

# INSURANCE AND REINSURANCE

## The Changes Occurring in Insurance Regulations

"The focus of the insurance industry should be on culture (including tone at the top, conflicts of interest management, and remuneration practices), disclosure of information to clients (particularly in terms of the nature and extent of the disclosures and how these are presented to customers), product oversight and governance (specifically in relation to documented policies and procedures as well as the testing and ongoing review of same) and, finally, training and development at all levels, including the board of directors", suggest Malcolm and Diane at Camilleri Preziosi Advocates.

They claim that these areas in insurance are likely to be high on the regulators' agenda, both locally in Malta as well as at European level, and hence the insurance industry would do well to centre efforts on these matters in order to be able to withstand regulatory challenges, as well as contribute to the achievement of the underlying objectives of these regulatory regimes. They expand on this in their following interview.

**Can you explain to our readers the relation between Malta and UK, in regard to the financial services? How does this relation enhance each jurisdiction?**

Malta is part of the Commonwealth of Nations and although Malta gained its independence in 1964, Malta and the UK have maintained excellent relations in the political and economic spheres. This has facilitated the enhancement of bilateral ties and closeness in international fora, both within and beyond the capture of the European Union. The financial services industry is an important sector for both jurisdictions' economies. Invariably, the UK has been the leading financial services hub in Europe and beyond; Malta, on the other hand, has established a thriving financial services industry which has benefitted the whole economy.

The UK's decision to exit the EU poses certain challenges for both jurisdictions. The type of relationship that the UK will maintain with the EU post-Brexit is yet to be clarified, however

there is little doubt that Malta is, and will remain, keen to maintain and enrich its strong connections with the UK. A Malta-UK Business Promotion Taskforce was set up recently, tasked with business promotion of Malta within the UK, with a focus on industrial, economic and financial activities in respect of which Malta is seeking to collaborate with the UK. Through the work of this Taskforce, Malta is reaching out to UK-based companies which are likely to want to set up base in a European Union Member State following Brexit, exploring ways in which to help such companies sustain their existing and future business models. It is encouraging to note that the interest that such companies have shown has already been significant, be it directly to the said Taskforce or via practitioners.

**With the EU's Fourth Anti-Money Laundering Directive bringing changes to the legal sector, is there anything you believe needs revising in Malta in relation to this?**

Malta is still in the process of trans-

posing the EU's Fourth Anti-Money Laundering Directive into domestic laws. One of the benefits of this new regime is the enablement of a risk-based approach to AML compliance. This can definitely be used to the advantage of local operators, in that it allows them to tailor and shape their AML compliance regime in a manner that is proportionate to the nature, scale and complexity of their business and to the risks that they face. For a jurisdiction such as Malta, the proper application of the principle of proportionality is essential in ensuring that the introduction of a directive such as this is embraced as a leap towards improving one's ways and systems, rather than a burden on its ability to conduct its operations. That being said, considering that the Directive allows vast discretion to national competent authorities to scale up the requirements, it is hoped that the local regulator will not adopt an overly-prescriptive approach which would defeat the purpose of the risk-based approach and negatively affect Malta's competitive advantage in certain sectors.

In an effort to address these concerns, the regulator has been forthcoming with the industry by launching rounds of consultations in connection with the new AML regime, including a specific framework for the gaming sector. Consultations around the implementation of a central beneficial ownership registers are expected to follow shortly. It is hoped that initiatives such as these will assist the regulator in appreciating the circumstances and concerns of the subject persons of the Directive and consider same when taking a stand on certain aspects of the framework which are particularly relevant for Malta as a jurisdiction.

**The reforms for the insurance regulatory update aims to change transparency, fairness, consumer protection and harmonisation; in what ways do you believe this to be true?**

The forthcoming Insurance Distribution Directive ('IDD') and the Regulation on Packaged Retail and Insurance-based Investment Products ('PRIIPs') are the two key frameworks which (re)insurance undertakings and distributors of (re)insurance products are focussing their efforts upon at the moment. Both legislative instruments align closely to other directives in terms of what they are seeking to achieve, namely transparency, fairness, protection for consumers across European financial services, the delivery of good customer outcomes, and, more broadly, harmonisation across all pockets of financial services.

