MFSA Newsletter

March 2012 | Issue 3

MFSA
Malta Financial Services Authority

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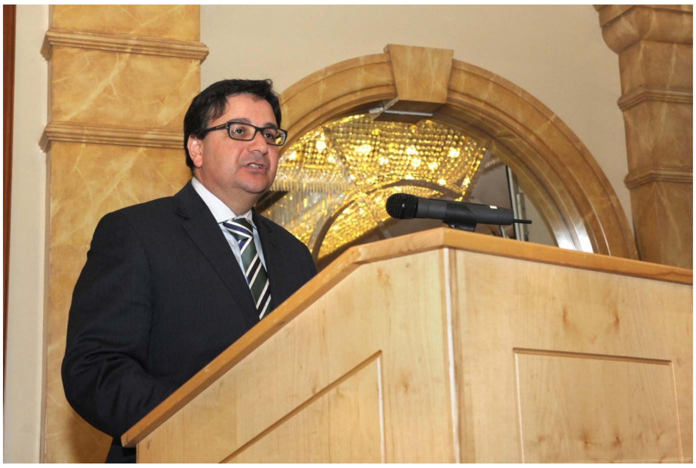
Further information

You can keep up-to-date on our news and regulatory developments by regularly visiting our website or by subscribing to our RSS feeds.

Continuing Professional Development Course for Directors of Investment companies and Investment Funds

As a continuing professional development training initiative on the governance of licenced entities, the Malta Financial Services Authority organised a workshop for directors of investment companies and investment funds. The event which was held on the on the 8th and 9th March at the Hilton Malta, was opened by the Hon Minister of Finance, the Economy and Investments, Tonio Fenech and was co-ordinated by ManagementPlus Group co-founder William Jones and a team of six other foreign speakers. Around two hundred participants attended the course.



Minister Tonio Fenech opening the CPDC at the Hilton Malta

In his invitation letter to the Directors of Investment companies and Investment Funds, Professor Joe Bannister stressed that the legal framework regulating licenced entities generally requires that the entity is managed in the best interest of the shareholders or clients as the case may be. The board of directors and the members of various offices and committees established for the proper conduct of business of licenced entities are ultimately responsible to its overall conduct of business as they have the duty to monitor that the licenced entity is being managed and operated in the best interest of everybody concerned.

The MFSA Chairman indicated that Governance of licensed entities is at the top of EU agenda. Following the publication of the De Larosiere Group Report in 2009, the European Commission has published Green Papers in 2010 and 2011. The 2010 Green Paper took stock of the lessons learnt from 2007-2009 financial crisis and considered a possible way forward to address the corporate governance issues which had been identified while the 2011 Green Paper attempts to address three issues:

1. The composition and effectiveness of the Board of Directors;
2. The involvement of shareholders;
3. The effectiveness of the "comply or explain" approach.

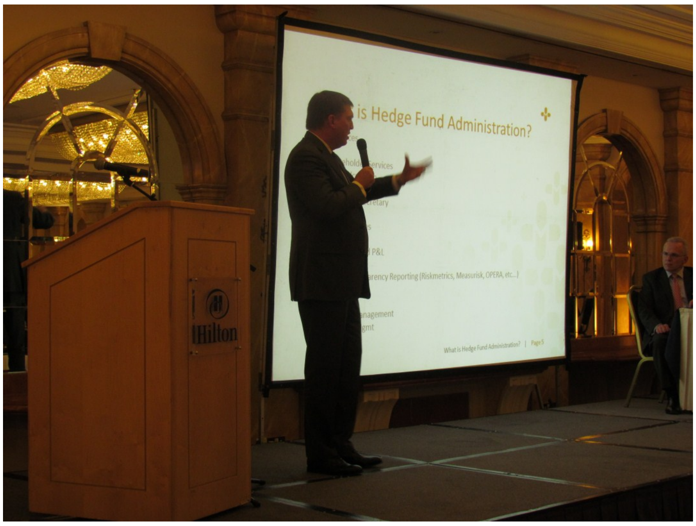
The MFSA carries out a rigorous fit and proper exercise on persons proposed as members of the Board of Directors and/or officers of the licensed entity in order to ensure that only the persons who have the required knowledge and experience to understand and monitor the conduct of business of the licensed entity are involved with the conduct of business. However, commitments by directors and /or officers of licensed entities are increasingly coming under the scrutiny and evolving legislation at international level proposes to limit the number of mandates.

