.com**.
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@ganadoadvocates.com**.

Back Issues of the **Insurance and Pension Law Newsletter** are available upon request or on our website at **ganadoadvocates.com.**

DISCLAIMER

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.

GANADO
ADVOCATES

171 & 176, OLD BAKERY STREET,
VALLETTA VLT 1455, MALTA
T. (+356) 2123 5406
F. (+356) 2122 5908
E. lawfirm@ganadoadvocates.com
www.ganadoadvocates.com