



ICLG

The International Comparative Legal Guide to:

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United Arab Emirates

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

Currently, the Insurance Authority is the statutory body responsible for licensing and regulating UAE insurers, reinsurers and insurance brokers; however, within the Dubai International Financial Centre (DIFC), the Dubai Financial Services Authority (DFSA) is the competent authority in matters concerning the regulation of insurance within the DIFC.

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

Setting up a new insurance company requires an application to be made to the Insurance Authority. The cost of registration is initially AED 10,000. The Insurance Authority, in turn, requires that certain documents are submitted by the applicant as part of the application. The most important documents to note are:

- An economic feasibility study and the company's business plans.
- A certificate from an Actuary in the case of personal insurance and fund accumulation operations, including: approval on the basis of calculating the insurance premiums; adequacy of technical provisions; the possibility of compliance with the solvency margin; and the minimum guarantee amount.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Foreign insurers may write business directly in the UAE through an agent or a branch. Branches of foreign insurers are able to write business directly without any restrictions, providing they are registered with the Insurance Authority. Entities licensed by the Dubai International Financial Centre (DIFC) may only write business directly for entities situated within the DIFC jurisdiction and are subject to licensing restrictions, the regulating body for DIFC insurance or reinsurance companies is the Dubai Financial Services Authority (DFSA).

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

Yes, the Civil Code in the UAE contains specific provisions relating

to contracts of insurance; furthermore, there are decisions made by the Board of the Insurance Authority that require insurance contracts to adhere to certain requirements.

1.5 Are companies permitted to indemnify directors and officers under local company law?

Yes, the law allows for such insurance contracts.

1.6 Are there any forms of compulsory insurance?

The most common examples for compulsory insurance in the UAE are motor insurance and construction all risk insurance, and recently health insurance became mandatory in Dubai for employees and many others. There are also various government bodies that require insurance, and such government bodies require that a party obtains insurance otherwise it will refuse to register applications in that body.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

The law protects both parties. There are certain principles that are for the protection of the insured and certain others for the protection of the insurer. It is a matter of opinion and circumstance of the parties that would ultimately determine which laws are more favourable to which party. Additionally, there are certain pressures from compulsory insurance that make insurers able to enforce harsher boilerplate clauses and policies, nevertheless the Insurance Authority, along with other laws, protect the insured from such economic pressures. The introduction of the Insurance Authority from the previous Insurance Supervision Board has proved that there is more interest from the policymakers to ensure that the market is carefully monitored and the correct policies are introduced. A set of laws that provide the perfect solution for different circumstances and a changing world is a challenging equilibrium.

The law does not prohibit the insured from claiming against the insurer, neither does it allow the insurer to get away with not covering a policy in instances where he was aware of the risk. There are provisions of the law which place a duty on the insured to act in "good faith" towards the insurer and answer any inquiries he may receive in full, including the disclosure of relevant information when issuing the policy. Although the laws are general, they contain

provisions that specifically deal with the knowledge of risk and the relationship between the insured and insurer of communicating risks and/or the process of the insurer understanding the risks.

2.2 Can a third party bring a direct action against an insurer?

Pursuant to the Civil Code, a third party may bring a claim against an insurer. The obligation in the Civil Code requires the insurer to pay either the insured or the person that should benefit from the insurance available in respect of the damages and losses sustained by him.

2.3 Can an insured bring a direct action against a reinsurer?

Insurance Law in the UAE does not provide a clear distinction between contracts of insurance and reinsurance; therefore actions may be brought against a reinsurer.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

According to the Civil Code, an insurer may terminate a contract for a breach of disclosure obligations. Furthermore, for life insurance, if incorrect information was provided at the time of the contract to gain a lower premium, then the insurance must be proportionately reduced.

However, in relation to a certain claim or the responsibility of a risk, the insurer may avoid being responsible to insure the risk in the event there was misrepresentation or non-disclosure by the insured in accordance with the law.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

Yes, there is a duty of good faith undertaken by the insured to disclose all material facts that are relevant to assessing risks by insurance underwriters, as well as any other facts the insurer is aware of and has not been specifically asked. The insurer must declare any other risks not mentioned.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

There is an automatic right of the insurer to claim against the party that has caused the damage, or to act in the place of the insured in relation to the claim or risk insured against the party that has caused any damage.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

The First Instance Court would be the initial Court for such disputes, then, if a respondent wants to appeal that decision, the case would

go to the Court of Appeals. Further, if the respondent still wants to challenge the decision of the Court of Appeals, the Court of Cassation or the Supreme Court would be the final Court and would determine the final judgment. In addition, there are two Courts in the first instance that hear a dispute, one comprises a panel of three judges for any amounts above AED 200,000 (in Dubai AED 500,000), and the other is one judge presiding to hear any claim under the amount of AED 200,000 (in Dubai AED 500,000). The Court of Cassation or the Supreme Court will not entertain cases less than AED 200,000.

