
CHAMBERS GLOBAL PRACTICE GUIDES

Insurance Litigation 2022

Definitive global law guides offering comparative
analysis from top-ranked lawyers

UAE: Law & Practice

Simon Isgar, Adam Tighe and Amany Ahmed
BSA Ahmad Bin Hezeem & Associates LLP

Law and Practice

Contributed by:

Simon Isgar, Adam Tighe and Amany Ahmed
BSA Ahmad Bin Hezeem & Associates LLP see p.14



Contents

1. Rules Governing Insurer Disputes	p.3	5. Claims Against Insureds	p.10
1.1 Statutory and Procedural Regime	p.3	5.1 Main Areas of Claims Where Insurers Fund the Defence of Insureds	p.10
1.2 Litigation Process and Rules on Limitation	p.5	5.2 Likely Changes in the Future	p.11
1.3 Alternative Dispute Resolution (ADR)	p.5	5.3 Trends in the Cost or Complexity of Litigation	p.11
2. Jurisdiction and Choice of Law	p.6	5.4 Protection Against Costs Risks	p.11
2.1 Rules Governing Insurance Disputes	p.6	6. Insurers' Recovery Rights	p.11
2.2 Enforcement of Foreign Judgments	p.6	6.1 Right of Action to Recover Sums From Third Parties	p.11
2.3 Unique Features of Litigation Procedure	p.7	6.2 Legal Provisions Setting Out Insurers' Rights to Pursue Third Parties	p.11
3. Arbitration and Insurance Disputes	p.7	7. Impact of Macroeconomic Factors	p.11
3.1 Enforcement of Arbitration Provisions in Commercial Contracts	p.7	7.1 Type and Amount of Litigation	p.11
3.2 The New York Convention	p.7	7.2 Forecast for the Next 12 Months	p.12
3.3 The Use of Arbitration for Insurance Dispute Resolution	p.8	7.3 Coverage Issues and Test Cases	p.12
4. Coverage Disputes	p.8	7.4 Scope of Insurance Cover and Appetite for Risk	p.12
4.1 Implied Terms	p.8	8. Environmental, Social and Governmental (ESG) Risk	p.12
4.2 Rights of Insurers	p.9	8.1 Impact on Underwriting and Litigating Insurance Risks	p.12
4.3 Significant Trends in Policy Coverage Disputes	p.9	9. Significant Legislative and Regulatory Developments	p.12
4.4 Resolution of Insurance Coverage Disputes	p.9	9.1 Developments Affecting Insurance Coverage and Insurance Litigation	p.12
4.5 Position if Insured Party Is Viewed as a Consumer	p.9		
4.6 Third-Party Enforcement of Insurance Contracts	p.9		
4.7 The Concept of Bad Faith	p.9		
4.8 Penalties for Late Payment of Claims	p.10		
4.9 Representations Made by Brokers	p.10		
4.10 Delegated Underwriting or Claims Handling Authority Arrangements	p.10		

1. Rules Governing Insurer Disputes

1.1 Statutory and Procedural Regime

There are several statutory and procedural regimes that govern insurance disputes within the UAE, depending upon the dispute forum nominated by the parties, or, in certain circumstances, the dispute forum that applies by default (ie, in the absence of an election, or if certain threshold criteria are met or not met, as the case may be).

By way of background, the parties to an insurance contract (ie, the insurer and insured) within the UAE are permitted to nominate either (i) “onshore”/local court litigation (the Committee for the Settlement and Resolution of Insurance Disputes (the “Committee”) is mandatory before onshore litigation commences; see under Onshore Courts), or (ii) arbitration before one of the arbitration centres within the UAE (namely, the Dubai International Arbitration Centre (DIAC), the Abu Dhabi Commercial Conciliation & Arbitration Centre, the International Court of Arbitration of the International Chamber of Commerce (ICC Court), the Abu Dhabi Global Market Arbitration Centre (ADGMAC) and other ad hoc arbitration as the applicable dispute forums). It is also possible for the parties to agree mediation.

