

United Arab Emirates

The United Arab Emirates is a federal state composed of seven emirates including Abu Dhabi and Dubai. The federation came into effect in 1971, but each emirate maintains a varying degree of control over certain areas of administration, including company formation and regulation under the UAE Constitution. As a federal state, certain federal laws apply equally across all emirates and take precedence over local laws and administration. This includes the UAE Federal Law 6/2007 on Establishing the Insurance Authority and Organising its Operations (the Insurance Law), which regulates the insurance sector in the United Arab Emirates. The Insurance Law and the Insurance Authority's regulations and directives take precedence over all other rules and regulations issued within an individual emirate. Therefore, where an insurance business seeks to establish itself within any particular emirate, the insurance business would have to abide by both the federal Insurance Law and Insurance Authority regulations as well as the local legislation of the emirate.

1. Overview of the insurance market

The business environment in the United Arab Emirates differs depending on the emirate, as does the size and expected growth potential of the insurance market. Therefore, companies seeking to establish an insurance business in the United Arab Emirates would need to consider the particular requirements, restrictions or obligations of the emirate in which they intend to incorporate.

1.1 Distinction between United Arab Emirates, the Dubai International Financial Centre and the free zones

In addition to the seven emirates of the United Arab Emirates, several emirates have established free zones, with Dubai having established the Dubai International Financial Centre (DIFC), which is an entirely separate jurisdiction with its own commercial and corporate laws and regulations. Insurance and reinsurance in the DIFC are discussed separately later in this chapter.

The free zones in the United Arab Emirates are designated zones where companies are subject to different commercial rules and regulations to those that apply outside the free zones. Each free zone has its own incorporation and licence requirements and will license a specific range of activities. The key limitation of the free zone is that free zone companies cannot access the UAE market directly and must fulfil requirements similar to those required by foreign entities which seek to trade in the United Arab Emirates. With regard to insurance activities specifically, the

free zones primarily license back-office insurance services for onshore insurers and reinsurers.

2. United Arab Emirates

2.1 Regulatory framework

(a) Overview of the current legal framework and regulatory environment in the UAE (non-DIFC)

The UAE legislature introduced the Insurance Law, effectively replacing the old insurance law, Federal Law 9/1984 on Insurance Companies and Brokers, in an effort to develop the insurance industry in the UAE. The Insurance Law created an independent Insurance Authority responsible for organising and overseeing the insurance sector and ensuring a “suitable environment to develop (the insurance industry)”; strengthening the role of the insurance industry in “securing lives, properties and liabilities against risk”; encouraging “fair and effective competition”; and carrying out a range of duties detailed in Article 7 of the Insurance Law. These duties include “protecting the rights of the insured and the beneficiaries” of insurance operations, “enhancing performance and efficiency”; ensuring insurance providers “observe the professional code of conduct”; receiving applications for the establishment of insurance and reinsurance companies, insurance brokers and related professions and issuing them with the necessary licences; and undertaking other relevant assignments that the board of the Insurance Authority (the board) deems necessary.¹

It is important to note that at the time of writing, the UAE government has decided to transfer the powers and responsibilities of the Insurance Authority to the UAE Central Bank.

(b) UAE federal laws and the Insurance Authority

Since the creation of the board in 2007, the Insurance Authority has issued a number of board decisions regarding the licensing and operation of insurance entities within the UAE.² Although the laws necessary for regulating the insurance industry are yet not comprehensive, the Insurance Authority is deeply aware of the need for more extensive regulation of the industry and is in the process of drafting and issuing further regulations in the coming months and years. We note that the Insurance Authority has issued draft regulations which have yet to be adopted and implemented on several areas including solvency margin, accounting, technical reserve requirements, bancassurance, and insurance and reinsurance brokers to name a few.

The Insurance Authority has so far issued two main board resolutions regulating

1 Insurance Law, Article 7.

2 Although ancillary to the topic at hand, we note that both the emirates of Abu Dhabi and Dubai have set up their own legislative bodies covering the provision of healthcare and health insurance: the Health Authority of Abu Dhabi (HAAD) and the Dubai Health Authority (DHA). HAAD has already implemented several laws governing health insurance in the emirate of Abu Dhabi including mandatory health insurance and a minimum standard of coverage to be provided for all residents. Although the DHA has promulgated a few laws in relation to health insurance it has yet to make health insurance mandatory for all residents.

the industry, namely Insurance Authority Board of Directors Resolution 2/2009 on Issuing the Implementing Regulations to the Law (the Implementing Regulations) and Insurance Authority's Board Decision 3/2010 (the Code of Ethics). We note that the Insurance Authority has also issued board decisions specifically targeting ancillary service providers to insurance companies, such as Insurance Authority Board Decision 8/2011 addressing insurance agents and Insurance Authority Board Decision 9/2011 addressing third-party administrators. We will not be addressing these decisions as they fall outside the scope of this chapter.

