1. WHAT RISKS MUST BE INSURED?

1.1 What are the compulsory classes of insurance?

In the UAE insurance and reinsurance are covered by Federal Law no. 6 of 2007 concerning the Establishment of the Insurance Authority and Regulation of Insurance Operations (the Insurance Law), which replaced Federal Law no. 9 of 1984 concerning Insurance Companies and Agents (the Old Insurance Law). Topics which have not been addressed by the Insurance Law, or any Directives or Resolutions from the Authority, should be read and interpreted in line with the Old Insurance Law. The Insurance Law applies to all companies and intermediaries that are registered and licensed in the UAE, except those insurance providers registered and licensed in the Dubai International Financial Centre (DIFC) or other free zones. The DIFC is a financial free zone established for the purpose of attracting foreign investments as it provides a separate legal framework to that of [the rest of] the UAE. The Dubai Financial Services Authority (DFSA) and the DIFC Authority are the regulators of companies and intermediaries in the DIFC, whereas the Insurance Authority (the Authority) established by the Insurance Law regulates those companies and intermediaries registered within [the rest of] the UAE. Thus, both the Authority and the DIFC need to be addressed when talking about the insurance regulations in the UAE.

The compulsory insurance classes in the UAE are medical and motor insurance. Health insurance providers in Abu Dhabi and Dubai must be registered with the Health Authority Abu Dhabi (HAAD) and the Dubai Health Authority (DHA), respectively. Law no. 23 of 2005 concerning Health Insurance in the Emirate of Abu Dhabi (the Health Insurance Law Abu Dhabi), which created the HAAD, was the forerunner for the later implemented rule in Dubai. The DHA was established by Law no. 13 of 2007. Law no. 11 of 2013 concerning Health Insurance in the Emirate of Dubai (the Health Insurance Law Dubai) expressly mentions in Article 4 that the law also applies to the free zones, including the DIFC. Moreover, Article 5 of the Health Insurance Law Dubai requires companies or intermediaries to request a licence to carry out health insurance from the DHA, which is renewable annually. In light of this, registration is mandatory for local health insurance providers. The same provision on registration can be found in the Health Insurance Law Abu Dhabi.

In addition, there are certain types of contractual mandatory insurance obligations, such as professional indemnity insurance for foreign legal
consultants and foreign auditing companies. Professional liability insurance for medical professionals and insurance brokers is also a contractual obligation.

Moreover, in the different free zones, employee insurance must cover disability income in relation to employees. Health and disability income is mandatory within the DIFC under Article 51 of DIFC Law no. 4 of 2005.

The DIFC additionally requires corporate entities under the strata scheme to insure their buildings and take out public risk insurance (accidental injury or death or property damage). Those buildings in the DIFC that fall within the Strata Scheme will be regulated by DIFC Law no. 5 of 2007 (the Strata Title Law). Part 7 Article 84 of the Strata Title Law requires a body corporate to insure the buildings and any other improvements to the common property. The policy should cover all risks associated with fire, weather perils, explosion and equipment malfunction, in addition to costs necessary to reinstate the building to its previous state, removing debris and fees for architects and other professionals. Further, they are required to take out public risk insurance for accidental death, personal injury and property damage (Article 86).

There are limited regulations in relation to classes of risks which must be insured by law. The compulsory and non-compulsory classes of risk are divided into categories. According to Article 4 of the Insurance Law, there are three classes of insurance, namely, life and capital insurance, property insurance and liability insurance, which are available to cover risks, whether mandatory or not.

Article 25(1) asserts that a company can only operate in one of the three classes and cannot carry out the businesses of life and capital insurance, and property and liability insurance at the same time.

The Insurance Authority Board of Directors Resolution 2 of 2009 on Issuing the Implementing Regulations of the Law (the Implementing Regulations) is one of the major board resolutions presented by the Authority that have actually been implemented and applied. They are intended to clarify the law and give a deeper understanding and explanation of the meaning of the statute.

The Implementing Regulations gives details on the classes of insurance. Article 4 concerns:

- all types of life and capital insurance, which pay certain amounts due to death, disability or reaching a certain age;
- all types of health insurance;
- personal accidents insurance related to life insurance; and
- capital insurance in the form of investment portfolios, which have the purpose of paying out capital on a fixed date for premiums, although this may not be in relation to life or death of the insured.

