

THE MIDDLE EAST:

Insurance Issues, Law & Liabilities

An Overview

Marko Stamenković
Cozen O'Connor LLP
9th Floor, Fountain House
130 Fenchurch Street
London EC3M 5DJ
United Kingdom

tel.: +44 (0)20 7864 2065
fax: +44 (0)20 7864 2013

Shari'ah & Insurance – Compatible?

- Blood Money
- Alleviating risk - contrary to the will of Allah? The camel & the Bedouin.
- *Gharar, Tabarru* & Dogs

“ He who takes back his gift is like a dog which eats its own vomiting”



Shari'ah & Insurance – Compatible?

- *Uberrimae fides* – “ ... one who practices *najsh* (cheating/trickery) is a *riba*-eating traitor ...”
- The *Wasit* – benefit of 3rd party involvement

Middle East Insurance Law

- *Shari'ah, The Koran, the Hadith & Latin/Napoleonic Law*
- KSA 2005 Law on Supervision of Cooperative Insurance Companies
- UAE (1) Federal Law No.6 of 2007 (2) The Civil Code

Capacity & PI

- Total insurance penetration below 10 %
- Compound annual growth rate of c. 25 % 2010- 2013
- Gross insurance premium of US\$80 billion in next three years
- Why? Population growth 228m to 330m by 2015 + wealth

Restrictions & Protectionism

- UAE Moratorium/KSA re-licencing
- Can you write direct?
- Reinsurance, fronting & the DIFC / QFC
- Out of Arabia vs ratings & growth

Law & Causation in the UAE

- *“ a tort is a civil wrong resulting from an act or omission that has caused injury or loss to a person or to property regardless of whether or not the act or omission constitutes a crime or is caused by a breach of contract ”*
- Article 282 of the Civil Transactions Law states:
“every harmful act done to a third party shall render its doer liable to damages even if he is incapable of discretion”

Damages (1)

- Article 292:

“In all cases, the amount of liability for damages shall be assessed pro rata to the damage sustained by the injured person as well as the gains lost by him, provided always that such damage is a natural result of the harmful act.”

- *Third party claims against insurance companies have been held to derive from the law and the insurance policy itself and therefore third parties have direct recourse against insurance companies.*

Damages (2)

- Article 389 of the Civil Code provides the following:

'If the amount of compensation is not fixed by law or by the contract, the judge shall assess it in an amount equivalent to the damage in fact suffered at the time of the occurrence thereof.'

- Prescribed limits for death of a worker; road accidents a little different

Articles 1026 – 1052 UAE Civil Code

- 1032: Assured must provide all information/knowledge of what is of concern to the insurer to estimate the risk
- 1030: Subrogation permissible
- 1033: Assured must act in good faith
- 1036: 3 year limitation period from occurrence

Growth classes of liability insurance

- D&O

- Property All Risks

- CAR

D&O

- Companies Law 1984
- The recession: concern & imprisonments (DIFC/Nakheel)
- Low uptake – family LLCs and privatisation
- Growth in regulation, controls & CG
- Consequent growth in private companies & hardening of rates

Decennial Liability

- UAE, KSA, KUWAIT, QATAR & IRAQ
- 10 (13) years duration for multi-billion dollar projects
- Joint/several liability on architect and contractor
- Collapse, defect incl. defect in the land (HWTs)
- Quality control – local issues

Construction/Property

- UAE slowdown in projects due to financial crisis but increased capacity
- Downturn has caused an upturn in disputes, arbitrations and insurance issues
- KSA – The Economic Cities
- Local and international cover required reflecting size of risk
- Warehouse insurance

Oddities

- Any arbitration clauses must be discrete and signed by both parties
- Any clause entitling insurers to avoid paying an indemnity must be highlighted and in different colour to rest of the policy wording

CONCLUSION

- An immature market requiring expertise & oversight
- An increasing appetite and specialisation in wordings reflecting inward nature of investment
- The law as a work in progress but there is much commonality between ME and western legal principles



SIMON JONES

ROBERT KAYE

NATALIE COOKSAMMY

JC DITZLER

ERIC KOWALEWSKY

MARKO STAMENKOVIĆ