

VOICE NEWSLETTER

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The IBG, a non-profit organization under the auspices of Dubai Chamber of Commerce & Industry, is releasing the second publication of its Voice Newsletter. The contents of this release cover thought provoking market risk and insurance issues.



THE COST OF PURSUING SMALL CLAIMS

Many insurers suffer from a high frequency of low severity claims, such as small fires or burst pipes, which erodes the premium needed to fund larger losses. Such attritional losses are worsened by low policy deductibles.

Do low deductibles always benefit policyholders? The trade-off may be more than just paying higher premiums. Insurance companies use deductibles to ensure policyholders have skin in the game and will share the cost of any claim. The better managed operations are more likely to accept higher deductibles and all too often we see higher risk operations press for lower deductibles.

Insurers bear the cost of investigating and settling insurance claims. Although loss adjusters fees cut into an insurance company's bottom line, they pay them to receive an independent opinion, ascertain liability, quantify loss amounts and to avoid paying fraudulent claims. Loss adjustment expenses and legal costs only represent a portion of an insurance company's costs of investigating and adjusting losses.

There are additional unallocated claims handling costs incurred by insurers for the routine operations of the claims department like salaries and other expenses.

Insurers in the UAE continue to provide allied and additional perils extensions under property policies at little or no extra premium, and deductibles remain modest. The cost of servicing small claims may involve months of investigations and hundreds of email exchanges between client, loss adjuster and insurance company and all too often the cost of adjusting a claim exceeds the adjusted claims settlement amount.

It make little sense when the cost of pursuing a small claim costs more than the amount an insured would end up recovering. Understanding the costs of low deductibles is not as simple as comparing the impact of premium movement. There is a multitude of additional costs and challenges and the insurance market should become more skilled at designing deductible structures and strategies that reduce claims expenses and eliminate attritional losses from being passed back to the insurer.

EXCLUSION CLAUSES, CONDITIONS PRECEDENT AND WARRANTIES IN RE/INSURANCE POLICIES

Article 1028(c) of the UAE Civil Code (Federal Law No. 5 of 1985) provides that a provision in a policy of insurance is void if it: "relates to a circumstance that leads to the avoidance of the contract or to the lapse of the right to indemnity of the assured"; and is not "shown conspicuously".

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.

Any clause in an insurance contract that tries to give the insurer the opportunity to avoid the contract of insurance or deny the claim must be displayed conspicuously. According to IA Resolution (article 7(2)), such a clause should be clearly displayed for example, in a different font or colour, while article 28 of the Insurance Law stipulates that it should be highlighted in a prominent manner, for example, in a different colour or in bold characters, and must be endorsed or initialed by the insured.

By way of example, the Dubai Court of Cassation, in case No. 242/2011, dismissed the case filed by an insured claiming losses from the theft of a mobile crane because the insured failed to notify the insurer within 14 days of the loss incident. In upholding the validity of the clause, the court reasoned that the clause was conspicuous enough and, meant to protect the right of the insurer to sue the party responsible for the incident. The court considered that notifying the police alone is not enough and cannot replace the notification of the insurer.

The above demonstrates that avoidance of loss through limitation of liability clauses can be achieved subject to compliance with the provisions of the law as interpreted by the UAE courts. Insurers should review their policy wordings accordingly to ensure they comply with Article 1028(c).

To the extent that a warranty, exclusion or a condition precedent is drafted in general terms and seeks to deny cover for any breach of the law, insurers will not be permitted by the UAE courts to rely on the general terms unless they seek to exclude cover for a criminal act or a deliberate wrongdoing pursuant to article 1028(1)(a) of the Civil Code. Any such clause where the breach is not causative of the loss is potentially invalid (Civil Code, article 1028(e)).

CLAIMS FOR DAMAGE TO UNDERGROUND SERVICES

A common feature in almost all construction projects is the need to carry out excavations or earthworks. Coupled with the fact that the vast majority of the UAE's utilities (water, sewer, electric, telecoms) are located underground, these activities bring with them the principal risk of hitting and damaging this buried infrastructure. It is also exacerbated by a number of challenges, ranging from inadequate knowledge of what lies under the ground to the use of inappropriate working methods, time, resources and commercial pressures.

Insurance policies are typically extended to indemnify insureds for liability resulting from loss or damage to underground services (such as cables, wires, pipes) under the precondition that prior to the commencement of work the insured has inquired with the relevant authorities about the exact position of all underground services and has taken all reasonable precautions to prevent loss or damage. The indemnity is limited to the actual repair costs and does not extend to any consequential loss.

Utility companies are entrusted by law to set necessary standards for the assessment of the value of the damages to the networks they own and operate as a result of violations by others. By law, persons who cause damage to the general network must compensate the authority/utility for those damages. The amount of compensation is decided by the authority/utility in addition to the amount of 10% of the compensation as administrative fees. Emiri decrees that specify the amount of compensation for every item of underground installations are superseded on the strength of articles in the decrees that give the respective authorities/utilities the right to decide the claimable amounts which can include penalties and loss of use. The estimated amounts of compensations by the authority/utility are final and they do not usually accept alternative damage repair quotations.

Insurers in the UAE pay out tens of million of dirhams in underground services claims every year without always being satisfied that the settlement provided does not allow for betterment or improvements. Consideration needs to be given by the market as to the basis of arriving at alternative, transparent and equitable indemnity settlement calculations.



SOLVENCY AND M&A OCTOBER EVENT

The Insurance Business Group hosted an event in Dubai addressing Solvency and Mergers & Acquisitions in the United Arab Emirates and more widely across the MENA region in mid-October. Speaking in advance of the panel discussion was Simon Dodsworth of Lockton Insurance Brokers in Dubai. Simon spoke on the current M&A trends impacting the insurance industry in the MENA region. The panel then heard from Vasilis Katsipis, of AM Best, who took a deep dive into the UAE insurance market, addressing performance, profitability and solvency.

Following the opening presentations, the panel, moderated by Peter Englund, Senior Executive Officer, Zurich Insurance Company (DIFC) took questions from the floor and remotely as they debated the challenges that insurers face.



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