The correct forum and Court to hear the dispute will follow the rules on jurisdiction to hear the dispute and, generally, is located in the place where the damage or loss occurred. However, it also may be established in the state or city that the respondent resides or has domicile.

There is no jury in UAE Courts that will be involved in an insurance claim.

3.2 How long does a commercial case commonly take to bring to court once it has been initiated?

After a claim has been submitted to the Court and is served to the defendant, a hearing would follow two to three weeks later allowing the defendant to respond to the claim. The parties will exchange their defence, and other claims and statements will be submitted. There can be as many hearings that a judge deems necessary; however, the first instance may take up to nine months. This is contrary to the procedures of the DIFC Courts, which is more alike to England and Wales, which have one hearing after several months of preparation.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action and (b) non-parties to the action?

There are rules in the evidence laws of the UAE to obligate the counter-party to provide documents in their possession under certain circumstances. Furthermore, the Courts may also oblige a third party to provide the Courts with documents following certain rules within the evidence laws. The general rule is that if a claimant or respondent, in respect of his own pleading, was not able to submit such documents beforehand and as a result causes an adjournment to another hearing, the court may (or if the counter-party requests) fine the party for causing such delay.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers or (b) prepared in contemplation of litigation or (c) produced in the course of settlement negotiations/attempts?

A party may withhold documents that relate to the advice they obtained from lawyers, unless such documents are required by law. Documents prepared in contemplation of litigation that was not common between the parties may be withheld. Documents produced during the course of settlement which are shared documents between the parties may not be withheld in the event the counter-party requests for such documents to be provided by the person withholding such documents.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

The Civil Courts have the authority to request a witness who is not a party to the dispute to give oral evidence; however, it is rarely practised. Furthermore, a court may direct a testimony under oath to be made by either parties to a dispute in the event the matter cannot be decided.

4.4 Is evidence from witnesses allowed even if they are not present?

Evidence from a witness may be provided in writing; however, under the evidence laws, it will not be considered as a witness statement or testimony. A party to a dispute may provide the Courts with evidence from third parties to prove certain facts of the case, however, one should be mindful about the weight of evidence as such statements may be considered to have less weight than other evidence that the Court may receive. For the DIFC, the evidential method is by an affidavit.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

A court-appointed expert is usually favoured over a party-appointed one. If the Court believes that there are technical areas which need to be clarified or evaluated, then the expert will generally be appointed from a court-approved list of experts. Court-appointed expert reports are heavily relied upon by judges in the UAE, whilst independent expert reports are less likely to have as much weight as the reports provided by the court-appointed experts.

4.6 What sort of interim remedies are available from the courts?

There are several interim remedies available from the Courts, including freezing assets, travel bans, obtaining or retaining possession of movable assets, orders to prove certain evidence speedily in light of the risk in the change of circumstances and various other orders requiring certain parties to act.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

Appeals against the Court of First Instance should be in relation to issues of fact or issues of law, and must be submitted within 30 days of the judgment date. There is an automatic right to appeal so long as it is conforms to the requirements of an appeal as opposed to the request of appeal to be approved by the Courts of Appeals.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

The law provides that interest may be claimed from the date the right was initiated; however, interest is applied on the amount of the claim and generally from the date the claim is brought before the Courts. The rate of interest will differ in respect of the nature of the claim where commercial claims (including insurance) will attract a 9% interest rate, and for property claims, it will sometimes attract a 5% interest rate.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

Court fees differ from emirate to emirate and in the DIFC. The standard rule regarding cost is that the losing party pays.

Court fees (including other fees) in most of the emirates (except for Abu Dhabi) for the First Instance, Appeal and Cassation Courts can reach, in the highest of claims, AED 60,000, a large part of which is recoverable or may be claimed from the losing party. In Abu Dhabi the court fees for the First Instance Court are 3% of the amount of the claim with no maximum cap.