The topics presented during the course regarded:

- Corporate Governance Framework
- Hedge Fund Structures and Jurisdictions
- Documentation and Fund Launch
- Portfolio and Risk Management
- Administration, Custody and Prime Brokerage
- Accounting and Audit
- Director Liability Management
- Corporate Governance Process

William Jones, the co-founder and senior partner of ManagementPlus Group opened the programme with a presentation on governance and Board of Directors' responsibilities as well as on the general considerations on corporate governance. In her presentation, Kerrie A. Walsh a special counsel at Shulte Roth & Zabel in London, focused on Hedge Fund Structures.

The third speaker Mr Andy Mack, founder of Fernden Advisors, gave an overview of Portfolio and Risk Management. Administration, custody and prime brokerage were the topics on which Mr Alain Guerard based his presentation. Mr Guerard is a principal at ManagementPlus and managing director of ManagementPlus in Luxembourg.



James Cox delivering his presentation on Corporate Goverance Process

The Business of Due Diligence and Operations was the subject covered by Mr Malcolm Paterson an Independent Director for single funds and asset management in Switzerland, Luxembourg, Cayman and Ireland.

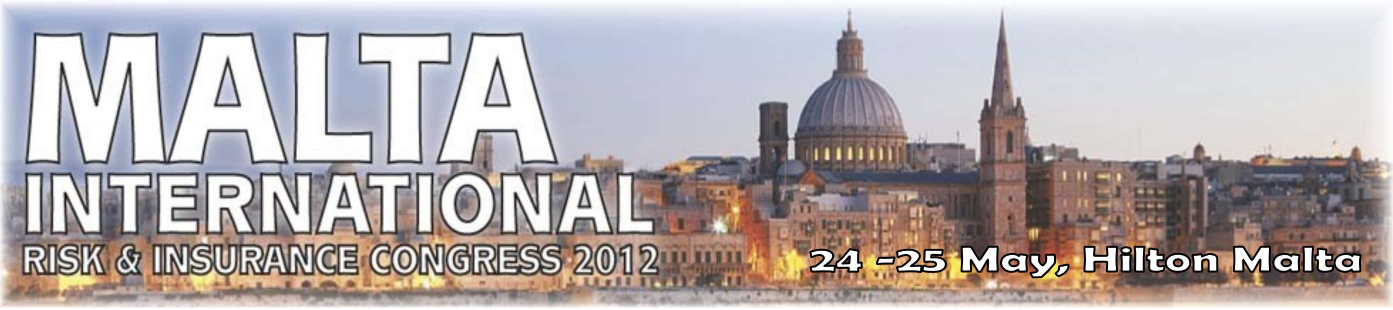
Another speaker was Mr Michael Ferguson, an Irish and UK Chartered Accountant and a CPA with Ernst & Young in Luxembourg. In his presentation Mr Ferguson highlighted the purpose of auditing as well as audit strategy and procedure.

The subject of Governance Process for Hedge Funds was dealt by Mr James W. Cox a Senior Advisor with ManagementPlus Group in Singapore.

A certificate of attendance was given to those who attend the course.

Mind the gap!

***Supply chain risk** and business interruption in particular is a hot topic in the European and international risk and insurance community currently as companies the world over try and work out how and why they were so badly hit by the Japanese earthquake and Thai floods. Insurance buyers are keen for the insurance industry to respond with broader coverage for the risks but the insurers say the risk managers need to manage their risks more effectively. This topic will be one of the key emerging risks discussed at the Malta International Risk & Insurance Congress on May 24 and 25 organised by Commercial Risk Europe and will spark lively debate. CRE Editor **Adrian Ladbury** reviews the ongoing debate that is taking the market by storm.*



A survey of US insurance buyers carried out by forensic accounting and claims firm Dempsey & Partners shows that only half of the risk and insurance managers surveyed who had experienced a supply chain disruption in the last five years had actually recovered claims.

