



## **GOOD FAITH IN THE UAE: AN INSURANCE FOCUS**

Insurance professionals will be familiar with the concept of good faith. There are, however, differences between common law and civil law systems as to the nature of the duty and the time of application. This article highlights the key points to bear in mind in relation to good faith in the UAE and how this can impact on claims.

# “If Insurers can prove bad faith by an Insured then Insurers can retain the premium paid by the Insured. If Insurers cannot prove bad faith, then Insurers must return the premium, or any part of it for the period that Insurers were not on risk. ”

## All-Encompassing Duty

The concept of good faith is enshrined within UAE law in relation to all contracts; parties must perform a contract *“in accordance with its contents and in a manner consistent with the requirements of good faith.”* (Article 246 of the UAE Civil Code (Federal Law No. 5 of 1985)).

Although the concept of good faith is not expressly defined, Article 246 explains that the contract is not restricted to an obligation on the parties to simply abide by the express terms but also *“embraces that which is appurtenant to it by virtue of the law, custom and the nature of the transaction”*. Amongst other things, parties must not seek to treat each other unfairly by unreasonable reliance on the strict wording of a contract.

## Obligations of the Insured

The UAE Civil Code contains further specific requirements in the provisions relating to insurance. Although they do not expressly apply to reinsurance contracts, it is generally understood that the UAE Courts would likely apply these provisions to insurance and reinsurance contracts alike.

## Disclosure

Pre-contract, Article 1032(b) of the UAE Civil Code makes it clear that an Insured must disclose all information that Insurers would wish to know when evaluating the risk.

An Insured’s duties do not end there; Article 1032(c) also provides that an Insured has an on-going duty of disclosure, post-contract, to notify Insurers of any matters occurring during the policy period that would lead to an increase in risk. This is of some comfort to Insurers; although policies may contain wording putting an Insured under this obligation anyway, in the UAE the obligation is one of law and not merely one of contract (which may be subject to interpretation).

## Consequences

If an Insured does not act in good faith and fails to disclose relevant information, or provides incorrect information, Insurers can require that the policy be cancelled from the date of the Insured’s failure to disclose the relevant information (absent express wording in the Policy, cancellation likely requires an application to Court) (Article 1033(1) of the UAE Civil Code).

If the failure is pre-contract, then the Policy will be void from the outset,

but if the failure occurred during the policy period then the cancellation will take effect from a later date, most likely from the date the Insured knew or ought to have known the information that it should have disclosed to Insurers, although this position is not clear.

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## Marine Insurance

Turning to marine insurance, the consequences to an Insured are slightly different.

In accordance with Article 385(b)-(c) of the UAE Maritime Code (Federal Law No 26 of 1981), an Insured must still (pre-contract) accurately disclose all information that will enable Insurers to evaluate the risks and (post-contract) notify Insurers of any known increase in risks during the policy period.

If an Insured has given any incorrect information, or not disclosed matters that ought to have been disclosed, such that Insurers underestimated the risk, Insurers can require that the

policy be rescinded (Article 388(1) of the UAE Maritime Code). Again, this likely requires an application to the Court, absent express wording in the policy.

Key differences to non-marine insurance are that:

- The UAE Maritime Code expressly provides that a Court can order rescission of the policy even if the non-disclosure/mis-representation has not affected the damage/loss (Article 388(2)).
- If Insurers can prove bad faith by the Insured, then Insurers can retain the whole premium. However, if Insurers cannot prove bad faith by the Insured, then Insurers may still retain half of the premium (Article 388(3)).

Unlike non-marine insurance law, the provisions of the UAE Maritime Code expressly apply to both insurance and reinsurance contracts (Article 370(2)).

### Obligations of the Insurer

The obligations on Insurers set out in the UAE Civil Code are not phrased as starkly in terms of good faith / bad faith.

However, Article 110 of the UAE Insurance Law (Federal Law No. 6 of 2007, as amended by Federal Law No. 3 of 2018) provides that Insurers must adhere to the provisions of applicable law, the insurance policy and Insurance Authority Code of Conduct and Ethics (as set out in Board Resolution No. 3 of 2010) when considering claims.

Article 3(2) of the IA Resolution provides that Insurers undertake to carry out their insurance practices on the basis of absolute good faith.

### Claims Handling

Article 1034 of the UAE Civil Code requires Insurers to pay the indemnity or sum due to the assured/beneficiary *“in the manner agreed upon when the risk materialises or when the time specified in the contract comes”*.

Article 9(2) of the IA Resolution provides that Insurers must decide

on claims without *“unjustified delay”*. This is not further defined and of course arguments can be made as to whether delays are justified. Article 9 goes on to state that Insurers must make a decision within 15 days of receiving a full set of documents, although, again, whether a set of documents is “full” may vary on a case by case basis.

Insurers must be mindful that it is, in theory, possible for Insureds to bring a damages claim as compensation for a civil wrong or for breach of contract against Insurers if they consider that a claim has been mishandled, or possibly incorrectly/wrongfully declined.

### Documents

More generally, Insurers are also subject to other provisions linked to the concept of good faith. For example, Article 7(2) of the IA Resolution requires that the policy is printed clearly and in readable font, identifying exclusion clauses (or other clauses allowing Insurers to avoid a claim) in a different font or colour. Article 28(2) of the UAE Insurance Law (Federal Law No. 6 of 2007, as amended by Federal Law No. 3 of 2018) also requires that these clauses should be endorsed by the Insured. Indeed, as per the UAE Civil Code (Article 1028(c)), if these clauses are not *“shown conspicuously”* then they will be void.

This can be seen as an extension of the principle of good faith; Insurers must not/cannot seek to rely on illegible or inconspicuous terms to avoid liability; a point to bear in mind when preparing standard policy documentation.

Insurers should also be careful to ensure that, at the time of contracting, proposal forms are provided that clearly request all information that Insurers consider material to the risk and which also set out the consequences of failing to provide such information (Article 6(3) of the IA Resolution).

### DIFC Insurance Law

As the DIFC is a common law jurisdiction, the express insurance

provisions of DIFC law are relatively limited and are set out within Part 4 of the DIFC Law of Obligations (DIFC Law No. 5 of 2005).

Article 61 of this law provides a general duty upon the insured to disclose every fact within its knowledge which would influence the decision of a prudent underwriter in determining the terms and conditions of the contract or whether to enter into it at all.

Article 62 goes on to provide that all parties to a contract of insurance are under a duty to act honestly and with the utmost good faith in relation to insurance contracts.

The duty will be satisfied where parties disclose all relevant facts, make no misrepresentations and both intend to, and do, carry out obligations with the utmost good faith. In the event of a failure to act in good faith, the other party may avoid the policy provided the breach of duty is material to the claim (Article 63).

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