2.2 Licensing

(a) *Overview and types of licence*

The Insurance Law and the Implementing Regulations regulate the licensing requirements of insurers and insurance activities in the UAE. The Insurance Law generally divides insurance operations into three categories, namely life assurance and funds accumulation operations; property insurance; and liability insurance.³ These categories also include the types of activity carried out by insurance and reinsurance agents, actuaries, insurance brokers, loss and damage adjusters, and insurance consultants, all of which are regulated by the Insurance Authority.⁴

(b) *Life assurance and funds accumulation operations*

The Implementing Regulations provide that life assurance and funds accumulation operations include life insurance of all types and policies connected to investment portfolios that pay certain amounts on death, disability or reaching a certain age.⁵ Also included are medical insurance, personal accident insurance connected to life insurance⁶ and all operations whereby the objective is to pay a lump sum on a fixed date against premiums or periodical premiums paid over time but not paid in connection with property, life or death.⁷

(c) *Property and liability insurance*

Article 5 of the Implementing Regulations specifies the activities that fall under the category of property and liability insurance. These include:

- fire risk insurance and insurance connected thereto;
- land, air and marine transport insurance and the insurance of related liabilities;
- insurance of vessel hulls, its machinery, supplies and insurance of related liabilities;
- insurance of aircraft bodies and similar including machinery, supplies and insurance of related liability;

3 Insurance Law, Article 4.

4 Insurance Law, Article 5.

5 Implementing Regulations, Article 4.

6 Implementing Regulations, Article 4: "All Insurance operations on personal accidents decided by the company in favour of the persons who holds Life Insurance policies from the same Company".

7 Implementing Regulations, Article 4.

- insurance of satellites, balloons, space crafts, machinery, supplies and insurance of related liability;
- trains, and train carts insurance and insurance of related liability thereof;
- insurance of land vehicles and insurance of related liability thereof;
- engineering insurance and insurance of related liability thereof and insurance ancillary thereto;
- petrol insurance includes insurances which are considered as petrol insurance;
- medical insurance of all types;
- insurance against all miscellaneous accidents and liabilities which includes the following types:
 - personal accidents insurance;
 - insurance of guarantee and breach of trust;
 - insurance of cash, *sukook*, shares, stocks or similar one whether during transport or saving;
 - insurance on theft and robbery;
 - glass breaking insurance;
 - insurance of professional liabilities, including insurance of medical profession, engineering, financial, accounting and legal and other professions;
 - insurance of industrial accidents and employer insurance;
 - agricultural insurance, cattle insurance and other animals;
 - other insurance which falls within various accidents insurance.

(d) Limitations of licences

Article 25 of the Insurance Law prohibits insurers from carrying out life assurance and fund accumulation operations alongside property insurance and liability insurance.⁸ Those companies that formerly provided the two types of insurance had to make the necessary adjustments to their operations by 2012.⁹ The Insurance Law imposes a penalty fine of no less than Dh250,000 and no more than Dh1 million for companies failing to comply with these requirements.¹⁰

(e) Fees

Cabinet Decision 23/2009 requires that insurers pay an annual fee calculated on a percentage of the annual premium written, less reinsurance premiums. The percentages payable depend on the type of insurance and are currently as follows:

- life insurance and funds accumulation – 0.2% of the annual premium;
- health insurance – 0.4% of the annual premium;
- property and liability insurance – 0.5% of the annual premium.

8 Insurance Law, Article 25(1).

9 Insurance Law, Article 25(2).

10 Insurance Law, Article 100.

(f) Restrictions on non-domestic insurers

Article 24 of the Insurance Law lists the entities that may be licensed and registered to carry out insurance and reinsurance business in the UAE. These include public joint stock companies, branches of foreign insurance companies and insurance agents.¹¹ Except for foreign companies licensed to carry out their activities in the free zones of the UAE, foreign companies may not practise their main activity or establish offices or branches in the UAE unless they obtain a licence from the Insurance Authority.¹²

Foreign insurers will usually establish a branch office in the UAE. Article 314 of UAE Federal Law 8/1984 Concerning Commercial Companies (the Companies Law) requires that branches of foreign companies must appoint a UAE national as an agent in order to operate, and if the agent is a corporate entity, it must be owned 100% by UAE nationals. The agent's obligations towards the company and third parties may be restricted and generally, the appointed agent will render a number of services to the company, such as liaising with governmental departments and services. The appointment of the local agent is usually regulated by a service agreement between the parties and the agreement will set out the terms and conditions of appointment of the local agent as well as its remuneration. The local agent does not assume any financial responsibility or liability related to the business or activity of the company's branch or its office in the UAE or abroad.

(g) Specific requirements for branches of foreign companies

The Insurance Authority further requires that foreign insurers applying for a licence in the UAE are rated at least AA (very strong) by Standard & Poor's or B++/B+ (very good) by AM Best.

(h) Legal requirements of a fronting arrangement

Foreign insurers including those registered and licensed in free zones often carry out certain insurance activities in the UAE through the use of fronting arrangements. Although the Insurance Law does not specifically address the use of fronting arrangements, they are commonplace in the UAE and the Insurance Authority is currently in the process of drafting regulations for their use in the market.