Given the sharp focus on supply chain risk since the Japanese earthquake and Thai floods last year it is no surprise that risk and insurance managers worldwide are calling on their insurers to deliver broader and deeper business interruption coverage, particularly for catastrophe prone regions of the world.

Equally unsurprisingly the big reinsurers and insurers are not falling over each other in a rush to meet the sudden spike in demand with cheap and condition-free coverage.

The leading commercial insurers and reinsurers argue that they cannot offer to renew existing contracts without more information and transparency, let alone offer more innovative and broader-based products.

The relative lack of transparency is obviously a key sticking point in this discussion as was debated at length during *Commercial Risk Europe's* series of national risk manager roundtable discussions as part of our annual Risk Frontiers survey.

But more generally, Dempsey argues that a lack of uniform business interruption value reporting requirements methods may well stifle development of potential new insurance products too.

This point was stressed earlier this month in South Africa too as CRE gathered a group of leading risk managers and brokers in partnership with the Institute of Risk Management South Africa (IRMSA) to discuss developing risks and insurance solutions as part of this year's Global Programmes project.

The South African brokers in particular believe that the scarcity of robust and formalised reporting systems used by risk and insurance managers in the country make it more difficult for them to gain the ear of the main board and negotiate better and more innovative coverage terms with insurers (*the full Global Programmes – Africa report, sponsored by Zurich Global Corporate and including roundtable discussion held in Johannesburg and Cape Town will be published with the May issue of CRE*).

The insurers are of course more than aware of the demand from insurance buyers and the potential for new business, not least because it comes at a time when margins are under increased pressure and demand in Europe and the US remains sluggish on the back of low economic growth.

At the recent AMRAE conference in France, Philippe Jouvelot, Chief Operating Officer of AXA Corporate Solutions, said that it would certainly be looking to increase dialogue with its corporate customers to try and find solutions to avoid a capacity crunch.

And, earlier this month Allianz Global Corporate & Specialty (AGCS) said that it had decided to extend its supply chain coverage to include non damage business interruption (NDBI), albeit on a bespoke basis.

AGCS revealed that more than half of the claims it received from the Japanese earthquake and tsunami last year came as a result of supply chain disruptions that are not caused by physical damage.

It said that evidence suggests that customers are improving the way they identify, measure and manage the risk and has started to offer NDBI coverage to its customers to cover threat to production from the failure of suppliers to deliver for example.

But AGCS will only offer this coverage on a customised basis and customers will have to prove that they are on top of their risks or face refusal.

The need for such extensions of coverage was made clear by the findings of the Dempsey survey that included responses from 67 corporate risk managers or those in finance responsible for the risk management function.

The claims firm found that 61% of those surveyed had experienced a supply chain disruption in the last five years that led to a loss of earnings. But only 30% had actually recovered insurance claims related to those losses.

"There's a great deal of inconsistency in the responses we received, which points to a lack of clear standards for quantifying business interruption and contingent BI exposures," said John Dempsey, Managing Partner, Dempsey Partners.

"That could be one reason behind the lack of innovation the industry has shown in addressing supply chain risk," he added.

"61% of those surveyed had experienced a supply chain disruption in the last five years that led to a loss of earnings"

The survey participants were divided over whether their property insurers clearly articulate and explain their requirements for reporting business interruption values. Some 54% stated that their insurers do clearly articulate the requirements, but 42% disagreed.

The balance tilted away from insurers when the risk managers were asked whether insurers clearly explain and articulate the information needed to insure supply chain risks. Only 43% of the survey participants said that this information is clear while 46% disagree.

Only one in four (26%) of survey participants expressed confidence that the risk modelling performed by their property insurers provides accurate business interruption exposure data and 51% lack confidence in this area. Dempsey suggested that this is perhaps as a result of experiences with losses in Thailand and Japan.

