

THE INCORPORATION AND INTERPRETATION OF EXCLUSION CLAUSES, CONDITIONS PRECEDENT AND WARRANTIES IN RE/INSURANCE POLICIES UNDER UAE LAW



UAE law does not expressly distinguish between insurance and reinsurance contracts in respect of interpretation.

To be valid and enforceable under UAE law warranties, conditions precedent to liability or exclusion clauses:

1. Must be “prominent” i.e. in bold font and a different colour.
2. Be endorsed by the assured.

If the clause has been successfully incorporated in accordance with the formalities set out above, there are certain other provisions regarding the interpretation of clauses in the insurance contract.

If there is scope for an interpretative construction of a contract, the UAE Court will enquire into the intentions of the parties, as well as the nature of the transaction and current business practice.

If there is doubt as to the meaning of a contract term, it will be construed against the party who put it forward or who benefits from it.

UAE law includes amongst others specific provisions for clauses dealing with late notification/claims co-operation and non-payment of premium.

The following summarises the incorporation and interpretation of exclusion clauses, warranties and conditions precedent in insurance contracts under UAE law.¹

UAE Law

The operation and interpretation of insurance contracts are governed by UAE Federal Laws No. 5 of 1985 (the Civil Code) and No. 6 of 2007 (the Insurance Law). In 2010, the UAE Insurance Authority issued a directive to insurance companies operating in UAE that is also relevant (Insurance Authority Board of Directors’ Resolution No. 3 of 2010 (the 2010 IA Directive)).

1. These laws do not apply to companies operating in free zones, for example the Dubai International Financial Centre (DIFC) in the UAE (See Insurance Law as defined below Article (2) 2).



UAE law does not expressly distinguish between insurance and reinsurance contracts in respect of interpretation. The Insurance Law Article (3) 1 defines an insurance as follows:

“An insurance is a contract pursuant thereto the insurer shall be obliged to pay the insured or the beneficiary whose in his favour the insurance has been concluded a sum of money, regular proceeds or other monetary indemnity in case the insured accident or risk occurred, in return of instalments or any other monetary sums paid by the insured thereto.”²

This definition applies to a reinsurance contract as well. The UAE courts have not given any further guidance on this provision.

Formal requirements for incorporation

Under the Civil Code, any clause that would “*cause the contract to be annulled or the insured’s right to be forfeited*” is considered void unless that clause is “*prominent*” (Article 1028(c)³). The 2010 IA Directive includes a near identical provision and provides that “*prominent*” means the words should be in a distinctive font or different colour (I.A. Directive, Article (7) 2.a).

Warranties, conditions precedent to liability or exclusion clauses would all fall within the definition of these clauses i.e. they would cause “*avoidance of the contract or lapse of the right of the assured*”.⁴

In addition, Article 28 of the Insurance Law is more draconian. It requires that any clause “*releasing the [insurer] from liability*” has to be

written in bold font and a different colour, and endorsed⁵ by the assured. This definition would appear to cover warranties, conditions precedent to liability and exclusion clauses.

We are aware of a number of Dubai Court of Cassation decisions (e.g. Nos 27 of 2009 and 298 of 2008), whereby the court has held that where insurers seek to rely upon a clause that limits or excludes liability, such clauses can only be relied upon where they are found in the body of the Policy, where they are clearly identifiable to the assured.

Although these decisions are not legally binding upon subsequent local courts, they are considered to be highly persuasive. They may also therefore persuade any court determining the issue under UAE law.

The cumulative effect of the above is that to be valid and enforceable under UAE law warranties, conditions precedent to liability or exclusion clauses:

1. Must be “prominent” i.e. in bold font and a different colour.
2. Be endorsed by the assured.

Interpretation

UAE law does not define “warranties”, “conditions precedent” or “exclusion clauses” as such. But assuming that the clause has been successfully incorporated in accordance with the formalities set out above, there are certain other provisions regarding the interpretation of clauses in the insurance contract of which the re/insurer should be aware.

First, as a general point, Articles 265 and 266 of the Civil Code govern the interpretation of contracts (including insurance contracts) and provide rules on how the insurance contract may be interpreted by a UAE Court.

Article 265(2) says that where there is scope for an interpretative construction of a contract, the Court shall make an enquiry into the intentions of the parties, as well as the nature of the transaction and current business practice in respect of the same.

Article 266 goes on to provide that where there is doubt as to the meaning of a contract term, it will be construed by the Court against the party who put it forward or the party who benefits from it⁶. In this regard, we should also point out that in our experience, the UAE courts are perceived to be “assured friendly”. Therefore, if the UAE Court considered there to be any ambiguity in the wording of the policy, Article 266, and our experience of the UAE courts, suggests the court may try to construe the clause in the assured’s favour.

Second, as a more specific point related to clauses in insurance contract, any clause in an insurance contract that seeks to entitle the insurer to avoid the contract of insurance/avoid the claim in relation to a breach which is not causative of the loss is potentially invalid (Civil Code article 1028(e)). This definition covers warranties, exclusion clauses and conditions precedent.

Finally, notification clauses (drafted as conditions precedent) are also covered by this section, which provides that late notification or

2. Insurance is similarly defined in the Civil Code Article 1026.

3. This has also been translated as “conspicuous” on Westlaw, and as “clearly shown” by the Insurance Authority.

4. This language is the same in the original Arabic Civil Code Article 1028(c), and the I.A. Directive Article (7) 2.a. The translation in the body of this memorandum is from Westlaw. The same phrase in the I.A. Directive has been translated by the Insurance Authority as “invalidate the contract or forfeit the insured right”.

5. Westlaw has translated this as “approved”.

6. This is analogous to the principle of *contra proferentem* in English law which provides that an ambiguous term will be construed against the party that prepared it.



failure to provide documents cannot inflict “forfeiture on the assured”, if the delay is due to an “acceptable excuse” (Civil Code Article 1028(c)).

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Conferences & Events

Lillehammer Energy Claims Conference

Norway
(6-8 March 2013)
Attending: Jonathan Bruce and Nigel Wick

Mining Claims Seminar

HFW, Friary Court, London
(19 March 2013)
Presenting: Rebecca Hopkirk, Toby Savage, Paul Wordley, Nigel Wick and Jonathan Bruce

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“Therefore, if the UAE Court considered there to be any ambiguity in the wording of the policy, Article 266 and our experience of the UAE courts suggests the court may try to construe the clause in the assured’s favour.”

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