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Queries & Suggestions

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INTRODUCTION

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, this newsletter will include:

- i. Solvency II Directive Transposed into Maltese Law;
- ii. Potential external audit of public disclosures under Solvency II;
- iii. STS Securitisation for the insurance market
- iv. The MFSA publishes a revised version of Insurance Rule 15 of 2008 and Insurance Intermediaries Rule 21 of 2007
- v. MFSA publishes 2014 Insurance Principals Statistics;
- vi. MFSA's consultation on regulations to be issued under the Insurance Business Act.

We trust that you will find this issue of the newsletter to be of interest and invite you to join in the discussion on our **Insurance Malta** and **Pensions Malta** LinkedIn Channels.

**INSURANCE &
PRIVATE PENSIONS TEAM**

Solvency II Directive transposed into Maltese Law

The Bill amending various financial services laws to transpose Solvency II Directive has been published in the Government Gazette on the 6th October 2015. The provisions of the Bill will come into force by notice in the Government Gazette issued by the Minister responsible for Finance.

The Bill follows various public calls for consultation issued by the Malta Financial Services Authority and highlights the main changes to be carried to the Insurance Business Act and other ancillary legislation as a consequence of transposing the provisions of Solvency II Directive.

The Bill can be accessed [here](#).

Potential external audit of public disclosures under Solvency II

In June 2015 the European Insurance and Occupational Pensions Authority (EIOPA) published a note which emphasized the importance of high quality information being provided to the public and the potential role that external auditors may play in relation to the public disclosures that insurers and reinsurers are required to make under Solvency II.

The public disclosures under Solvency II will be in the format of the Solvency and Financial Condition Report (SFCR) that must contain the information specified by the Solvency II Directive and as further detailed in the Commission Delegated Regulation (EU) 2015/35. The objective of these public disclosures is to provide EU-wide consistent and comparable information to the interested stakeholders about the solvency and financial condition of insurers and reinsurers. However, EIOPA stresses that it is also important that the information is of good quality to permit stakeholders to make informed decisions.

The SFCR has generated a lot of discussion during the past years regarding the possibility of such public disclosures being made subject to external audit and the added burdens this would generate, particularly on smaller undertakings. It was expected that EIOPA would apply a uniform requirement across member states in this regard. However EIOPA has granted discretion to the respective National Supervisory Authority of the member state to determine whether an external audit is required for these disclosures. Certain member states have already declared their position and require an external audit for supervisory reporting and public disclosures.

In its note in June 2015 EIOPA stated that it would monitor closely possible divergent levels of quality in public disclosures across the member states and suggested that certain key elements such as the balance sheet, own funds and capital requirements could fall within the scope of an external audit which would be a powerful tool to ensure high quality of the disclosures.

The Malta Financial Services Authority has not officially declared its position in this regard and it is still not known whether Maltese insurers and reinsurers will be required to subject parts or all of their SFCR to external audit. In view of the imminent implementation of Solvency II, it is anticipated that the MFSA's decision will be made known in the near future.

The full text of EIOPA's note can be viewed [here](#).

MFSA publishes 2014 Insurance Principals Statistics

The MFSA has published figures for Insurance Principals (having their head office in Malta as at 31st December 2014) and offering General and Long Term Insurance/ Re-Insurance. These reports are available below.

An annual report, digesting the statistical overviews below and elaborating on any significant changes since 2013, will be published by the MFSA in the coming weeks.

Insurance Principals Statistics 2014 - General Business

Insurance Principals Statistics 2014 - Long Term Business

STS Securitisation for the insurance market

The EU's Capital Markets Union will see initiatives to improve market efficiency and reducing the distance between investors and those in need of capital at national level and across the common market.

Increasing and diversifying the sources of funding is fundamental for the wider policy goals. As part of the action plan, the European Commission has proposed legislation aimed at regenerating the securitisation market to pre-crisis levels – the Securitisation Regulation.

Existing EU rule books already cater for this, but these are scattered across different legal acts and are not always consistent. Compiling the rules into a single instrument is intended to bring cross sector consistency.

The Securitisation Regulation will regulate all securitisations, prescribing rules in relation to retention of risk, reduced opacity and due diligence considerations, all aimed at creating “simple, transparent and standardised” (STS) securitisations. The Solvency II Delegated Regulation already provides for risk weightings that apply to securitisation investments determined in accordance with specified criteria. Once the Securitisation regulation is formally adopted, the Solvency II Delegated Regulation will need to be brought in line: risk weighting criteria will be replaced by mechanisms in the Securitisation Regulation, extending the STS securitisation concept to the insurance space.

INSURANCE RULE 15 OF 2008 & INSURANCE INTERMEDIARIES RULE 21 OF 2007

MFSA publishes a revision of two rules

The MFSA has published a revised version of Insurance Rule 15 of 2008 on Appointments and Changes of Director, Controller or Senior Manager and Insurance Intermediaries Rule 21 of 2007 on the Personal Questionnaire to be submitted by specific individuals. The aforementioned Rules have also been reviewed with a view to removing the 21-day time limit for approval

of directors, senior managers, compliance officers and money laundering reporting officers. Moreover, the revised Personal Questionnaire Form will serve the purpose of providing the Authority with information which was not addressed in the original Form and which information is considered to be relevant to the due diligence process.