Article 5 gives an extensive list of risks covered under property and liability insurance.
DIFC
The DFSA has published two Rulebooks (General Module (GEN) and Conduct of Business Module (COB)) to regulate insurance providers in the DIFC. They include specifications of the insurance classes applicable in the DIFC. Rulebooks GEN and COB indicate that, compared to the Insurance Law of the UAE, which consists of three compulsory classes, as mentioned above, the DIFC regulations only establish two classes of insurance, namely life and non-life insurance classes. Rulebook GEN lists (in Appendix 4) the classes of life insurance policies and non-life insurance policies.

1.2 Who must they be insured with
1.2.1 Locally admitted insurers
The insured must take out insurance for UAE-based risks from an insurance company duly organised and registered as such with the Authority under Article 26(1). Article 47 of the Insurance Law declares that a local insurer or a branch of a foreign insurance company can only insure risks in the UAE if they have obtained a licence from the Authority. The Insurance Law applies to all national and foreign insurance providers inclusive of those providing cooperative insurance, Takaful or reinsurance according to Article 2(1). Article 2(2) states that the law does not apply to companies which carry out insurance activities in the free zones. Companies that are incorporated and carry out insurance business in the DIFC are regulated by the DIFC Authority and the DFSA.

1.2.2 Foreign insurers
As mentioned above, a foreign company or a branch of a foreign company may carry out insurance activities if it has established a presence in the UAE and has obtained a licence from the Authority (Article 26). Article 24 provides that a public joint stock company (PJSC), a branch of a foreign insurance company or an insurance agent may engage in insurance or reinsurance activities as long as it has received prior authorisation and has been granted a licence by the Authority. Other legal company structures, such as a limited liability company or a limited liability partnership, will not receive approval under law or be licensed as an insurance provider in the UAE; thus, risks can only be insured by a company incorporated as a PJSC or a branch office. Normally, a PJSC will not be the best form for a foreign company intending to incorporate in the UAE due to shareholding restrictions, which cap the percentage of foreign ownership to 25 per cent. Thus, considering these stringent shareholding requirements, a branch office may be more suitable for a foreign company.

In line with Article 68 of the Insurance Law, an insurance company licensed in a free zone may only conduct its activities in that free zone. Reinsurance activities may, however, be conducted outside the free zone; hence, they may reinsure risks based in the UAE.

Article 314 of the UAE Federal Law no. 8 of 1984 Concerning Commercial Companies (the Commercial Companies Law) specifies that a foreign company or a branch office of a foreign company must acquire a licence
from the competent authority and appoint a UAE national as an agent. The national agent does not have any fiscal responsibility, nor can he be made liable for the actions and activities of the foreign insurer within the UAE or abroad. The agent only acts as a liaison, in order to represent the foreign insurer in front of government departments, among others.

DIFC
The DIFC does not impose such restrictions on ownership for insurance companies or branches of foreign companies, as its main incentive for attracting foreign companies wanting to establish a presence in the DIFC is the fact that they are granted 100 per cent ownership without national shareholding requirements.

Similar to the UAE Insurance Law, the DIFC allows insurers and intermediaries to insure risks based in the DIFC, but not to insure UAE-based risks (DFSA Rulebook COB, clause 7.2.2). They may, however, enter the UAE insurance market either through reinsurance or by establishing a branch office or a subsidiary in the UAE (Federal Law no. 8 of 2004). The same requirements on setting up a branch or a subsidiary concerning ownership restrictions (as discussed above) for foreign firms apply equally to firms entering the UAE market from the DIFC.

2. WHO CAN INSURE NON-COMPULSORY CLASSES OF RISK?
Any insurer or reinsurer who is registered with and licensed by the Authority may insure or reinsure compulsory or non-compulsory risks based in the UAE. The Insurance Law does not exclude any classes of risks.

Moreover, the DFSA Rulebook (Gen Module and COB Module) do not exclude any classes of risks either, thus when considering whether a risk is non-compulsory this may be left to interpretation by the DFSA for future cases to come.

2.1 Locally admitted insurers
Locally admitted insurers can insure any class of risk provided they are licensed to do so.

2.2 Foreign insurers
Foreign insurers can insure any class of risk provided they are licensed to do so.

2.3 Excess and surplus lines markets
There are no limitations in the law in relation to such classes and who can insure them.

