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NEWSLETTER

INTRODUCTION

This holiday season brings to an end a very active quarter for the local and European insurance industry.

The European Commission continued fleshing out the Solvency II regime with the publication of delegated regulations that will bring into force Level 2 rules for insurance companies. Pan-European regulator EIOPA has meanwhile started work on the Level 3 rules. Our news section briefly outlines all the initiatives taken by the regulators during this quarter. Click on the links we provide you for more information or speak to us should your require any further clarification.

Our team delivered a series of presentations to directors of insurance companies on the impact of Solvency II on their duties and responsibilities during a one-day event organised by the Institute for Legal Studies on 24 November 2014.

We welcome 2015 with a sense of excitement as we celebrate the enactment of the Securitisation Cell Company ('SCC') Regulations. SCCs are an innovative cell structure ideally suited for insurance-linked securities deals. We have prepared a fact-sheet on the new regulations on **page 6**.

We wish you happy holidays and a great start to the New Year!

INSURANCE &
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IN THIS ISSUE

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New PRIIPS Regulation to apply from end-2016

The Regulation on Key Information Document for Packaged Retail and Insurance-based Investment Products (PRIIPs) was **published** in the Official Journal of the European Union. PRIIPS manufacturers will need to produce a standardised, concise, three-page key information document in respect of a broad range of products including insurance-based investment products as unit-linked life insurance policies. The new regulation will apply as from 31 December 2016.

EIOPA Consults on Draft Solvency II Guidelines

EIOPA published its **comments** to the first round of consultation on new technical standards and guidelines to be published as part of the Solvency II regime. The first set of consultation contained draft Level 3 Solvency II rules mostly relating to Pillar I and Pillar II covering areas as own funds, group solvency, internal models; ORSA and governance. The second set of consultation was also **published** for consultation during Q4 2014 until 2 March 2015.

European Insurance Stress Tests Results

The European Insurance and Occupational Pensions Authority (EIOPA) published the Final Report for the 2014 EU-wide **Insurance Stress Test** on 30th November 2014. 14% of undertakings do not meet the SCR requirements of Solvency II in the pre-stress scenario, increasing to 24% in a prolonged low-yield scenario. The names of individual companies that fell short in EIOPA's stress tests were not released. Eight Maltese insurance undertakings, both life and non-life, participated in the exercise.

Malta's insurance sector grows 8%

The Maltese insurance sector grew by 8% during 2013, statistics released by the MFSA **show**. As at December 2013, there were 60 undertakings authorised to carry out re/insurance business with a total gross written premium of €2.6 billion.

EIOPA Consumer Trends Report

EIOPA **published** the third edition Consumer Trends Report on 2 December 2014. The report lists a litany of practices that are, in EIOPA's view, detrimental to consumer protection. The long list includes lack of transparency, inconsistent information disclosure, excessive focus on price in advertising non-life products, and mis-selling of unit-linked life insurance products. National supervisors focused on beneficiary protection arrangements in the case of unclaimed life insurance contracts and the growth in use of comparison websites.

EU-US Insurance Project

The Steering Committee of the EU-U.S. Insurance Project hosted a **forum** on the 25th October 2014 to discuss important initiatives related to group supervision and the use of ORSA, whereby various insurance professionals exchanged their views and practices between the insurance undertakings and supervisory authorities from around the world. The intention to develop a clear designation of responsibilities for group and solo supervisors within colleges was highlighted together with the formulation of common high-level principles for transatlantic colleges.

Common Application for Internal Models

Insurance and Reinsurance undertakings applying for an internal model to calculate their Solvency Capital Requirements under Solvency II are being **encouraged** to use the Common Application Package (CAP) published by EIOPA on the 4th December 2014. The CAP provides guidance as to the level of granularity and documentation required for the Solvency II application process and addresses insurance group concerns by promoting a consistent approach across EU jurisdictions. The CAP may also be used for the pre-application process.

EIOPA Publishes 2015 Work Programme

EIOPA published its **work programme** for 2015. As expected, the implementation of Solvency II ahead of the 1 January 2016 go-live date will continue to dominate the agenda. The pan-European supervisory authority will also focus on the finalisation and fleshing out of the reform of the Insurance Mediation Directive and the Packaged Retail Investment and Insurance-Based Products.