It is worth noting that by virtue of Dubai Decree No 34 of 2021 Concerning the Dubai International Arbitration Centre (DIAC), as of 20 September 2021, the Arbitration Institute of the Dubai International Financial Centre and the Emirates Maritime Arbitration Centre were abolished, whereby such disputes will now be governed by DIAC (unless the parties thereto agree to another dispute resolution forum).

Onshore Courts

If the parties agree or nominate (ie, within the policy of insurance) to pursue any insurance dispute through the “onshore” courts, or if those courts are applicable by default (see below commentary related to arbitration), then the parties are required to initially raise a complaint before the Committee, which sits within the UAE Central Bank – Insurance Division (Article 110(3) of Federal Law No 6/2007 on the Regulation of Insurance Operations, as amended).

The process before the Committee begins with a quasi-reconciliation-style approach, whereby there is an onus on the parties to attempt to resolve their dispute without having to proceed to formal litigated proceedings. Any agreement reached between the disputing parties before the Committee is entered in a deed of reconciliation and attested by the chairman and board of directors of the UAE Central Bank – Insurance Division. If, however, the dispute cannot be resolved before the Committee, the Committee will issue an award/decision on the dispute. The award/decision can be appealed to the emirate-specific first-instance court (see **1.2 Litigation Process and Rules on Limitation** for discussion on the UAE court structures) “within 30 days from the day next to their notification of the Award, otherwise, *the Award shall be considered final and enforceable*” (Article 16 of Insurance Authority Board Decision No 33/2019, as amended).

Arbitration

As noted above, the parties to an insurance contract in the UAE are permitted to nominate arbitration as the applicable dispute resolution forum, as an alternative to proceedings before the local courts.

In practice, this option may prove more palatable for “foreign” individuals/entities as the election of arbitration allows the parties to:

- nominate the language of the proceedings (noting that onshore courts are conducted in Arabic language only);
- nominate foreign laws in respect of the dispute forum and seat (noting that local policies (direct risk) must apply the substantive law of the UAE and that the local courts are reticent to apply non-UAE laws);
- appoint independent experts (as opposed to experts being appointed by the local courts without any input or election from the parties); and
- elect internationally tried and tested procedural arbitration rules (ie, the International Chamber of Commerce Arbitration Rules).

Furthermore, disputes arising under, and pursuant to, an insurance contract with a *valid* arbitration clause are not required to proceed before the Committee prior to filing formal proceedings (Article 5(3) of Insurance Authority Board Decision No 33/2019, as amended).

The word “valid” has been emphasised above as it requires further discussion. There are regulatory provisions within the UAE that the parties to an insurance contract are required to follow to validate the nomination of arbitration as the dispute resolution forum. One such provision is that the arbitration clause needs to be “mentioned in a special agreement, separate from the general conditions printed in the insurance policy” (Article 1028(d) of Federal Law No 5/1985 on the Civil Transactions Law of the United Arab Emirates State (the “Civil Code”), as amended). Despite that wording, it should be noted that Federal Law No 6 of 2018 on Arbitration does not specify any such requirement. Rather, it states that “an

arbitration agreement may be made... in the form of a separate agreement or included in a certain contract” at Article 5(1).

Given these apparent inconsistencies, it remains at the discretion of the UAE courts as to whether a separate arbitration agreement is required to validate the nomination of arbitration as the dispute resolution forum for insurance disputes. As a matter of practice, if the intention is to nominate arbitration as the applicable forum, then a separate arbitration agreement ought to be executed between the parties to the insurance policy/contract to avoid any uncertainties.

In any event, and from a procedural perspective, the inclusion of an “invalid” arbitration clause can result in additional time and cost, if a dispute on jurisdiction is raised. As an example, if an insurance contract contains an arbitration clause, although the clause is not mentioned in an agreement separate from the general policy conditions (ie, in accordance with the above-referenced Civil Code provision), the party intending to rely upon the arbitration clause may commence arbitration proceedings; however, the opposing party(ies) is/are at liberty to contest the jurisdiction based upon the (in)validity of the arbitration clause.

