

The Regulation of Insurance Brokers in UAE

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October 2016

In the United Arab Emirates the insurance brokerage profession is regulated by Insurance Authority Board of Directors resolution No. 15 of 2013 (as amended by resolution No. 20 of 2014) (the “Regulations”) and resolution No. 58 of 2015 in respect of the execution of resolution No. 15 of 2013 (the “Execution Rules”).

A company may not practice insurance brokerage in the UAE without obtaining a license from the Insurance Authority. A license is valid for one year and renewable on a yearly basis. It expires at the end of December each year. Companies wishing to obtain a license from the Insurance Authority must meet certain requirements set by the Regulations. Among those requirements, the applicant must be a company incorporated in the UAE under the Commercial Companies Law or a branch of a company incorporated in a foreign country or in a financial free zone in the UAE provided that it is licensed to practice the same types of insurance brokerage. It should also be subject to the same level of regulatory authority and have been in practice for a period not less than five years. The Insurance Authority under the regulations has the power to set additional requirements beside those stipulated in the regulations.

The technical staff of the insurance broker should also meet certain requirements set by the Regulations. The insurance Broker must have at least a general manager, operation manager, internal auditor and at least one specialized employee for each type of insurance. The Execution Rules further stipulates specific requirements for each of the said employees and the person responsible for the branch.

The insurance broker is required to submit an unconditional bank guarantee payable on demand to the Insurance Authority chairman of the board of directors. This may be liquidated fully or partially at any time in order to guarantee the settlement of the broker’s transactions and obligations arising from his practice toward the insurance companies and his customers.

The insurance broker must obtain an insurance policy in favour of the Insurance Authority chairman of the board of directors covering the broker’s professional liability. The value of this policy must be at least AED 2 million for companies incorporated in UAE and AED 3 million for a branch of a company incorporated in a foreign country or in a financial free zone in the UAE.

The Regulations set certain obligations which the insurance broker must comply with towards the Insurance Authority, the insurance companies and the broker’s customers. The insurance broker should follow up and collect the premiums on behalf of the insurance companies except those related to life insurance and funds accumulation operation, group health insurance, marine and air transport insurance, vessels hull and petroleum insurances.

Federal Law No. 6 of 2007 (in respect of the establishment of the Insurance Authority and Regulating the Insurance Practice) (the “Law”) defines an insurance broker as:

“The person mediating independently in insurance or reinsurance operations between the insurance/reinsurance applicant on one hand and the insurance/reinsurance company on the other, and charging, for his services, a commission from the insurance/reinsurance company with which the insurance/reinsurance policy is concluded.”

The role of the insurance broker in UAE is not different from that practiced in other jurisdictions. Insurance brokers are not responsible for the default of either the insurance companies or the customers in meeting their financial obligations. The insurance broker is only liable if the broker fails to deliver premiums paid by the customers to the insurance companies, or fails to deliver recoveries paid by the insurance companies to the customers.

Despite the fact that the laws in the UAE have defined the role of insurance brokers, in a recent case which Al Tamimi was not involved but which has come to our notice, the Dubai courts held that an insurance broker in a reinsurance brokerage transaction was liable to pay recoveries due to an insurance company from a reinsurance company. The facts of the case, as we understand them, were as follows:

- An Insurance company (the “Insurer”) reinsured the risks which it covers under its motor insurance policies through an insurance broker (the “Broker”) with a reinsurance company (the “Reinsurer”) which signed a cover note issued by the Broker. The Broker issued a second cover note to the Insurer with the same terms of the cover note issued to the Reinsurer and stating the name of the Reinsurer.
- During the currency of the reinsurance cover, the Insurer paid the due reinsurance premiums through the Broker who was transferring the said payments to the Reinsurer without delay. The Insurer also made claims to the Reinsurer through the Broker for recoveries they had paid to their insured.
- The Broker did follow up the recovery claims of the Reinsured with the Reinsurer, but the Reinsurer ignored all the claims and failed to meet its obligation to pay any indemnity to the Reinsured.
- The Reinsured filed a court case against the Reinsurer and the Broker before Dubai Court of First Instance and requested the court to oblige both companies to jointly pay to the Reinsured the amount of the indemnities due under the reinsurance contract.

The court of First instance appointed an accounting expert who examined the documents including the correspondence exchanged between the Broker and the Reinsured, the accounts and the cover notes. The appointed expert concluded that:

- The reinsurance contract (second cover note) was concluded between the Broker and the Reinsured;
- The exchanged correspondences prove that the Broker admitted the amount owed to the Reinsured;
- The Reinsurer is not liable to pay such amount to the Reinsured jointly with the Broker as the Reinsurer signed the first cover note but did not sign the reinsurance contract (second cover note).

The Broker argued that:

- It met all its obligations as a broker by following up the claims in a timely manner and with due diligence;
- It is not obliged by the law to indemnify the Reinsured for any claim as long as it did not receive any payment from the Reinsurer in respect of such claims.
- The Broker may not insure or reinsure any risk as this does not comply with its license and thus it cannot be held liable to pay any indemnity payable under the reinsurance cover.

The Court of First Instance adopted the findings of the expert and held that the Broker was liable to pay to the Reinsured the recoveries claimed under the reinsurance contract.

The Broker filed an appeal before the Appeal Court and raised the same arguments. The court appointed an insurance expert who concluded that:

- The relation between the Reinsured and the Reinsurer was a pure reinsurance relation.
- The Broker was merely acting as a broker through whom the reinsurance contract was concluded between the parties. The Broker followed up all the claims of the Reinsured but the Reinsurer failed to fulfil its obligations.
- It was the duty of the Reinsurer to pay the claimed amount.

However the Appeal Court rejected the findings of the expert and upheld the Court of First Instance judgement, adopting the same reasons as those detailed in the Court of First Instance's expert's report.

The Broker appealed the judgement before the Cassation court. The court rejected the appeal and confirmed the Appeal Court judgment. The reinsurance contract (second cover note) was concluded between the Broker and the Reinsured. Although the Reinsurer had signed the first cover note, it was the Broker who was liable since he issued the second cover note and the signature of the Reinsurer on the first cover note did not constitute an acceptance of coverage of the insured risks.

Conclusion

The findings of the Dubai Courts in this case are surprising. It is likely that the court applied general rules of contract and did not take into account the nature of the reinsurance practice followed by the brokers where cover is made by virtue of a cover note. This case is the first of its kind in the UAE and so its conclusions cannot be said to have a lot of weight. Several cases of the same kind have to be heard before the UAE courts to establish a rule on the liability of the insurance brokers for reinsurance claims where reinsurance cover is made through issuing two separate cover notes. It is hoped that future decisions will depart from the findings in this case and uphold the industry practice.