



INSURANCE DISPUTES COMMITTEES “IDC”

Given the increase in insurance disputes in the Kingdom of Saudi Arabia, it is time to circle around with the dispute mechanisms in the Kingdom. Unlike certain Common law jurisdictions, KSA has a dispute procedure which is given over specifically to insurance: the Insurance Disputes Committee (the IDC).

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The IDC was established in 2003 under the Law on Supervision of Cooperative Insurance Companies issued by Royal Decree no. (M/32) dated (02/06/1424H) (the Law). The Law established Primary Committees (i.e. the IDC) and the Appeal Committees.

Each IDC consists of three experts, the head of which must be a legal consultant, with the other two being from an insurance or banking background. The Appeal Committee must have not less than three specialised insurance members. The Appeal Committee's role is to consider appeals but limits its consideration to examining cases where the amount involved is in excess of SAR 50,000. Unlike other Dispute committees, there is no interaction with the Courts i.e. decisions of the IDC (or the Appeal Committee) are final.

The IDC's jurisdiction and appeals:

The IDC hears claims on all disputes and violations related to insurance. The IDC's jurisdiction covers disputes arising from insurance policies, disputes between insurance companies and reinsurance companies, insurance service providers, violations of the regulatory and supervisory instructions of SAMA, and (unlike the IDC in the UAE) subrogation claims. In other words, anything to do with insurance in the KSA.

There are three primary IDC jurisdictions: Riyadh, Jeddah and Dammam. These committees have the jurisdiction to hear disputes occurring in the regions of each city. The General Secretariat may, upon the request of the claimant (if it is a natural person) refer the claim to any other IDC which has no territorial jurisdiction over the case, provided that the claim has not been considered by the territorially competent IDC. Where the defendant is a corporate entity the IDC will hear the case where the entity resides.

Laws applying the IDC:

Under KSA law, there is no commercial or civil code which sets out an all-embracing theory of insurance/ contract law. Contracts (including those of insurance) are always first interpreted in accordance with *Sharia* law. If there is a conflict between a contractual clause and *Sharia* then *Sharia* will apply. An overriding principle of *Sharia* law is that the contract is the law of the parties which means, generally, that the parties to a contract (including of insurance) are free to agree the terms and such terms will be legally binding so long as they are not contradictory to provisions of *Sharia* law. All terms are expected to be set out in the contract and very few terms are ever implied.

In that regard, the IDC when hearing a matter governed by KSA law will

apply the principles of *Sharia* law, and in particular the principles of fairness, and seek to achieve a balance between the two. The fairness principle is implied in all dealings. In addition, as with other civil law countries (and even more so in KSA) there is no system of binding precedent or “case law” as there is in common law countries.

For that reason, it can be difficult to predict exactly how the IDC will deal with any particular matter under KSA law. However, as a general rule, in the case of insurance, exclusion clauses, warranties and conditions precedent are acceptable under *Sharia* law. Indeed, unlike in the laws of some other GCC countries, KSA law expressly recognises these types of clause – see Article 52 of the Implementing Regulations for Co-operative Insurance Laws (the Implementing Regulations). Article 52 of the Implementing Regulations also goes on to imply (without explicitly stating) that conditions and exclusions contained in separate documents to the main policy (e.g. in endorsements and riders) will also be deemed validly incorporated into the policy. The primary requirement under Article 52 of the Implementing Regulations is that the policy is written in a “clear way” that can be understood by a layperson (the translation provided by the IDC reads “*by the public at large*”). Although



Article 52 of the Implementing Regulations does not define exactly what is meant by this, Article 21 of the Insurance Market Code of Conduct Regulation (which does not apply to the reinsurance market) provides that insurance policy wording must (i) use simple language and sentence structure, where possible; and (ii) be printed in clear, readable text, with no fine print.

That being said, although these clauses are expressly recognised in KSA law, in our experience the IDC will disapprove of a party seeking to place excessive reliance on these clauses as, again, the IDC will seek to balance reliance on limitation clauses with the principles of fairness. The IDC is likely to disregard any terms that are seen as inequitable or unfair on one of the parties. Further, under general principles of *Sharia* law, parties cannot waive, exclude or limit rights until such rights have accrued.

However, where the law does not address the underlying facts, the IDC can settle claims in accordance with the nature of the dispute, applicable rules and as agreed upon according to the law, comparative jurisprudence and international practices adopted in the insurance industry. The latter issues are important. If KSA or *Sharia* Law does not address the particular circumstances, the parties can look

to other jurisdictions e.g. common law jurisdictions such as English, Australian, Canadian or US law.

Article (7) of the Law stipulates that all types of evidence can be used before the IDCs, including electronic and computer data, telephone recordings, fax correspondence, emails and SMS messages. Perhaps, more importantly, the Regulations imply that the IDCs can determine their own procedures e.g. unlike Civil Code jurisdictions, the IDCs can hear oral evidence and advocacy if they so wish.

Judgments of IDCs are (generally) published and whilst not binding on other IDCs are of persuasive authority.

Finally, IDCs have the powers to award "all legal expenses". This differentiates the IDC from Courts in the GCC where minimal expenses are recoverable. Naturally, such provisions do make parties think twice about pursuing frivolous claims if there is the potential for an adverse costs order.

For further information, please contact the authors of this briefing;



JOHN BARLOW

Partner, Riyadh

T +971 4 423 0547

E john.barlow@hfw.com



MOHAMMED ALKHLIWI

Partner, Riyadh

T +966 11 834 3516

E mohammed.alkhlawi@hfw.com



THOMAS NEIGHBOUR

Senior Associate, Dubai

T +971 4 423 0515

E thomas.neighbour@hfw.com

Additional research undertaken by trainee Yara Alkhamis.

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