UAE Insurance Law (Update)

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In March 2015, the UAE Minister of the Economy confirmed that the federal government was working on legislation designed to allow for full foreign ownership of companies operating outside the UAE's economic free zones. However, the legislation is likely to apply only to foreign companies operating in certain sectors of the economy and insurance is unlikely to be one of those sectors.

This is surprising because the UAE, along with other GCC countries, is very underpenetrated in terms of the insurance. In the case of trade credit insurance, for instance, this underpenetration is particularly stark. Despite the importance of international trade to the GCC and the region's USD $2.4 trillion economy, the penetration of trade credit insurance is 4 times lower than it is in the US and 6 times lower than it is in Europe.

Part of the reason for this underpenetration is historical. However, in the UAE, it also has to do with government policy aimed at fostering the local insurance industry and at promoting national investment and the development of UAE's capital markets.

Recent Developments in Insurance

Changes announced in February this year by the Insurance Authority, the statutory body charged with licensing and regulating UAE insurers, are evidence of this policy as well as of a need to ensure that insurers are able to withstand future economic shocks.

Some of these changes impose new limits on the amount of exposure that UAE insurers can have to particular asset classes by limiting their invested assets at any one time to:

- no more than 30% of real estate assets;
- no more than 30% of UAE equity instruments, including mutual funds; and
- no more than 20% of non-UAE equity instruments, including mutual funds.

For government debt securities, insurers may invest 100% of their assets in securities issued by a UAE Emirate and 80% of their assets in securities issued by a foreign country with an A-credit rating.

Other than these changes announced by the Insurance Authority, the legal requirements for the establishment and conduct of insurance operations in the UAE remain the same. This means that the only way that a non-GCC wholly-owned foreign insurer can operate in the UAE is to acquire a stake of not more than 49% in an existing UAE insurer. Even then, as a UAE insurer is required to be established as a public company listed on either the Abu Dhabi Securities Exchange or the Dubai Financial Market, the corporate governance requirements that apply to listed entities will continue to limit the ability of a foreign investor to control a UAE-licensed insurer. Under UAE law, the chairman and a majority of the board of directors must be UAE nationals. A majority of the board must also be comprised of non-executive directors and at least one-third must be independent directors.

Alternative Structures of Control

That said, there are a number of measures that can be used to lessen the effect of the foreign ownership rules and to allow alternative means of control of UAE insurers.

Such measures allow the foreign shareholders to have certain benefits in practice that full ownership of the UAE company would offer. Such measures include the foreign investor/insurer:

- negotiating consent rights in its shareholders' agreement (i.e. negative control);
- entering into a nominee arrangement or a management agreement with a UAE national investor (as opposed to the articles of association which are largely in a standard form);
- agreeing on certain director appointment rights (although these rights would be subject to the corporate governance requirements referred to above).

Even then, these measures are limited and may not achieve the commercial objectives desired by the foreign investor/insurer. For instance, they may not deliver the accounting consolidation, management control or economic return that the foreign investor/insurer desires. There is also the risk that, to the extent that these measures allow the foreign shareholder to engage in a commercial activity in the UAE that is not otherwise open to it, they may fall foul of UAE federal law regarding commercial concealment.

DIFC (Dubai International Financial Centre)

An alternative to this approach is investing in an insurer incorporated in the Dubai International Financial Centre (DIFC).

The UAE Commercial Companies Law and relevant insurance laws and regulations do not apply to entities established in the DIFC. Instead, the DIFC has a separate set of laws and regulations which allow full foreign ownership of companies within the DIFC. Insurance businesses carried out in the DIFC are also regulated by the Dubai Financial Services Authority rather than the UAE Insurance Authority.

On the other hand, insurers established in the DIFC are limited in the type of insurance that they can offer. An insurer based in the DIFC may only insure DIFC risks or non-UAE risks. In relation to UAE-based risks, DIFC insurers may only offer reinsurance.

This latter restriction nevertheless allows access to the UAE and the GCC region as a whole, since there are few restrictions on reinsurance arrangements with local direct insurers (who frequently cede up to 100% of the risk) in the UAE or in the other GCC countries.

Setting up on-shore/off-shore

As an insurer based in the DIFC is not treated as a UAE insurer, acquiring a DIFC insurer which is subject to the less restrictive ownership rules of the DIFC will give foreign investors the ability to establish an initial presence in the UAE.

However, it must be remembered that being based in the DIFC, the insurer will be restricted in the jurisdiction in which it can operate and in the lines of insurance that it can write.

Al Tamimi & Co has considerable experience in advising and assisting local and international insurers with establishing a presence in the DIFC and on-shore in the UAE.   If you are considering setting up in either of these jurisdictions, Al Tamimi & Co can advise and assist you with achieving your commercial objectives.