

Dual Insurance and other Insurance Clauses

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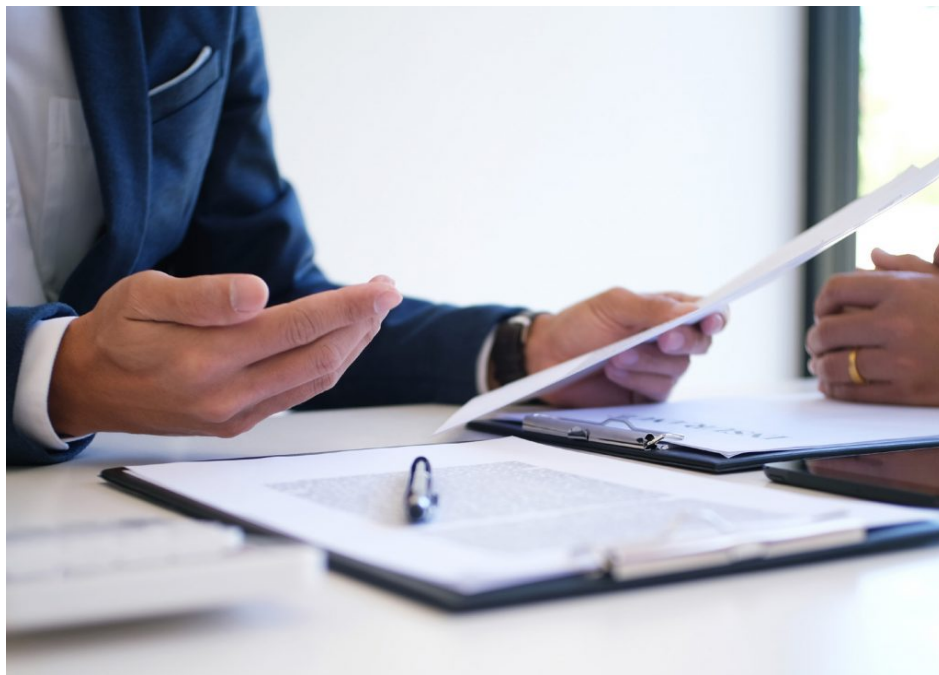
What happens when two insurers are legally liable for the same loss to the same insured? How does UAE law deal with this situation?

The answer is – ‘not very well’. Unfortunately, this can lead to an unsatisfactory state of affairs as each insurer seeks to pass on liability for the loss to the other insurer. Insurers in the UAE tend to do this because they know that, once the other insurer has satisfied the liability, they are unlikely to be subject to a claim to contribute to the loss. This occurs for two reasons:

- firstly, UAE law prevents an insured from recovering more than the value of the insured loss. Accordingly, if the policy issued by the first insurer covers the loss and if, for whatever reason, the insured elects to make his or her claim only against that insurer, the insured has no further incentive to make a claim for the loss under the policy of the second insurer. In many cases, the insured may not even be aware that he or she is entitled to cover for the loss under a second policy of insurance; and
- secondly, once the loss has been fully indemnified by the first insurer, UAE law does not give the first insurer any independent right to sue the other insurer liable for the loss for contribution.

In common law countries, the right of contribution between insurers arose out of equity. It was not a right recognised by common law. Where the right exists in non-common law jurisdictions, it has usually been created by legislation. If it has not been created by legislation, as is the case in the UAE, the right is not otherwise available.

Dual Insurance



Whether the right to contribution among insurers is available or not, the condition necessary for a claim of contribution is the existence of dual insurance.

Dual insurance (or double insurance as it is also called) arises when the same party is insured with two or more insurers in respect of the same interest in the same subject matter against the same risk and for the same period of time. Each of these elements must be present in order for dual insurance to arise.

Cases in which dual insurance claims commonly occur are:

- motor vehicle accidents where the driver is driving to work and suffers personal injury. Usually, both the driver's motor vehicle insurer and the worker's compensation insurer of the driver's employer are liable for the driver's injuries, barring the existence of a provision in either policy providing otherwise;
- construction projects where a construction all risks policy will typically insure the contractor and subcontractor for liability for property damage or for personal injury. As the subcontractor will commonly carry its own public liability insurance, both policies will respond in the event that the subcontractor incurs liability for causing personal injury or property damage, barring any exclusion providing otherwise; and
- healthcare services where medical professionals retained as independent contractors by a hospital usually carry their own professional liability insurance and may also be covered by the professional liability insurance of the hospital retaining them. This situation is common in the UAE and in the GCC more widely.

In any of these cases, if loss or damage is caused by the risk insured against, then, subject to the terms of each policy, the insured person or entity may recover the full amount of the loss from whichever insurer or insurers they elect to claim it from.

Other Insurance Provisions

Given the UAE does not give the insurer who has paid a claim a right of contribution from any other insurer also liable for the loss, insurers operating in the UAE are left to deal with cases of dual insurance pre-emptively in their policy wordings. Some common examples of wordings dealing with the prospect of dual insurance are:

Notification Clauses: These clauses provide that, unless the insured gives written notice to the insurer about the existence of a second policy of insurance covering the same risk, the policy will be void. An

example of such a clause is: “No claim shall be recoverable if the property insured has been previously or subsequently insured elsewhere, unless the particulars of such insurance have been notified to the insurer in writing”.

Rateable Proportion Clauses: These clauses have the effect of preventing an insured from claiming its full loss from one insurer. They provide that each insurer will be liable for a rateable proportion only. An example of this kind of clause is: “If at the time any claim arises under this policy there is any other existing insurance covering the same loss damage or liability, the insurer shall not be liable to pay or to contribute more than its rateable proportion of any loss, damage, compensation, costs or expense”.

Excess Clauses: These clauses turn the policy containing them into an excess insurance policy so that cover is only triggered where the loss exceeds the limit of the other insurance. An example is: “If at the time of the occurrence of any injury, loss or damage there is any other indemnity or insurance of any nature wholly or partly covering the same injury, loss and/or damage, the insurer shall not be liable to pay or contribute towards any such injury, loss or damage except in excess of the sum or sums actually recovered or recoverable under such other indemnity or insurance”.

Conclusion

Given the absence under UAE law of an independent right of contribution among insurers, it is important that insurers deal with the possibility of dual insurance pre-emptively in their policy wordings. This is best done by including an ‘other insurance’ clause in the policy like the ones described above.

In cases where the insured and one of the insurers are in litigated proceedings, the insured may choose to sue all other insurers also liable for the loss. If that happens, then the UAE courts will usually apportion liability for the loss ratably between all insurers, subject to any countervailing terms in each insurer’s policy.

Even in that case, an ‘other insurance’ clause will usually be given legal effect to by the UAE courts, although competing ‘other insurance’ clauses can cancel each other out. An example is where both policies contain an ‘excess’ clause. In that case, the court is likely to apportion liability ratably between the insurers liable for the loss and the ‘excess’ clause will be ignored.

Al Tamimi & Company’s [insurance team](#) regularly advises on dual insurance issues and claims for contribution between co-insurers. For further information please contact [Justin Carroll](#) j.carroll@tamimi.com