The arbitral tribunal may rule on a plea that the tribunal does not have jurisdiction based upon the invalidity of the arbitration clause/agreement either as a preliminary question or in a final arbitral award on the merits of the dispute. If the tribunal rules on a preliminary basis that it does have jurisdiction, the opposing party can appeal the decision to the local courts (Article 19 of Federal Law No 6/2018 on Arbitration). If the arbitration proceedings are dispensed with for want of jurisdiction, the filing party is responsible for the arbitration fees and would then be compelled to

commence separate onshore court proceedings to resolve the dispute.

Financial Free Zone Courts

Separate to the onshore courts within the UAE are the two emirate-specific financial free zone courts (the Abu Dhabi Global Market (ADGM) Court for Abu Dhabi and the DIFC Court for Dubai). These free zone courts do not govern insurance disputes between the insurer(s) and insured(s) within the UAE; however, it is not unusual for the reinsurance treaties (ie, the agreement that governs the relationship between the insurer(s) and their reinsurer(s)) to nominate these courts to govern the disputes between the insurer/reinsurer. It is also possible for insurers and reinsurers to choose foreign governing law and foreign jurisdiction provisions in reinsurance agreements reinsuring UAE risks.

1.2 Litigation Process and Rules on Limitation

Court Structures

There are two streams of “onshore” courts within the UAE: the Federal Judiciary and the emirate-specific courts. The highest court within the Federal Judiciary is the Federal Supreme Court, which has exclusive jurisdiction over certain reserved matters, such as cases that concern the federal government or ministers/senior officials (Article 99 of the UAE Constitution of 1971).

Notwithstanding this, and save for any exceptions (ie, a valid arbitration agreement), UAE insurance disputes are heard (following the procedures before the Committee) before the emirate-specific courts, which comprise a Court of First Instance and two appellate courts (the Court of Appeal and the Court of Cassation).

All UAE onshore courts apply civil law, whereby the appointed judges are at liberty to issue judgments

without reliance upon, or reference to, any previous court judgments or rulings.

Otherwise, and as noted in **1.1 Statutory and Procedural Regime**, disputes between insurers and reinsurers can be heard before the ADGM Court (in Abu Dhabi) or the DIFC Court (in Dubai), which are independent common law courts, if that forum is nominated within the reinsurance treaty.

Limitation Periods

There is no single regulation within the UAE that outlines the applicable limitation periods. For each separate practice area (ie, insurance, construction, commercial, etc) there are separate regulations that specify the rules of limitation. From an insurance perspective, the Civil Code states that “claims arising from the insurance contract shall not be heard after the *lapse of three years* from the occurrence of the event from which the claim arose, or from the knowledge of the interested party of such event” (Article 1036(1)). Marine insurance has a two-year limitation period as a matter of general law (Federal Law No 26 of 1981 (the Commercial Maritime Code), Article 399(1)).

There is some level of jurisprudence within the UAE as to what constitutes the “commencement of a claim” for an insurance dispute (ie, claim notification to the insurer, or otherwise). Nevertheless, to avoid any uncertainty or limitation period defences being raised, the filing of formal court/arbitral proceedings ought to be adopted as the method to preserve the right of limitation (ie, file the claim within the three-year period).

1.3 Alternative Dispute Resolution (ADR)

The UAE is not typically a jurisdiction that has a strong reliance/emphasis on alternative dispute resolution procedures.

Notwithstanding this, it is becoming increasingly prevalent (perhaps as a means to try to reduce time and cost) that the parties to an insurance dispute are willing to agree to participate in mediation procedures. As is the case in many Western jurisdictions, the mediation procedures within the UAE are not binding, and the parties are not compelled to attend, or agree to, mediation; however, there are certainly benefits in commencing mediation procedures if they can serve to narrow the issues in a dispute and/or prompt the parties to reach a settlement. There are several mediators and mediation centres available within the UAE to accommodate any such intention of the parties. The authors have seen more mediation in respect of insurer and reinsurer disputes over the past few years.