The disclosure obligations imposed on manufacturers and distributors of (re)insurance products under the IDD and the PRIIPs are far more extensive than what market players, particularly intermediaries, have been accustomed to under the preceding regime, namely the Insurance Mediation Directive, which will now be completely abolished and replaced by the IDD. The main aims of the Insurance Product Information Document and the Key Information Document are specifically addressed at mandating the disclosure of, inter alia,

key risks and costs that the consumer should be made aware of. In addition, disclosure obligations around remuneration, inducements and suitability assessment are equally onerous. Most of these new provisions, as well as other requirements around governance structures, competence and product approval processes, also replicate similar provisions which investment firms are conversant with under the MiFID framework.

In theory, the means by which the EU is seeking to achieve the above-stated aim sound robust. However, the effectiveness of the regime will ultimately depend on how it is applied and enforced in practice. The behavioural biases that consumers suffer from in practice would seem to suggest that consumers might be prone to information over-load as a result of these additional disclosures and as a result may tend to turn to their advisers and rely their judgement rather than read through the plethora of documentation. Consequently, the use of traditional regulatory tools such as disclosures is no longer sufficient to protect consumer and policymakers are thus forced to consider alternative 'nudging' measures through which to address and counteract these biases.

**Briefly, can you explain the regulatory changes occurring in the insurance industry and how this will affect your clients?**

The local industry has demonstrated time and time again that it is capable of adapting to the challenges it has had to face. This is also evident from the flexible models that the local regulator has sought to introduce over the years in relation to insurance, including protected cell companies, incorporated cell companies, securitisation cell companies and reinsurance special purpose vehicles, amongst others. Further, the domestic market has responded well to the Solvency II regime and, notwithstanding certain challenges (particularly in terms of the nature and extent of investment in human resources and reporting systems), the

local market remains well-capitalised and able to meet and exceed its compliance obligations however unsurmountable they might seem.

In light of the regulatory changes brought about by the IDD and the PRIIPs Regulation in particular, the local industry will once more have to introduce new internal processes and procedures where appropriate, as well as revisiting existing ones. More importantly, the industry will have to think hard about how to align these developments which are specific to the insurance sector to other broader regulatory changes, such as the new general data protection regulation, the market abuse regime and the changes to the anti-money laundering framework, as well as keeping abreast with parallel guidance, technical standards, and similar pronouncements being issued by the local and European regulators.

The industry cannot afford to concentrate its efforts solely on compliance, however. The insurance industry is constantly evolving and embracing innovative technology, such as robo-advice, automation, InsurTech, and other technologies relating to data analytics, in an effort to personalise policyholder experience and stay ahead of competitors. Today's rapidly evolving environment, consumer-centric culture and increasingly technology-driven economy requires insurers to be agile in order them to prosper. The sooner they acknowledge that disruption is here to stay, that customers are key and that risks are constantly changing, the smoother the adaptation will prove to be. The insurance industry must also be alert to the fact that there are multiple potential benefits linked to big data analytics and processes, but there are also a number of growing risks, such as privacy issues and cyber threats, which may have a significant reputational impact on the insurer and the sector if they were to materialise, apart from other consequences attached to regulatory breaches. **LM**

### About Malcolm Falzon



Malcolm Falzon is a Partner in the Corporate & Finance practice group at Camilleri Preziosi. His areas of specialisation comprise capital markets, M&A, aviation and gaming. He is also responsible for the firm's insurance practice, assisting local and international clients on regulatory, corporate, licensing and dispute resolution matters.

### About Diane Bugeja



Diane Bugeja is a Senior Associate at Camilleri Preziosi Advocates, practicing primarily in the fields of financial services regulation and anti-money laundering regulation. Diane also advises local and overseas clients, including insurance and re-insurance undertakings and distributors, on the impact of the current and forthcoming regulatory regime on their business models.

### Firm Profile

Camilleri Preziosi is counsel to Malta's largest broking house, prominent insurance companies and captives, and a number of other players in the insurance market including insurance agencies, insurance managers, loss adjusters and independent insurance consultants. The firm advises various London-based and continental insurance companies licensed to carry out business in Malta. The firm has amassed considerable experience in licensing and operational matters related to insurance and reinsurance, assisting clients in negotiations with the regulator for the purpose of setting up operations in Malta and, thereafter, in ensuring compliance with the regulatory framework.

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