MFSA's consultation on regulations to be issued under the Insurance Business Act

As part of the transposition exercise of the Solvency II Directive into Maltese law, the MFSA issued for consultation a number of proposed MFSA regulations. Subsequent to the changes effected to the Insurance Business Act ('IBA'), the MFSA is currently amending the subsidiary legislation issued under the IBA to align it with the requirements, as well as the terminology of the Solvency II Directive and is also introducing new regulations.

In all, the MFSA presented ten amended regulations for this consultation, most of which involved changes to adopt the Solvency II terminology such as 'undertaking' instead of 'company' and 'competent authority' instead of 'authority'. The other key amendments to existing regulations are shown below.

COMPANIES CARRYING ON BUSINESS OF AFFILIATED INSURANCE – REGULATIONS, 2015

- ① Companies carrying on affiliated insurance business are now referred to as captive insurance or reinsurance undertakings.
- ② Captive re/insurance undertakings that propose to carry out a portfolio transfer are no longer required to make copies of a statement of particulars of the portfolio transfer available for inspection for 30 days at the offices of the transferor or the offices of its insurance manager, where applicable.
- ③ Captive re/insurance undertakings that propose to carry out a portfolio transfer of long term business and apply to the Financial Services Tribunal for approval of such a scheme are not required to make copies of the application and related report available for inspection at the offices of the transferor or the offices of its insurance manager, if applicable, unless otherwise determined by the Financial Services Tribunal.

LINKED LONG TERM CONTRACTS

– REGULATIONS, 2015

- ① The Regulations only apply where the investment risk is borne by a policyholder who is a natural person.
- ② Permitted Links have been aligned to Article 50 of the UCITS Directive.

PENALTIES FOR OFFENCES AND INFRINGEMENTS – REGULATIONS, 2015

- ① In line with changes made to the Insurance Business Act ('IBA'), the penalties have been aligned to the penalties of the Investment Services Act (Cap. 370) providing for:
 - i a maximum court penalty of €466,000 (up from €116,468) and a maximum of 4 years imprisonment (up from 2 years);
 - ii a maximum administrative penalty of €150,000 (up from €93,174.94) and a maximum daily penalty of €116 (from €116.47)

APPROVED AUDITOR

- REGULATIONS, 2015

- ① Fines aligned to amounts prescribed by Accountancy Profession Act (Cap. 281)
- ② Circumstances that would lead to the suspension or revocation of authorisation of an approved auditor and the manner in which such action is taken by the Authority are transposed from Insurance Rule 17 to these Regulations. The timeframe for submission of representations in the event of a notice from the MFSA indicating the intent to suspend or revoke authorisation to be reduced from fifteen days to fourteen days.
- ③ New regulation granting MFSA the power to revoke the authorisation of the approved auditor if the annual supervisory fee is not paid on the due date in terms of the relevant fees regulations

LONG TERM BUSINESS CONTRACT

STATUTORY NOTICE - REGULATIONS, 2015

- ① Statutory notice to be provided in the language of the country of commitment.
- ② Penalties for failure to serve a statutory notice increased such that the minimum penalty increased from €465.87 to €1000 and maximum penalty increased from €2,329.37 to €150,000.

REORGANISATION AND WINDING UP OF INSURANCE UNDERTAKINGS - REGULATIONS, 2015

- ① Regulations amended to align to Solvency II requirements and provide for different winding up proceedings which may not involve the Court.
- ② Removed requirement to publish in the Malta Government Gazette in relation to winding up proceedings or reorganization measures implemented.
- ③ Any creditors of a Maltese re/insurance undertaking who reside, are domiciled or with head office outside Malta, including in a third country now have a right to lodge claims or submit observations in relation to claims in the case of reorganization measures or winding up proceedings. This previously only referred to other EU/EEA Member states.
- ④ The Maltese insurance undertaking is no longer required to maintain a register showing the assets representing the technical provisions as a result of agreed changes to the IBA during the consultation process.
- ⑤ The commitments entered into under freedom of services or through a branch of the Maltese insurance undertaking that is wound up are to be met in the same way as the other insurance contracts of that undertaking, without distinction as to nationality of the persons insured and the beneficiaries.

It is also being proposed to issue a number of new regulations transposing specific provisions of the Solvency II Directive. The proposed new Regulations to be issued under the Insurance Business Act include:

- European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015
- Insurance Business (Commission Delegated Regulation on Solvency II) Regulations, 2015
- Insurance Business (Exemptions) Regulations, 2015
- Insurance Business (Maintenance of Assets) Regulations, 2015
- Insurance Business (General Provisions of Supervision) Regulations, 2015
- Insurance Business (Solvency II Transitional Provisions) Regulations, 2015

The MFSA also proposed the revocation of the Insurance Business (Criteria of Sound and Prudent Management) Regulations on the basis that the requirements would be transposed into Insurance Rules. The Insurance Business (Companies Accounts) Regulations will also be revoked as Maltese companies are now required to prepare their financial statements in accordance with International Accounting Standards and International Financial Reporting Standards as stipulated by EU regulations.

The MFSA invited interested persons to submit comments and feedback by not later than Monday 19th October 2015. A copy of the proposed Regulations may be accessed by clicking [here](#).

On the 13th October 2015 the MFSA issued a consultation on a second set of Regulations entitled the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015. The purpose of these Regulations is to transpose the Solvency II requirements relating to group supervision that were not included in the IBA. Watch out for further reviews on these Regulations on our website. You may access a copy of the proposed Regulations by clicking [here](#).

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

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Dr Matthew Brincat at mbrincat@ganoadvocates.com.

We will be pleased to hear from you.

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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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.