2. Jurisdiction and Choice of Law

2.1 Rules Governing Insurance Disputes

As noted in **1.1 Statutory and Procedural Regime**, the parties to UAE insurance contracts are at liberty to elect local courts or arbitration as the dispute resolution procedure. If the former is adopted, the disputes are governed by the laws of the UAE, which include the applicable federal (ie, the UAE Civil Code) and emirate-specific laws, and the laws specific to the insurance sector, to the extent applicable. If the latter is adopted, the procedural rules are governed by the laws that the parties elect within the arbitration agreement or the arbitration forum (which could be the laws of England and Wales, as one example) but the UAE laws would need to apply to the substantive dispute arising from the direct insurance policy.

2.2 Enforcement of Foreign Judgments

The process for enforcing foreign judgments within the UAE (whether relating to insurance

matters or otherwise) is dependent upon whether there are any treaties between the UAE and the country where the judgment (to be enforced) was issued. If there is a treaty between the UAE and the foreign country, the rules of the treaty will be applied.

Otherwise, and in the absence of a treaty, the enforcement of a foreign judgment within the UAE is governed by Article 85, “Execution of Foreign Judgments, Orders and Bonds”, of Cabinet Decision No 57/2018 on the Regulation of Federal Law No 11/1992 on the Civil Procedure (the “Civil Procedures Law”). It is important to note, however, that it is not possible to enforce a foreign judgment in the absence of the following (Article 85(2)) (the “Enforcement Conditions”):

- the courts of the UAE are not exclusively competent in the dispute in which the judgment or order was rendered and the foreign courts that issued it are competent in accordance with the rules of international jurisdiction established by their law;
- the judgment or order is delivered by a court in accordance with the law of the country in which it was issued and duly ratified;
- the litigants in the case in which the foreign judgment was delivered were summoned and were duly represented;
- the judgment or order has the force of res judicata in accordance with the law of the court that issued it, provided that the judgment has acquired the force of res judicata or provided for it in the same judgment; and
- the judgment does not conflict with a judgment or order rendered by a court of the UAE and does not contain anything contrary to public order or morals.

2.3 Unique Features of Litigation Procedure

At the outset, insurers that have not been issued a licence from the UAE Central Bank – Insurance Division to issue insurance policies within the UAE are not permitted to issue policies (for UAE-based risks) directly to UAE entities and citizens/residents as those risks must be insured by insurance companies licensed and regulated by the UAE Central Bank – Insurance Division. Foreign reinsurers are, however, permitted to enter reinsurance treaties with local/cedent insurance entities to reinsure UAE-based risks.

In the context of the above caveat, insurers licensed to insure against UAE-based risks within the UAE are to be mindful of the “pre-litigation” procedures before the Committee (as highlighted in **1.1 Statutory and Procedural Regime**); namely, the 30-day period within which the parties to the dispute are permitted to challenge any adverse award/decision of the Committee. If the insurance company does not challenge the dispute within the specified period, any award/decision of the Committee shall be considered final and binding.

3. Arbitration and Insurance Disputes

3.1 Enforcement of Arbitration Provisions in Commercial Contracts

Generally, arbitration clauses are recognised by UAE law. The authors have provided commentary related to the applicability of arbitration provisions in contracts of insurance. Notwithstanding this, and for ease of reference, arbitration clauses need to be mentioned in a special agreement, separate from the general conditions printed in the insurance policy (Article 1028(d) of the Civil Code), to be, without a doubt, enforcea-

ble within the UAE. This is not the case for insurers and reinsurers, for which a clause within the applicable reinsurance treaty will be construed as a separate, and independent, agreement to arbitrate and not otherwise.

Again, from a practical perspective, if proceedings are commenced before the onshore courts, and one of the parties wishes to rely upon an arbitration clause to dispute the jurisdiction, the onshore courts would be more likely to dismiss those proceedings if the parties have entered into an arbitration agreement separate from the general insurance policy provisions (than if an arbitration clause was merely included within the insurance policy). In those circumstances, the filing party would be compelled to commence separate arbitral proceedings to resolve the dispute as a matter of contested jurisdiction.

3.2 The New York Convention

The UAE is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”). The Convention was adopted in the UAE pursuant to the operation of Federal Decree No 43/2006 on the Adherence of the United Arab Emirates to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The enforcement of arbitration awards issued within a foreign country is governed by Article 85 of the Civil Procedures Law and is therefore required to satisfy the Enforcement Conditions, as referenced in **2.2 Enforcement of Foreign Judgments**.