The New York-based forensic accounting firm said that the survey also found a dramatic variance in the methods used by insurance managers to report their business interruption values to their insurance companies.

The majority of survey participants (88%) report these values each year but their methods range from informed estimates (4%) to comprehensive annual studies (10%).

The most popular reporting approaches include customised worksheets tailored to their business (39%) and business interruption worksheets supplied by their insurers (32%).

"We found some striking contradictions in the responses we received to a number of the survey questions. That underlines the fact that there's plenty of room for improvement in how businesses and their insurance companies approach business interruption, contingent BI and their overall supply chain exposures," said Mr Dempsey.

"Furthermore, with related insurance coverages becoming more restrictive, businesses clearly need to examine supply chain and business interruption risk with greater precision and understand the extent and limits of the protection afforded by their insurance programmes," he added.

Some 81% of the participants said that they feel that their reported business interruption values are a good estimate of their business interruption exposures.

But some 61% of those surveyed said they also believe that more accurate business interruption value and exposure data would help them structure a broader, more cost-effective property insurance programme.

Also some 85% of those in the survey indicated that their organisations have identified their key supply chain risks. But only 69% feel their organisation has adequately described these risks to their insurers.

The insurers that shouldered the heavy losses from Japan and Thailand last year and saw their year-end results hit as a result are more than aware of the problem.

Andreas Shell, Global Head of Property Claims at AGCS, said earlier this month: "More than half of our insurance losses from the Japan disaster were the result of business and supply chain interruptions—that's a new dimension." AGCS pointed out that many companies' supply chains have become more global in recent years while, at the same time, inventories have been scaled back because of the cost-driven focus on just-in-time deliveries.

Companies have also outsourced larger shares of their operations and reduced the number of individual component suppliers in an increasing drive for competitiveness, said the insurer.

"The disasters in Japan and, even more so, the extensive flooding in Thailand late in 2011 showed companies and insurers just how vulnerable global supply chains are," stated AGCS this week.

"The electronics and automotive industries, in particular, were faced with bottlenecks or even production outages around the world through so-called 'contingent business interruptions' where suppliers were unable to deliver as planned, impacting production in these industries directly," it added.

AGCS recently carried out a survey that showed that many companies now understandably view disruptions in the supply chain and business interruptions as a major business risk, a conclusion shared by *Commercial Risk Europe's* annual Risk Frontiers survey of Europe's leading risk managers published last October.

The good news for AGCS and its rival international corporate insurers is that many companies are undertaking what it described as 'systematic' efforts to make their supply chain risks more transparent and limit their risks.

"many companies now understandably view disruptions in the supply chain and business interruptions as a major business risk"

"For cost reasons, many companies will still be forced to source their components from just a few suppliers or even a single one in the future. But risk awareness is growing," said AGCS Risk Consultant Ralf Dumke.

The insurer said that companies are taking an increasingly professional approach to address specific risks. This includes the listing of key suppliers and their production locations, running through catastrophe scenarios, the application of geo-coding and the development of business contingency plans.

But the insurer stressed that companies should not merely 'professionalise' their own risk management, but also engage their suppliers in the process. "Even the suppliers' suppliers must be involved," Mr Dumke said.

Beyond the development of better proprietary risk management systems to manage the risk at source many companies are also preparing for business interruptions by taking the necessary insurance cover. But for it to work the insurers need more information, said AGCS.

"While we had to deal with a high claims burden as a result of the large number of natural disasters last year, we continue to provide sufficient cover for business and supply chain interruptions. But we expect companies to allow us an insight into their risk management approach and also into their supplier structures, particularly when loss exposures are high," explained Volker Muench, Head of Corporate Underwriting Property at AGCS.

Risk and insurance managers who work for complex modern companies should, however, not expect off-the-shelf products to meet their rising demands. AGCS explained that conventional business interruption policies are only triggered by physical damage, for example, when either a company or its suppliers are unable to produce because of accidents such as a fire or an earthquake.

