

Issue N° 35
July 2014

GANADO
ADVOCATES

INSURANCE AND PENSION LAW NEWSLETTER

Solvency Watch

News

Questions & Suggestions

IN THIS ISSUE

3

Solvency watch

6

News

8

Questions & Suggestions

CONTRIBUTORS

Dr Matthew Bianchi
 Dr Matthew Brincat
 Dr Elaine Magri
 Dr Stephanie Cassar
 Dr Stephanie Zarb Adami
 Dr Clement Mifsud Bonnici
 Dr Philip Mifsud

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. Latest developments in relation to the Solvency II Directive
- ii. Focus on IMD II in particular the proposed Complaints-Handling Insurance Intermediaries Rules.

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

**INSURANCE &
PRIVATE PENSIONS TEAM**

EIOPA published updated sub-set of Quantitative Reporting Templates

The following are recent updates issued by EIOPA:

- i. Following EIOPA's publication of harmonised and Solvency II Quantitative Reporting Templates ("QRT"), an updated sub-set of Quantitative Reporting Templates ("QRT") have now been published. These are available from EIOPA's Guidelines on Submission of Information to National Competent Authorities (NCAs), applicable in the Preparatory Phase (2014-2015).
- ii. The decision to implement XBRL as the standard for reporting data submission between EIOPA and NCAs as well as to promote its use in the market was also adopted.
- iii. The following products have been developed by EIOPA:
 - Data Point Model which is a structured representation of data;
 - EIOPA XBRL Taxonomy for the presentation of data items in the technical format of XBRL.

More information can be found [here](#) and the following dedicated e-mail address can be used to contact EIOPA about this information: xbml@eiopa.europa.eu

Council approves Omnibus II Directive

The Council of the European Union has approved the Omnibus II Directive, ensuring that the implementation of the Solvency II regime is on track for the start of 2016.

The Omnibus II Directive introduces some notable amendments to the Solvency II Directive. In particular, the Omnibus II Directive includes the provision of specific tasks for the European Insurance and Occupational Pensions Authority (EIOPA). It also contains a set of measures that clarify the treatment of insurance products with long term guarantees, including annuities, in order to mitigate the effects of artificial volatility and a low interest rate environment.

The next step is for the Omnibus II Directive to be published in the official journal of the EU. It will enter into force the day following the publication.

The latest developments on the Solvency II Directive can be accessed by [clicking here](#).

EIOPA launches EU-wide insurance stress test and publishes Solvency II technical specifications

The European Insurance and Occupational Pensions Authority (EIOPA) has launched an EU-wide stress test for the insurance sector aimed at testing the overall resilience of the insurance sector and to identify its major vulnerabilities. The results of the stress test analysis will be published in November 2014.

Solvency II Updated EIOPA timetable for production of first set of guidelines

The European Insurance and Occupational Pensions Authority (EIOPA) has published slides relating to its first set of guidelines under the Solvency II Directive (2009/138/EC), which were presented at a meeting of its Insurance and Reinsurance Stakeholder Group (IRSG) on 29 April 2014.

EIOPA's slides include provisions relating to technical provisions, own funds, the solvency capital requirement (SCR), valuation, internal models, governance and the own risk and solvency assessment (ORSA), equivalence and the supervisory review process (SRP).

The slides set out the following timetable for development of the first set of Solvency II guidelines:

CONSULTATION: June to the end of August 2014;

FINAL DRAFT: November 2014;

TRANSLATION: December 2014 to the beginning of February 2015;

COMPLY OR EXPLAIN: February to the end of March 2015;

available for the start of the approval process from 1 April 2015.

The timetable set out in the slides is more detailed than the timetable EIOPA published on its website on 31 January 2014 (see Daily News 3 February 2014).

A copy of the slides is available [here](#).

This test comprises of two modules:

- the core module, which includes two adverse market scenarios covering financial asset stresses (sovereigns, corporate bonds and equities) as well as shocks to real estate asset prices and interest rate stresses; and
- the second module, which addresses the impact of a low yield environment. It is a follow-up to EIOPA's opinion on the supervisory response to a prolonged low interest rate environment.

The adverse market scenarios have been developed in co-operation with the European Systemic Risk Board. These scenarios, which have been approved by the General Board of the ESRB, highlight adverse conditions that are specific and relevant to each sector.

Simultaneous with the launch of the stress test, EIOPA has published technical specifications for the preparatory phase (Part 1 (EIOPA-14/209), together with an annex (EIOPA-14/211), and Part 2 (EIOPA-14/210)). The technical specifications will provide a ground for undertakings to value assets and liabilities and to calculate solvency or minimum capital requirements and own funds. EIOPA has also published a new webpage, together with a template for submitting questions to the relevant national competent authority.

Copies of the [EIOPA stress test press release](#) and [updated webpage](#); ESRB related [press release](#) containing the adverse scenarios sent to the EBA and EIOPA, [EIOPA-14/209](#) and [annex](#); [EIOPA related webpage](#), [Q&A template](#) and [accompanying list](#) are available.

Consultation on Guidelines and their Impact Assessment for Solvency II

On the 2nd June the European Insurance and Occupational Pensions Authority ("EIOPA") invited stakeholders to provide their comments on the first set of Guidelines and their Impact Assessment for Solvency II. These Guidelines are addressed to National Competent Authorities or Financial Institutions and seek to ensure that a consistent application of EU law and that effective supervisory practices are adopted by the various Member States.

Consultation papers have been issued in respect of these five areas:

- Consultation Paper on Pillar 1 GL, including Guidelines on Technical Provisions, Own Funds, the Standard Formula SCR and Group Solvency;

- Consultation Paper on Internal models GL;
- Consultation Paper on Pillar 2 GL, including ORSA and Governance;
- Consultation Paper on Supervisory Review Process (SRP) GL; and
- Consultation Paper on Equivalence GL.