An application to execute a foreign arbitral award requires the submission of a petition before the execution judge. The judge of the Court of Execution shall issue their order within three days from submission of the petition. Furthermore,

the order from the Court of Execution may be appealed in accordance with the rules for filing an appeal (Article 85(2) of the Civil Procedures Law).

3.3 The Use of Arbitration for Insurance Dispute Resolution

Nomination of Arbitration

At the time of writing, there were 62 insurance companies within the UAE, with 35 being national/local companies and 27 being “foreign” insurance companies. From experience, foreign insurance companies (and reinsurance companies, in respect of reinsurance treaties) are more likely to nominate arbitration as the dispute resolution forum given that it allows (as highlighted in **1.1 Statutory and Procedural Regime**) the parties to:

- nominate the language of the proceedings;
- nominate foreign laws in respect of the arbitration forum;
- appoint independent experts; and
- elect internationally tried and tested procedural arbitration rules.

In the above regard, arbitration is a common method of insurance dispute resolution adopted within the UAE. It is difficult to determine from a macro level if that preference is heightened within any particular line of insurance business; however, there is no limitation to nominating arbitration within any line of insurance business written in the UAE. Marine and aviation tend to attract arbitration as a dispute forum, as does property/casualty insurance lines.

Rules and Privacy

If arbitration is nominated as the dispute resolution forum, the parties are permitted to elect between several governing arbitration rules,

including DIAC, the Abu Dhabi Commercial Conciliation & Arbitration Centre, and the ADGMAC.

Unless the parties otherwise agree, arbitration proceedings within the UAE shall be held at private meetings (Article 33(1) of Federal Law No 6/2018 on Arbitration).

Appeals

In order to raise an objection against an arbitral award, a lodgement of an action in nullity before the Court of Appeal, or during the examination of the request for recognition of the award, needs to be filed (Article 53(1) of Federal Law No 6/2018 on Arbitration). The applicant is required to prove the reason(s) to invalidate the arbitration award. Such reasons include demonstrating that the arbitrators relied upon an invalid arbitration agreement, or if there was a failure of the arbitral panel to apply the law agreed between the parties.

Otherwise, the Court of Appeal is permitted to nullify the arbitral award if the subject matter of the dispute is not capable of settlement by arbitration, or if the award is in conflict with the morals of the UAE (Article 53(1) of Federal Law No 6/2018 on Arbitration).

4. Coverage Disputes

4.1 Implied Terms

Generally, UAE law does not recognise the concept of implied terms, other than “good faith”. By virtue of Article 246 of the Civil Code, all insurance policies/contracts within the UAE are to be implemented “according to the provisions contained therein and in a manner consistent with the requirements of good faith”.

4.2 Rights of Insurers

Insurers are permitted to obtain sufficient details/particulars relating to the insurable “risk” prior to the inception of an insurance policy. This discovery/due diligence process often takes the form of proposals/questionnaires to which the (to be) insured party is required to respond. If the insured party conceals, in bad faith, certain matters, or has presented misstatements, such that the risk was underestimated, the insurer may be permitted to rescind the contract (Article 1033 of the Civil Code).

4.3 Significant Trends in Policy Coverage Disputes

An increasing number of insurers/reinsurers have tightened up existing policy terms and conditions in addition to adding new provisions to avoid uncertainty and reduce the risk of coverage disputes.

4.4 Resolution of Insurance Coverage Disputes

The resolution of coverage disputes follows the same process as any other insurance dispute, as highlighted in **1.1 Statutory and Procedural Regime**. Disputes related to direct insurance in the UAE are resolved through the Committee or through a valid agreement to arbitrate. Reinsurance disputes tend to be resolved by the chosen dispute forum or jurisdiction clause within the reinsurance treaty.

4.5 Position if Insured Party Is Viewed as a Consumer

The rights of the insurer and insured do not change in circumstances where the law views the insured party as a consumer.