A fronter issues an insurance policy to an end-user and reinsures 100% of the risk to another risk carrier. A frontee, on the other hand, assumes 100% of the risk of an insurance policy issued by another insurer.

Where a company acts as a frontee, it will also be responsible for ensuring that the insurance policies for which it is assuming the risk have been issued according to the regulations presented in the Insurance Law. The Insurance Authority will not hesitate to penalise the issuing company as well as the frontee if an insurance policy does not comply with the UAE laws and regulations.

In order for a foreign insurer to enter into a fronting arrangement, the company is required to hold a licence for the specific class of insurance that is being fronted

11 Insurance Law, Article 24(1): "Insurance or re-insurance operations in the state may be practised by any of the following persons licensed and registered with the Authority: (a) General stock company established in the state; (b) Branch of foreign insurance company; (c) Insurance agent."

12 Insurance Law, Article 26.

and ensure that it is licensed within the particular emirate in which its insurance policies will be sold.¹³

2.3 Business conduct

Insurers seeking to operate in the UAE must comply with a number of important prudential and corporate governance regulations and requirements. In terms of prudential regulations, these include paid-up capital and capital reserve requirements. With regard to corporate governance, insurers must meet record-keeping and reporting standards; ensure that the board of directors and senior executive meet the necessary qualifying standards; and comply with regulations regarding anti-money laundering and the employment of UAE nationals as part of the UAE government's emiritisation policy. A summary of each of these requirements is provided below.

(a) Prudential regulations

Capital requirements: Effective from January 31 2010, the minimum paid-up capital of an insurer has been increased to Dh100 million as required by Cabinet Resolution 42/2009. Additionally, a minimum of 75% of the paid-up share capital must be held by a UAE or Gulf Cooperation Council (GCC) national or a legal entity wholly owned by UAE or GCC nationals.

Capital reserve requirements: Article 45 of the Insurance Law stipulates the reserve funds that must be maintained by insurers, though the value of the reserve funds depends on whether insurance policies issued are individual term, individual decreasing term or whole life and endowment.

Client money which is held as part of an insurer's reserve funds can be held only in accordance with the conditions provided in Article 26 of Ministerial Decision 32/1984, which still applies through the old insurance law, Federal Law 9/1984,¹⁴ and which includes the following:

- an insurer can use a maximum of 25% of the monies in the reserve funds for the purpose of buying shares or bonds of private or public joint stock companies licensed in the UAE;
- an insurer can deposit a maximum of 10% of the monies in the reserve funds in a current account; and
- an insurer must deposit at least 25% as cash deposits in banks operating in the UAE.

13 Insurance Law, Articles 41 and 42.

14 We note here that sections of Federal Law 9/1984 have remained in force as per Article 122 of the Insurance Law, which states: "The Federal Law No. 9 of 1984 on insurance companies and brokers referred to herein shall be cancelled and while no contradiction with the provisions of the law herein the executive regulation and the decisions issued thereby shall remain valid pending the issue of the executive regulation necessary to implement the provisions of the law herein." This is normal practice when a regulatory regime is undergoing a process of reform. As such, certain sections of the old insurance law will remain valid until the particular subject matter is addressed by the Insurance Authority in a separate board decision.

Once the above conditions are fulfilled and should an insurer have any leftover money in its reserve funds, the money can be invested as per Clause 5 of Article 26 of the ministerial decision, that is to say in bonds issued or guaranteed by the UAE government, in any property in the UAE or in mortgage loans for property in the UAE.

(b) Corporate governance

Record-keeping and reporting requirements: Every insurer and reinsurer based in the UAE must provide the Insurance Authority with a detailed report on its operations by the end of each financial year. The report must be signed by the chairman of its board of directors, the authorised manager, or those authorised to sign on behalf of the company.

The reporting requirements are extensive and include the following:

- The report should include the company's annual accounts, auditor's report and all related detailed information annexed thereto, including the annual budget, and detailed profit and loss accounts for the different types of insurance carried out by the company and for each branch of its operations in the UAE.
- The report should be prepared and finalised within four months of the end of the company's financial year.
- The report should be submitted to the Insurance Authority at least 30 days before calling the company's annual general meeting.
- The Insurance Authority is entitled to request the company to amend the above submissions in accordance with the requirements of the Insurance Law and its associated rules, directives and decisions.

Reporting insurer's rating: Branches of foreign insurers in the UAE are required to provide true copies of their rating and classification certificate issued by international rating agencies recognised by the UAE Insurance Authority. Currently, the Insurance Authority acknowledges Standard & Poor's and AM Best.

If the rating of a foreign insurer operating one or more branches in the UAE changes, the general managers of the branches must report this change to the UAE Insurance Authority, which will subsequently be entitled to suspend the licences of the branches.

There are no current obligations imposed on insurers in the UAE to provide data to insurance bureaux and agencies.

Reporting to the Emirates Insurance Association: Article 99 of the Insurance Law states that:

- Insurance and reinsurance companies operating under this law may establish a professional federation named "Emirates Insurance Association," which shall have a corporate personality and all insurance companies shall be deemed to be members.
- The association shall look after the interests of policyholders, beneficiaries,