EC Publishes Solvency II Delegated Regulation

The Solvency II regime continued being fleshed out during Q4 2014 when the the European Commission ('EC') published a **delegated regulation**, also referred to as the Implementing Measures, for the Solvency II Directive on 10 October 2014. The Delegated Regulation will automatically come into force in national legislation once the European Parliament and Council give it their seal of approval after a six month scrutiny period comes to an end.

EIOPA Principles on Sound Principles for Crisis Prevention, Management and Resolution

EIOPA published an **opinion** on 1st December 2014, on Sound Principles for Crisis Prevention, Management and Resolution Preparedness of National Competent Authorities (NCAs). NCAs have been introducing changes in their Crisis Prevention, Management and Resolution Frameworks. EIOPA has developed 14 principles that NCAs need to take into account to ensure consistency in approach, and suggests an organisational setup and emergency plans for crisis prevention and management together with the development of recovery and resolution plans.

MFSA issues a Circular on Group Supervision under Solvency II

The MFSA **asked** insurance companies to confirm whether they fall within the scope of group supervision under Solvency II. The Authority requested the shareholding structure of the whole group, clearly identifying which entities would fall within the scope of insurance group supervision. Undertakings were also asked to determine the applicable level of group supervision.

Insurers to apply for Legal Entity Identifier

The MFSA asked Maltese re/insurance undertakings and groups to **apply** for a Legal Entity Identifier (LEI) code from an endorsed agency (link). Companies are required to inform the MFSA of their application to obtain an LEI by 30th June 2015.

SECURITISATION CELL COMPANIES

The Securitisation Cell Company Regulations were enacted during November 2014. This fact-box sets out the salient features of the new regulations that aim to position Malta as a domicile of choice for insurance-linked securities.

In a nutshell

Single legal entity empowered to establish one or more cells for the purpose of securitisation transactions.

What are the uses of a securitisation cell company?

A cell company may be used for all kinds of securitisation transactions. This includes:

- Asset-backed securities in various asset classes including loans, receivables, loans and residential and commercial mortgages;
- Whole business securitisations;
- Synthetic securitisations;
- Insurance-linked securities transactions including catastrophe bonds, longevity risk transfer transactions, hedge-fund backed reinsurers and platform structures;

How are cells ring-fenced from the SCC and from other cells?

The SCC Regulations provide that each cell constitutes a separate patrimony of the SCC. The claims in respect of one cell may only be met out of assets of that cell. No recourse to the non-cellular assets applies.

How do you establish a securitisation cell company?

A securitisation cell company can be established with a minimum share capital of €46,588 (which may be at least 25% paid-up), two shareholders and be administered by two directors. It takes around three business days to establish a SCC from submission of all required documentation.

Insurance-linked securities securitisation cell companies

Prior regulatory approval is required in the event of establishment of a securitisation cell company that will enter into insurance linked securities transactions that fall within the scope of the Reinsurance Special Purpose Vehicles Regulations. Please contact us for further information of activities captured by the said regulations.

How do you establish a cell in a SCC?

A cell is established by means of a resolution of the board of directors of the SCC resolving to establish a cell for the purpose of a securitisation transaction. No minimum capital requirements for the establishment of a cell apply. In the case of an SCC authorised to enter into insurance-linked securities transactions, prior regulatory approval for the establishment of the cell is required.

Minimum capital requirements

Minimum share capital of €46,588 (which may be at least 25% paid-up) held by at least 2 shareholders is required for the establishment of a SCC. No minimum capital requirement applies for the establishment of a cell.

Authorisation timeline

Prior authorisation is only required in the case of (i) securitisation cell companies issuing insurance linked securities and (ii) securitisation cell companies issuing securities to the public on a continuing basis. Authorisation of securitisation cell companies is a two-step process: a core authorisation stage and a cell approval stage. The core of the securitisation cell company will be approved first in a process that would likely focus on the corporate and governance arrangements of the vehicle. Transaction details, including transaction documents would be reviewed in the cell approval stage.

Are multi-currency deals possible?

Yes, it is possible to establish cells in different currencies, each with a separate accounting base currency. The SCC is required to prepare accounts in only one of the currencies.
Are multi-originator structures possible? Yes, it is possible to establish multiple-originator structures provided that each originator transacts with a separate core.

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:
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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@ganadoadvocates.com**.

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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.

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