4.6 Third-Party Enforcement of Insurance Contracts

Pursuant to Article 252 of the Civil Code, contracts within the UAE are not permitted to impose an obligation upon a third party; however, they are permitted to establish a right in favour of a third party. Article 1035 of the same code provides a course of action where a third party makes a claim against the insured. In most lines of insurance, a third party may bring a direct claim against an insurer if the third party is named as a beneficiary in the policy.

One example of where a right is conferred upon a third party is within motor vehicle insurance contracts, which are governed by the Insurance Authority Board of Directors’ Decision No 25/2016 Pertinent to Regulation of the Unified Motor Vehicle Insurance Policies (the “MV Law”).

The MV Law states at Article 2 that an insurance company is permitted to issue a motor vehicle policy against third-party liability, hence it operates to cover liability towards a third party.

4.7 The Concept of Bad Faith

Despite there being a statutory obligation to exercise good faith in commercial contracts (as noted in **4.1 Implied Terms**), the Civil Code does not define what is required to demonstrate good faith, nor is there any regulatory concept of bad faith. Notwithstanding this, the concept of bad faith does exist, and is commonly featured within UAE court pleadings; however, it is at the discretion of the court as to whether the conduct of the party is tantamount to bad faith. In the instances where bad faith has been ruled against the parties to a contract, the conduct has been deliberate and/or intended to cause harm/loss.

4.8 Penalties for Late Payment of Claims

Pursuant to Article 9(2) of the Insurance Authority Decision No 3/2010 Instructions Concerning the Rules of Professional Conduct and Ethics to be followed by Insurance Companies Operating in the State, insurers are required “to develop an appropriate mechanism to deal with the claims filed including... determining an adequate period for deciding upon the claims”.

If the insurer delays in settling compensation owing to an insured party, in accordance with the terms of the insurance policy, as soon as the accident occurs or as soon as the insured risk takes place, the insurer may be liable for a penalty (to be issued from the UAE Central Bank – Insurance Division) in the sum of AED50,000 (pursuant to the table enclosed with Cabinet Decision No 7/2019 on the Administrative Fines imposed by the Insurance Authority (the “IA Fines”). Furthermore, any such fine can be doubled in the case of repeated violations within one year (Article 3 of the IA Fines).

4.9 Representations Made by Brokers

If a broker misrepresents an insurance product to their client, the client would be bound by the written and agreed/signed terms of the policy (irrespective of any misstatements made by their broker); however, the insured party may have recourse against their broker (ie, in a professional negligence/misrepresentation suit). The client, as an insured, may also raise and file a dispute to the Committee to address the broker’s conduct.

4.10 Delegated Underwriting or Claims Handling Authority Arrangements

Generally, there is little, if any, delegated underwriting authority in the UAE. The concept of managing general agents/managing general underwriters (MGAs/MGUs) is not recognised in the UAE, other than in the DIFC and ADGM free

zones for wholesale reinsurance. Loss adjusters are a common feature and are instructed by insurers/reinsurers to investigate and negotiate/settle claims. In limited circumstances, they may have some delegated authority to settle claims on behalf of insurers.

With regard to health insurance lines of business, insurance companies within the UAE rely upon the services of third-party administrators (TPAs) to process insurance claims. If there are coverage disputes, the insured party would not ordinarily pursue the TPA for recourse given that they act as an agent of the insurance company. In that scenario, from a practical perspective, the insured party would raise a notification directly with the insurance company and if the coverage is not extended to the insured party, a complaint would be raised before the Committee (for insurance policies that nominate local courts as the dispute resolution forum) or proceedings may be filed before the arbitration centre (according to the nomination within the insurance policy), as applicable.

5. Claims Against Insureds

5.1 Main Areas of Claims Where Insurers Fund the Defence of Insureds

It is common for insurance policies (particularly within property all-risks policies) within the UAE to contain a “claims co-operation” clause, whereby the insured is expected to take reasonable steps to mitigate their losses, which invariably means defending any claims initiated against them. If the insured party does not have sufficient funds to defend such proceedings, the insurance company may (at its sole discretion) fund those proceedings, provided the coverage extends to the insured and the limit of indemnity has not been exhausted under the policy. In any

event, this is not a common occurrence within the UAE.