The insurer pointed out, however, that many companies nowadays also seek cover for business interruptions that are caused by events that are not necessarily sparked by physical damage, such as strikes or power blackouts.

AGCS said this week that it will offer risk managers this type of policy in the future but stressed that it will not be an 'off-the-shelf' product.

" many companies nowadays also seek cover for business interruptions that are caused by events that are not necessarily sparked by physical damage"

"We don't have enough historical data for risk modelling. In addition, we are looking at potentially high cumulative totals because entire sectors or regions could be affected," Mr Muench explained, adding that in a first step, AGCS would therefore cooperate with select clients and offer them a customised product.

The simple fact is of course that neither the risk managers nor their brokers and insurers should have allowed themselves to get into this pickle in the first place. Why were un-modelled BI risks in far flung territories being created by the companies in the first place and why were the insurers and reinsurers happy to carry them without adequate risk assessment?

The answer to that is equally simple: That was a different age in which money grew on trees and everyone was doing everything in their power to grab their share, regardless it seems of the real underlying risk. The good news is that it has not taken that long for the market to start earnestly looking for solutions that should last after the problem was so horribly exposed in Japan and Thailand. Keep up the pressure!

The insurability of supply chain risks will be one of the key topics debated by industry leaders at the Malta International Risk & Insurance Congress, organised by CRE, and held at the Hilton Malta on May 24 and 25. The congress is free for risk managers and offered at a competitive rate for the insurance market.

To secure your seat please go to www.commercialriskeurope.com/Maltacongress2012 or contact Annabel White—awhite@commercialriskeurope.com

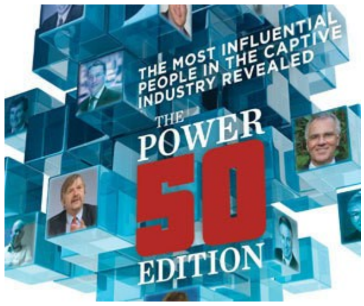
Maltese Protected Cell Companies

Malta licensed four protected cell companies (PCCs) and three new cells in 2011 as companies look to write business directly into Europe. The Malta Financial Services Authority (MFSA) is expecting numbers to grow as Solvency II's implementation date gets closer. Malta is arguably the only EU domicile with PCC legislation as Gibraltar is only a member of the EU via the UK.

Michael Xuereb, MFSA director of business development said, "The PCC is proving to be an ideal vehicle for passporting into Europe. This is mainly due to the experience Maltese PCCs have been gaining in Europe which is proving attractive to companies who want to set up a managed operation by taking a cell in a Maltese PCC.The fact that the cell model can be replicated to cater for multiple captive operations within the same vehicle while tapping the same management experience and know-how. Makes it an efficient and effective proposition." said Xuereb. "The indications are that the business will continue to grow in 2012."

Source Captive Review - Article by Vicky Beckett

Captive Review "Power 50" - The most influential people in the international captive insurance industry revealed



The influential **Captive Review** magazine for this month included a feature on the top fifty most influential people in the international captive insurance industry.

The "Power 50" rankings are based on a person's ability to shape the industry. Input for the award was gathered from reader suggestions and votes from peers in the field.

MFSA Chairman Professor Joe Bannister who ranked 43 in this top list was cited as perhaps the EU's most innovative domicile regulator and described by some voters as a 'modern-day Steve Butterworth' (acclaimed former Guernsey regulator. Bannister played a leading role in bringing cell legislation (PCC and later ICC) to Malta. Malta's legislation is cited as among the most flexible and captive-suitable within the European Union, and is likely to help influence other domicile's future regulation.

Source Captive Review - Article by Matthew Broomfield

Revised MFSA Listing Authority Policies

On the 8th of this month, the MFSA published the revised Listing Authority policies after a period of consultation with the market. The policies which were already revised on 9th December last to include further exemptions from the policies, were further amended to clarify the policy relating to the preparation of the Financial Soundness Report.

