

Qatar: Insurers and Arbitration Clauses

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February 2016

For the most part, insurance companies generally prefer arbitration over the traditional judicial system. However, some countries, such as Qatar, have statutes that purport to impose some restrictions on insurance companies in inserting arbitration clause in their policies. The principle adopted by the Qatari legislature is that any dispute should be resolved by the courts, and the arbitration is an exceptional way to resolve such disputes.

A few years ago, a fire broke out in a mall in Doha owned by the claimant resulting in severe damages. The Claimant submitted a claim before the Qatari courts against the insurance company under the insurance policy for the losses suffered, noting that the dispute resolution clause in the insurance policy refers to arbitration and not to the Qatari courts.

At the first hearing before the Qatar Court of First Instance, the defendant pleaded that the case should be dismissed and referred to arbitration, because the insurance policy contained an arbitration clause. In this particular insurance policy the arbitration clause was only contained in the general terms of the policy.

Accordingly, the claimant argued that the arbitration clause was not valid, since it should have been included in the specific terms of the insurance policy. Having the arbitration clause in the general terms did not suffice, and therefore the Qatari court should have had jurisdiction regarding this dispute.

The claimant cited Articles 775, 801 and 107 of the Qatari Civil Procedure Code in its submissions. Article 775 of the Civil Procedure Code applies to insurance policies and provides that: "it shall not be permissible to challenge the insured neither with the conditions relating to nullity or loss of right unless it was clearly presented, nor the arbitration clause unless it was made in a special agreement independent of the general conditions."

However, the court of first instance did not accept the claimant's argument, and held that, even if the arbitration clause was not separately presented in the general insurance policy and, was nevertheless included in the general conditions of the policy, the arbitration clause was still enforceable. Therefore the court of first instance dismissed the case on the basis that the insurance policy included an arbitration clause, notwithstanding that it was set out in the general conditions of the policy.

The claimant filed an appeal before the Qatari court of appeal based primarily on Articles 775, 801 and 107 of the Qatari Civil Code, in conjunction with other supporting references from the doctrine and jurisprudences. Respected civil law jurists, such as Sanhoury, are of the view that an arbitration clause in an insurance policy should be set out in the policy in such a way as to obtain special attention from the insured/beneficiary, so as to ensure that the insured/beneficiary is aware of the inclusion of the arbitration clause and therefore such clause should be separated from the insurance policy.

The court of appeal rendered a judgment in favour of the claimant and held that the arbitration clause should be contained separately in the insurance policy in order to be enforceable. The arbitration clause has an autonomous nature, and must be clearly apparent and the arbitration clause must be separate from the insurance policy.

Therefore, if insurance companies want to ensure that an arbitration clause in an insurance policy is enforceable in Qatar, then based on this recent court of appeal judgment it would appear that the most

prudent course of action would be for insurance companies to arrange for the insured/beneficiary to sign a separate arbitration agreement alongside the insurance policy; or at least place the arbitration clause as an independent annex to the insurance policy. Otherwise an insurance company runs the risk that the Qatari courts will state that the arbitration clause is not enforceable and will not be valid under Qatari law.