5.2 Likely Changes in the Future

The above position is unlikely to change within the foreseeable future, although more ADR is expected to be used by the overseas reinsurance market.

5.3 Trends in the Cost or Complexity of Litigation

The formation of the Committee that deals with insurance-related disputes is a sort of mandatory pre-action protocol, which must be exhausted before local litigation is commenced. It is likely that the Committee process will reduce costs and encourage the parties to settle sooner.

5.4 Protection Against Costs Risks

Claimants within the UAE are not able to purchase UAE-based policies of insurance to protect against cost risks in litigated proceedings in the UAE. This may be possible, however, in the DIFC and ADGM jurisdictions, but is uncommon.

6. Insurers' Recovery Rights

6.1 Right of Action to Recover Sums From Third Parties

Insurance contracts within the UAE typically include a "right of subrogation" clause within their terms. That provision allows the insurer to essentially "step into the shoes" of the insured party and commence proceedings against a third party to recover damages incurred under the insurance policy.

As an example, if a fire event occurs within an insured premises and there is an at-fault/liable third party (ie, the manufacturer of a faulty light bulb that set alight and caused the fire damage),

the insurer (provided the policy is responsive and the limit of indemnity has not been exhausted) may opt to pay out the claim to the insured party and commence proceedings against the liable third party to recover the losses that it incurred (only up to the value thereof) under the policy of insurance.

6.2 Legal Provisions Setting Out Insurers' Rights to Pursue Third Parties

The statutory right of subrogation in the UAE arises from Article 1030 of the Civil Code, wherein the "insurer may subrogate the insured in what he has paid in compensation as a result of the lawsuits, the insured may have against the author of the prejudice, which has been the source of the insurer's liability".

Any such subrogated claim may be brought in the name of the insurer; however, the insurance policy, containing the right of subrogation clause, would need to be tendered as evidence.

7. Impact of Macroeconomic Factors

7.1 Type and Amount of Litigation

The health sector has undoubtedly seen the biggest increase in claims since the onset of the COVID-19 pandemic, either from primary costs (ie, treatment of COVID-positive patients) or from the secondary related costs (ie, mental health treatment costs). Although the emirate-specific health authorities (the Dubai Healthcare Authority for Dubai and the Health Authority Abu Dhabi for Abu Dhabi) have remarkably covered the cost for the primary COVID-19-related health costs, the insurance sector is now compensating claimants for the secondary health-related costs, subject to the terms of their insurance policies.

Outside of the healthcare insurance sector, general insurance providers noticed a marked increase in claims during the COVID period under various coverages, particularly with disease and contamination riders/endorsements.

7.2 Forecast for the Next 12 Months

The forecast for health insurance policy renewals is that they will further aim to exclude any secondary COVID-related costs, such as mental health claims.

7.3 Coverage Issues and Test Cases

There have been few, if any, test cases arising from the pandemic. Given that the UAE government has covered the cost for the preponderance of COVID-related treatment costs, there have not been any coverage disputes, or test cases, related to these matters. However, many health (and, in some cases, life) insurers adapted their underwriting of medical risks based on insureds having tested positive for COVID-19.

7.4 Scope of Insurance Cover and Appetite for Risk

Unsurprisingly, given the upturn in claims arising from these insurance products as a consequence of COVID, there have been significant changes to the following lines of business:

- policies that cover business interruption have included stricter wording as to what constitutes business interruption and disease/contamination, and have introduced further applicable exemptions/exclusions to avoid similar scenarios; and
- health insurance policies have tightened their language to stem the avalanche of mental health and well-being claims.

8. Environmental, Social and Governmental (ESG) Risk

8.1 Impact on Underwriting and Litigating Insurance Risks

The authors have not noticed any specific changes to the underwriting and litigation of insurance risks within the UAE as a result of climate change events. Notwithstanding this, on a related topic, insurers within the UAE have amended their policy terms (particularly motor vehicle insurers) to exclude coverage for accidents that occur as a result of “cloud seeding”, which are typical weather modification events that occur in the UAE for the purpose of extracting moisture from the atmosphere. These events often lead to an increased number of accidents (such as car crashes and flooding) due to the sudden onset of rain, hence the motivation to exclude such occurrences from the insurance policies.