The new policy requires a suite of reports which would collectively analyse the financial position of issuers seeking Admissibility to Listing in fulfilment of the Listing Authority Policies regarding the Financial Soundness of Applicant as opposed to the original policy which required one report.

The documents described in the policy are:

A. Due Diligence Report by an Accountant independent of the Issuer

B. Letter of Confirmation by the Reporting Accountant

C. The Financial Analysis Summary

D. Covering Letter – Financial Analysis Summary

The policy also includes illustrative examples of the documents to guide the Issuers as well as the practitioners involved in the preparation of such documents. The new policy also includes details of the role of the sponsor with respect the preparation of the due diligence report.

A copy of these documents can be sourced from the MFSA Website under the Listing Authority webpage heading "Listing Authority Policies".

Proposed Regulation on Central Securities Depositories

On 7th March 2012, the European Commission launched a proposal aimed at setting up a common European regulatory framework for central securities depositories. The proposal contains the following key features:

1. The settlement period will be harmonised for the securities transactions across the EU. In Europe most securities transactions are settled either two or three days after the trading day, depending on each market. The settlement period will be harmonised and set at two days after the trading day, although shorter settlement periods will be allowed.

2. The settlement disciplinary measures will be harmonised across the EU. These consist of *ex ante* measures to prevent settlement fails, and *ex post* measures to address settlement fails. The key objective is to reduce settlement fails and to discourage any competition lowering the standards for settlement discipline, for instance between markets that may have different penalties systems in place.

3. Issuers and investors will have to keep an electronic record for virtually all securities. If they are traded on stock exchanges or other regulated markets, securities should be recorded in CSDs.

4. Central Securities Depositories have to comply with the provisions of the proposed regulation in particular the rules on the organisation and conduct of central securities depositories to promote smooth and safe settlement.

5. Central Securities Depositories shall be authorised and supervised by the competent authority of the Member State where they are established.

6. Authorised Central Securities Depositories will be granted a passport to provide services in the Union either by providing directly a service in another Member State or by establishing a branch in that Member State. A Central Security Depository from a third country can be granted access to the Union if it is recognised by ESMA.

7. A Central Securities Depository shall have a right to become participant in a securities settlement system of a CSD.

The proposal can be viewed at the following link: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012PC0073:EN:PDF . It now passes to the European Parliament and to Council for negotiation and lastly for adoption.

IOSCO Consults on Exchange Traded Funds Regulation

On 14th March, 2012 the International Organisation of Securities Commissions ('IOSCO') published a consultation document entitled *Principles for the Regulation of Exchange Traded Funds ('ETFs')*.

The consultation document lays down 15 principles for the assessment of the quality of regulation and industry practices relating to ETFs.

The principles cover the following topics:

- ETF classification and disclosure;
- Marketing and sale of ETF shares;
- The structuring of ETFs; and
- Liquidity shocks and transmission across correlated markets.

A copy of the consultation document is available on the IOSCO website: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD376.pdf.

The MFSA encourages the local industry to consider and contribute to the consultation process. The consultation period is open until 27th June, 2012.

Should you have any queries in relation to the IOSCO document, please contact Mr Christopher P. Buttigieg, Deputy Director - SMSU (cbuttigieg@mfsa.com.mt) or Mr Jonathan Sammut, Analyst - SMSU (jsammut@mfsa.com.mt).

Press Releases issued by the European Supervision Authorities

European Banking Authority (EBA)

6 March 2012 - The EBA publishes today a Discussion Paper on Draft Regulatory Technical Standards on the capital requirements for CCPs foreseen by the EMIR

6 March 2012 - The European Supervisory Authorities publish today a joint Discussion Paper on Draft Regulatory Technical Standards (RTS) foreseen by the EMIR Regulation

15 March 2012 - The EBA has commented on the IASB's ED/2011/6 Revenue from Contracts with Customers

23 March 2012 - The European Central Bank (ECB) and the European Banking Authority (EBA) have today published a second version of the classification system between their respective reporting frameworks.