A separate consultation paper for the Impact Assessment of the Guidelines has also been made available. Following this consultation, EIOPA intends to adopt a final set of Guidelines which will be made available on its website.

The period for providing comments will end on 29 August 2014 and the consultation papers can be accessed by clicking [here](#).

MFSA COMMUNICATION IN RELATION TO SOLVENCY II

The MFSA has issued a communication in relation to Articles 213 and 214 of the Solvency II Directive 2009/138/EC and to Sections 3 and 4 of the guidance paper issued by the MFSA on 22 November 2013 on insurance groups under Solvency II.

A number of queries have been received by the MFSA particularly in relation to whether an insurance group will exist even where there is an insurance holding company controlling only one insurance or reinsurance company. In this respect the MFSA made representations with and sought clarification from the EIOPA Group Solvency Sub-Group.

The MFSA has been advised that an insurance group will exist even where there is an insurance holding company controlling only one insurance or reinsurance company. Consequently there is the obligation to compute the group solvency calculation at the level of the ultimate insurance holding company. The Group Solvency Sub-Group have explained that insurance holding companies falling within this scenario cannot be treated more favourably than other insurance holding companies in terms of the Solvency II Directive.

EIOPA launches a discussion paper on conflicts of interest

The European Insurance and Occupational Pensions Authority (EIOPA) has published a discussion paper on conflicts of interest in direct and intermediated sales of insurance-based investment products (EIOPA/14/061).

Publication of the paper follows a request for technical advice from the European Commission and accompanying mandate concerning amendments relating to conflicts of interest made to the Insurance Mediation Directive (2002/92/EC) (IMD) by Article 91 of the amended Markets in Financial Instruments Directive (MiFID 2).

The discussion paper focuses on the conflicts of interest as introduced by the amendments to the IMD. The Commission has made an equivalent request to the European Securities and Markets Authority (ESMA) on possible delegated acts concerning MiFID 2 as regards conflicts of interest of investment firms, among other issues in respect of packaged retail products (together with insurance-based investment products). EIOPA is requested to co-operate with ESMA in preparing its advice, bearing in mind the specificities of insurance-based investment products and their distribution.

The discussion paper focuses on the two issues on which the Commission has requested technical advice:

- a. criteria for identifying types of conflict of interest that might harm customers; and
- b. steps to be taken in identifying, preventing, managing and disclosing conflicts of interest.

In addition, the paper identifies specific issues relating to insurance distribution activities that need to be taken into account. These include proportionality and the handling of third party payments (inducements).

Next steps. The deadline for comments was 22 July 2014. Responses to the paper will assist in informing EIOPA's future consultation on draft technical advice to the Commission. EIOPA is required to provide its final technical advice to the Commission by 13 February 2015.

Click [here](#) for more information.

EIOPA organises a public event on Insurance Mediation Directive

EIOPA hosted a public event in Frankfurt on 11th July 2014. An exchange of views on the EIOPA Discussion Paper on conflicts of interest in sales of insurance-based investment products was discussed. This followed the mandate from the European Commission to EIOPA for technical advice. Topics that were addressed during the event include:

- What are the types of conflict of interest that could harm customers?
- How can these conflicts of interest be best avoided or managed?
- How can conflicts of interest be best addressed for very small intermediaries?
- What are the challenges in addressing conflicts of interest for large insurance undertakings?
- What are the disclosures that should be made to customers, and when?

EIOPA has initiated the “comply or explain” process on the Guidelines on complaints-handling by insurance intermediaries.

The Guidelines are subject to a comply-or-explain procedure whereby competent authorities are expected to make every effort to comply with them. During a 2-month period each competent authority will need to confirm whether they comply or intend to comply with the Guidelines. In the event that a competent authority does not comply or does not intend to comply, it will need to inform EIOPA, stating its reasons. EIOPA will publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. EIOPA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation.

Complaints-Handling by Insurance Intermediaries

On the 3rd March 2014, the MFSA issued a consultation document on the introduction of a new Insurance Rule – the Insurance Intermediaries Rule 25 of 2014 entitled “Complaints-Handling by Insurance Intermediaries” (the “Insurance Intermediaries Rule”). Further information regarding rule this can be accessed [here](#).

Following feedback received from interested parties within the relevant sectors, certain clarifications to the Insurance Intermediaries Rule were made. These included Article 2 on the application of this rule.

The Insurance Intermediaries Rule, which incorporates the Guidelines on Complaints-Handling by Insurance Intermediaries and the *Report on Best Practices by Insurance Intermediaries in Handling complaints* (both published by EIOPA on the 27 November 2013), will enter into force on the 1 July 2014 and will apply to any person (natural or legal) enrolled in the Agents, Managers or Brokers List and is carrying out insurance intermediaries activities.

The Note for Information can be accessed by clicking [here](#) and the Insurance Intermediaries Rule can be accessed [here](#).

Setting up a reinsurance SPV & listing of Insurance-Linked Securities in Malta

GANADO Advocates participated in a seminar with the theme “Setting up a reinsurance SPV & listing of Insurance-Linked Securities in Malta.”

This seminar was organised by Commercial Risk Europe in collaboration with IFSP and was held in London on the 10 April 2014.

During the seminar, Richard Ambery (Partner) delivered a session on Regulations for the formation of a Reinsurance SPV.

Click [here](#) for more information

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@ganoadvocates.com or

Dr Mathew Brincat at mbrincat@ganoadvocates.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@ganoadvocates.com.

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