Court fees in the DIFC vary a lot as there are several different fees for each part of the case; for example, there are fees for registration, fees for any application submitted and fees for each day of the trial, as well as several other fees. In a simple straightforward case (but not for small claims), the fees can reach up to USD 20,000. We have not included Small Claims Courts, which involve drastically fewer fees.

It is advantageous to settle before trial due to the legal fees of UAE Courts (excluding DIFC). This is because the UAE Courts (other than those situated in the DIFC) do not compensate the legal fees in full.

4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

The courts may not compel the parties to resolve a dispute; however, the Courts certainly have done so in certain instances. When a case is in adjournment, the Courts may request the parties to seek a settlement. In certain cases, the Courts have a mediation stage before being allowed to have the dispute heard by a judge; in these cases, the parties must attempt mediation before proceeding to the First Instance Courts.

4.11 If a party refuses to a request to mediate, what consequences may follow?

In the event that certain claims (as a result of a signed contract between parties or others) require a party to mediate before proceeding to trial, the claim may be dismissed; however, in the absence of any rules to mediate, there are no consequences for a party that refuses to mediate.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

The laws of the UAE allow for party autonomy and in particular allow for arbitrations to be conducted and agreed between parties. The conduct of the arbitration must conform to the laws of the UAE in relation to arbitration which are mostly procedural. The Courts may intervene in arbitration decisions by rejecting or authenticating them. Furthermore, the parties may request from the Courts interim orders in respect of arbitration proceedings in the event such party does have a right for such interim orders. The parties can go so far as to open a case in the Courts to appoint arbitrators and obligate

parties to enter into arbitration and thereafter authenticate such arbitration decisions. Grounds that require Court interference are where a party is not responsive and actively avoiding entering into arbitration with another party. There are also other instances where the arbitrator or parties, by their actions, oppose the rules set by the UAE in respect of the arbitration.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

There is not specific wording or a phrase that should be put into a contract; rather, requirements that the UAE law provides that will make an arbitration clause lawful. It is recommended that the arbitration clause should include the following:

- a clear agreement to arbitrate;
- a seat or legal place of arbitration or centre (determined by procedural law);
- institutional rules governing the arbitration;
- language of the arbitration; and
- the number of arbitrators.

Furthermore, it is important to adhere to the UAE arbitration rules and other laws to ensure that any arbitration award will be enforceable in the UAE afterwards.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

There are possibilities, circumstances and acts or omissions by the parties which may require the Courts to reject the arbitration clause. Any breach of procedural law will ultimately mean the rejection of the arbitration award. Other examples include when there is a common principle in an arbitration dispute and no other suit may be filed. However, if one of the parties decides to file a suit with the Courts and the other party doesn't object to such case at the first hearing, the Courts will dismiss the arbitration clause and the case will be entertained by the Courts, subject to the procedural law.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

As explained above, there are many interim forms of relief that may be obtained that would be suitable to a certain case or circumstance

at hand. As an example, if a party is refusing to conduct arbitration, the claimant may seek from the Courts to obligate parties to enter into arbitration.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

The arbitral tribunal are bound to give reasons for their award, and should include a summary of the claim, the defence and other statements and documents.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

There is no right to appeal to the decision of an arbitral award on its merits, and it is subject to procedures being carried out correctly.



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With nearly a decade of successful litigation experience across the United Arab Emirates, Mr. Al Shamsi has built one of Dubai's most reputable and respected law practices. He is widely regarded as a top litigator in the Dubai Courts, with extensive experience in corporate, banking and finance and insurance law. Mr. Al Shamsi advises both local and international companies and governmental entities in cases involving complex litigation. He appears regularly before the Appeals Court and the Court of Cassation, as well as UAE's Federal Supreme Court. Mr. Al Shamsi has been described as being "...very thorough and highly efficient – Hamdan faced each challenge with strategy, professionalism and confidence which ultimately resulted in our successful outcome". It is no surprise that he has been awarded for being one of the most influential young leaders in the Middle East and the young achiever award, amongst many more.

HAMDAN ALSHAMSI
LAWYERS & LEGAL CONSULTANTS

Hamdan AlShamsi Lawyers and Legal Consultants was established in 2011, and has since become a name synonymous with success and is well known in the legal circuit. The law firm specialises in advising on commercial issues, insurance, due diligence, family law, intellectual property law, banking, companies law and other matters locally, and is dedicated to offer unparalleled, high quality and culturally sensitive legal services while adhering to the highest standards of integrity and excellence.

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