European Securities and Markets Authority (ESMA)

1 March 2012 - ESMA advises European Commission on Prospectus Directive’s overhaul - Advice covers possible delegated acts

22 March 2012 - ESMA issues a report on its first examinations of credit rating agencies

23 March 2012 - ESMA reviews pre-trade transparency waivers to ensure consistent MiFID application

27 March 2012 - ESMA seeks views on proxy advisors

Licences - February 2012

NEW LICENCES ISSUED

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Collective Investment Scheme licence issued to **Portfinance SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Innocap Fund SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **PMG Focus Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Ananea Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Valletta Global Equity Events SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Luperco SICAV plc** in respect of one sub-fund.

UCITS

- Collective Investment Scheme licence issued to **Alpstar Capital Funds SICAV** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Valletta European Event SICAV plc** in respect of one sub-fund.

Investment Services

- Category 2 licence issued to **Alpstar Capital (Malta) Limited.**

Insurance

Insurance Undertakings

- Licence issued to **Genghis Insurance Company Limited** to carry on business of insurance and reinsurance in four classes of the general business.
- Licence issued to **FNF Title Insurance Company Limited** to carry on business of insurance in two classes of the general business.

Pensions

Retirement Schemes

- Certificate of Registration issued to **The Bourse Retirement Scheme (Malta).**

Retirement Scheme Administrators

- Certificate of Registration issued to **Bentley Trust (Malta) Limited.**

Trustees & Fiduciaries

- Authorisation issued to **Abacus Corporate Services Limited** to receive property under trusts, to act as a trustee and to provide other fiduciary services (including acting as an administrator of private foundations).

LICENCES SURRENDERED

Collective Investment Schemes

Professional Investor Funds targeting Qualifying Investors

- Surrender of licence issued to **Atlantik Advanced Solutions 1 SICAV plc** in respect of one sub-fund.

LICENCES EXTENDED

Collective Investment Schemes

- Licence issued to **Ananea Funds SICAV plc** was converted from PIF targeting Qualifying Investors to PIF targeting Experienced Investors.

Investment Services

- Extension of licence issued to **Fortelus Capital Management Limited** to extend its licence to provide investment services to Professional Clients (besides collective investment schemes) in relation to all the Investment Instruments listed in the Second Schedule of the Investment Services Act.
- Extension of licence issued to **LL Capital & Partners Limited** to extend its licence to include all of the instruments listed in the Second Schedule to the Investment Services Act in relation to the investment services for which it is licensed.

Trustees & Fiduciaries

- Extension of licence issued to **Vistra (Malta) Limited** to include acting as an administrator of private foundations.

Registry of Companies - New Registrations for February 2012

Companies (Local)	Partnerships	Total
310	6	316

MFSA Notices - March 2012

02/03/2012 - Notice to Financial Services Licence Holders - FATF identifies jurisdictions with strategic deficiencies

20/03/2012 - Notice to Financial Services Licence Holders - Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran.

22/03/2012 - Surrender of Licence by Tell Investments CP

22/03/2012 - Surrender of Licence by Tell Capital Ltd

28/03/2012 - Surrender of authorisation by Grafton (Europe) Insurance Company

28/03/2012 - Notice to Financial Services Licence Holders – Restrictive measures by the Council of the European Union

MFSA Circulars - March 2012

02/03/2012 - Notice to Financial Services Licence Holders - FATF identifies jurisdictions with strategic deficiencies

Warnings

MFSA warnings and Foreign warnings received by MFSA can be viewed on the MFSA Website.

Forthcoming Events

April 13, 2012 - Rights and Remedies Conference

May 18, 2012 - Finance Malta 5th Annual Conference

May 24-25, 2012 - Malta International Risk & Insurance Congress 2012

Forthcoming Training Courses

- MITC - Insurance Broking Certificate
- ILS - An Introduction to Maltese Financial Services Law

Foundations in Accounting and Business

MFSA
Malta Financial Services Authority

Details of Malta International Training Centre (MITC) training programmes' are available on the MITC Website.

Issued by the Communications Unit, Malta Financial Services Authority, e-mail: communications@mfsa.com.mt

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