9. Significant Legislative and Regulatory Developments

9.1 Developments Affecting Insurance Coverage and Insurance Litigation

From a regulatory perspective, the most notable change within the UAE insurance sector over the past 12 months has been the merging of the Insurance Authority within the UAE Central Bank; however, the merger does not appear to have caused any disruptions to the insurance litigation market. The formation of the Insurance Disputes Committee has, to some extent, impacted on UAE insurance litigation, where claims can be settled at a fraction of the cost and on a more timely basis.

The authors have otherwise noticed momentum from the UAE Central Bank – Insurance Division

to digitise and implement emerging technology within the insurance sector. The digitisation of the insurance market within the UAE was encouraged with the implementation of the Insurance Authority Board of Directors' Resolution No (18) of 2020 Concerning the Electronic Insurance Regulations. Furthermore, with the introduction of the UAE Central Bank – Insurance Division's "Insurtech Sandbox" initiative, which is a pilot run to facilitate the implementation of insurtech

products, it is anticipated that new processes and applications may be introduced within the insurance sector in the not-so-distant future.

The push towards digitisation and the implementation of technology-based programmes/initiatives within the UAE insurance sector is likely to lead to the promotion of business within the UAE, and, inevitably, an upturn in insurance claims and insurance litigation.

BSA Ahmad Bin Hezeem & Associates LLP is a regional law firm in the Middle East with nine offices across five countries. A diverse team of 150 lawyers are from 35 different cultural backgrounds and can speak 22 languages. The firm is a market leader in new and evolving sectors, partnering with clients towards a sustainable, progressive future. It prides itself on being connective: sparking collaboration, creating synergy and driving change. Established for over 20 years, the firm is expanding organically, nourishing its talent and investing in its people.

The insurance and reinsurance team is a market leader in the Middle East, with unrivalled local regulatory knowledge. BSA has rights of audience before all courts in the UAE, meaning it offers clients a holistic service in both contentious and non-contentious insurance matters. The firm is involved in many of the region's ground-breaking deals, and advises regulators and governments on legislative developments, as well as assisting legislative bodies in drafting insurance laws.

Authors



Simon Isgar is the head of the insurance and reinsurance practice at BSA and a partner, based in the Dubai office.

Previously the head of Kennedy's' MENA Insurance

practice, Simon has almost 20 years' experience representing international insurers and intermediaries throughout insurance markets globally, undertaking both contentious and non-contentious work. He also leads the firm's Middle East cyber-response team. Simon is a qualified barrister and also has higher rights of audience in the English courts. He has appeared in several Part VII hearings relating to transfers of insurance portfolios. His recent work includes representing a client in a large fire loss claim, as well as acting for a large capacity provider in respect of a reinsurance dispute in the UAE.



Adam Tighe is a senior associate in the insurance and reinsurance practice at BSA, with a strong focus on insurance litigation. He advises international insurers/reinsurers,

brokers, loss adjusters and large self-insured corporates across a broad range of matters, including policy interpretation/coverage, compliance matters and claim prospects. His particular areas of speciality include professional negligence, medical negligence and property damage claims (including significant natural disaster events). Adam is registered with the Queensland Law Society (Australia), the Dubai International Financial Centre Courts and the Dubai Legal Affairs Department.



Amany Ahmed is an associate within the insurance department in BSA's DIFC office. She has over ten years' experience in the Middle East. She has wide-ranging experience specialising

in litigation across a variety of sectors with a proven track record in dealing with cases through the litigation and enforcement process. Amany has a broad range of experience in various sectors, including insurance, labour, real estate and is well versed in Personal Status Law and Commercial Law. She also specialises in the enforcement of the arbitral awards within the UAE courts.

BSA Ahmad Bin Hezeem & Associates LLP

The Gate Precinct
Building 3, Level 6
Dubai
United Arab Emirates

Tel: +971 4 528 5555
Email: info@bsabh.com
Web: www.bsabh.com



CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com