

Proposed Draft Regulation: The Registration of Insurance Brokers and Organisation of their Operations

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More guidance is provided than in the existing laws and regulations and there are a few important matters of note, including changes to registration and capital requirements (differing between local and foreign brokers), guarantees and premium collection.

Capital

For Local Brokers, the Regulations have increased the minimum paid up capital requirement to AED5 million, up from AED1 million as currently stipulated in the Ministerial Decision No. (543) of 2006 regulating of Insurance Brokers' Profession. There is still a 51% local share capital ownership requirement in terms of a Local Broker.

Where the Broker is classed as foreign (branch), it requires a minimum paid up capital of AED10 million in its country of registration and they require a local national representative.

Financial Guarantees

Financial guarantees currently required of Brokers has also increased, from the indemnity required under professional liability insurance, to bank guarantees required to survive the termination of a Broker arrangement.

Insurance Brokers are obliged to submit to the IA a professional liability policy of not less than AED3 million for a Local Broker and AED5 million for a foreign Broker per event, in the event of civil liability arising from damages occurring due to the practicing of its profession. This is up from the current requirement of AED1.5 million for local or foreign brokers.

A further Bank Guarantee is also required for liabilities not arising/covered under the above-mentioned insurance policy and is to be dedicated to rights arising to third parties. This Guarantee is to be for one year, automatically renewable during the term of the Brokers registration and of continual duration beyond the date of terminating registration until a decision is made by the IA to cancel the Guarantee. Currently this Guarantee need only be for a period of one year following termination of registration. For Local Brokers the guarantee has gone up from AED1 million to AED2 million for the main office and from AED500,000 to AED1 million for each branch office. Foreign Brokers require AED3 million for the main (branch) office and AED 2 million for each additional branch in the State.

Duties of Broker

Not only do the Regulations provide for increased financial guarantees from Brokers, but it also sets out with more detail, the responsibilities and obligations of Brokers to Insurers and Brokers to Clients. Brokers duties need to be encompassed in an agreement containing several provisions including the period of the agreement, classes of insurance to be brokered, geographic territory, whether the broker is authorised to collect premiums (where authorisation is permitted, i.e. compulsory motor vehicle insurance), how to pay balances from one party to the other (if permitted) and the Broker's entitlement to commission.

The Brokerage agreement is not to include authorisations for the Broker to:

- Issue policies, endorsements or amendments (except in respect of motor vehicle policies);
- Accept indemnities due to the insured or its beneficiaries; or
- To deny claims.

Provisions are also included to prevent Insurers from poaching Clients already working with the Broker and neither party is permitted to offer a better deal to a Client who has authorised both Insurer and Broker in respect of the same insurance.

The Regulations stipulate that the Broker now requires a Power of Attorney (“POA”) from the Client authorising them to carry out the anticipated insurance brokerage. The POA will need to be sent to the IA for their comment and amendment if necessary. The Regulations also set out certain requirements for the POA.

The Broker is required to solicit conditions and rates from at least two or more companies for the client. The Broker is obliged to advise the client of their disclosure obligations, the importance of paying premiums and the repercussions for not complying with these obligations.

When a policy is coming up for renewal, the Broker is obliged to advise the client in a timely manner. They should also (if authorised) follow up on claims and indemnities due to the client, specify the legal procedures, documents to be submitted and provide explanations and guidance.

Finances

Contrary to the common practice of local insurance Brokers in the UAE, the Regulations stipulate that the Client is to pay the insurance premium and any other amounts due from the Client, directly to the insurance company and not to the Broker. Furthermore, the Broker has no right to receive the insurance premiums or any amount due from the Client (this does not apply to compulsory insurance of civil liability arising from motor vehicle accidents where the Broker is permitted to collect premiums and pay to the Insurer).

Brokers need to keep their accounts and records for their business, separate from Client accounts and records.

Brokers will also be required to submit audited accounts to the IA every year; and the IA may also be appointed to examine Brokers’ books and records.

Penalties and Disputes

Penalties provided for under the Regulations in cases of violations, include the service of a written notice and an opportunity to remedy; suspension from practice (not to exceed 6 months, or double in the case of a repeated offence); and/or cancellation of registration. If an IA registration is to be cancelled, the IA is to give notice by way of publication in two newspapers, one Arabic and one English.

If there are any disputes arising in relation to the Regulations and any requirements/obligations/ action there under, it is to be first referred to the IA to see if a compromise can be reached, before judicial action is taken.

Effects

The proposed Regulations are more likely to have a greater effect upon the Local insurance brokerage industry, particularly the smaller companies who may struggle to come up with the increased paid up capital. It may also require a change to long held practices of collecting premiums from clients and using for their own short term capital requirements.

Irrespective of the above, the above changes may bring the UAE closer to a standard of international best practice of which our insurance broking industry should be striving for.

With only one year provided to comply once the Regulations are implemented; Brokers, Local and Foreign, need to start considering now some of the proposed changes to compliance requirements, in order to be able to smoothly implement any systems or organisational changes necessary, within the allocated time frame.