3. WHICH REINSURERS CAN BE USED?
3.1 Must they be locally admitted?
All reinsurers may reinsure UAE-based risks.
The Insurance Law applies equally to reinsurers and insurers. Article 26(2) stipulates that reinsurers may reinsure inside and outside the UAE. Due to the absence of large local reinsurers that have the capacity to reinsure large amounts of risks, insurers may reinsure with foreign reinsurers (Article 29 Insurance Authority Resolution no. 4 of 2010). As risks must often be spread between more than one reinsurer in order to satisfy the financial liquidity needed in case a claim against an insured risk is made, and as the number of local reinsurers with this type of liquidity is very limited, risk is mainly spread between foreign reinsurers, which tend to be more capable and solvent. It should be noted that this openness in regulation towards foreign reinsurers is not fixed; if or when the local reinsurance market develops and grows, the laws may be changed in this regard.

Foreign reinsurers tend to incorporate in the DIFC in order to gain access to the local market. Those who transfer risks solely cross-border are not required to obtain licensing from the DFSA.

The law provides that reinsurers that transfer insurance risks only cross-border need to be licensed and authorised in their home jurisdiction according to the rules and regulations imposed on them there. Additionally, the insurer must be satisfied that the reinsurer he is using has the capacity and liquidity needed to cover the risks that the insurer has reinsured (Article 41). As the UAE is one of the few jurisdictions which allow the use of foreign reinsurers, the necessary due diligence to ensure that the cover will be awarded in case the insured risk occurs must be carried out.

Takaful insurance providers are only allowed to transfer insurance risks to conventional reinsurers if the capacity of the available retakaful insurance providers does not meet the solvency level required to insure the risk. Thus, currently, as the retakaful market is still under development, takaful insurers will generally use conventional insurers to ensure that their exposure to risk is covered fully by a reinsurer with the adequate capacity to guarantee the solvency required if the risk insured is to occur. For more details on retakaful insurance and transfer of insurance risks see section 8.

3.2 If not, are security requirements imposed?
There are no security measures imposed on reinsurers in the UAE, but changes are likely to be made to the law in the future according to proposals which are in the process of being drafted.

4. THE TAXATION OF INSURANCE
4.1 What taxes are levied on insurance premium?
UAE
There is no taxation system in the UAE, although taxes are imposed in Abu Dhabi, Dubai and Sharjah on companies operating in the oil industry and the banking sector, and even in these sectors only certain companies will be liable to tax. Usually oil and gas companies have concessions to pay taxes at specified rates, while foreign banks and hotels pay taxes according to a flat rate prescribed by law. Hence, insurers and reinsurers based in the UAE are not liable to pay tax.
An annual fee is payable to the Authority, according to Article 2 Cabinet Decision no. 23 of 2009 concerning Charges, Supervision, Control and Transactions of Insurance, on a percentage of the total subscribed annual premiums underwritten minus locally applicable reinsurance premiums underwritten by an insurance company as follows:

- life and capital insurance: 0.2 per cent of annual premium;
- health insurance: 0.4 per cent of annual premium; and
- property and liability insurance: 0.5 per cent of annual premium.

DIFC
Pursuant to DIFC Law 9 of 2004, all companies within the DIFC enjoy the benefit of zero taxation for 50 years from 2004. According to Article 14, this period may be extended by another 50 years upon expiry. Therefore the transfer of assets and profits will not be taxed, except where this applies to reinsurance companies working cross-border. Some foreign jurisdictions have a tax treaty on double taxation with the UAE, thus reducing the tax liabilities of the DIFC-authorised reinsurers. The DFSA Rulebook Fees Module sets out the licensing and annual fees payable to the DFSA for insurance providers.

4.2 What exceptions are there?
There are no exemptions applicable as there is no tax levied on insurance or reinsurance providers in the UAE. In the DIFC, companies enjoy tax exemption and the benefit of double taxation treaties with other jurisdiction, as discussed above.

5. INSURANCE REINSURANCE AND CAPITAL MARKETS
5.1 How is finite reinsurance treated?
5.1.1 What constitutes risk transfer?
Finite reinsurance reduces the exposure of risk for the reinsurer, thus reducing his liabilities. Asset risk or credit risk is usually transferred in order to minimise the capital exposure an insurer may encounter, but there will be a limit or cap on the amount of risk a reinsurer will assume.

Risk is transferred through alternative carriers (captives) or alternative products (catastrophe bonds, run-off solutions, multiline, multilayer products, multitrigger programme). The risk is transferred to the market rather than to another insurer, thus capital surplus is easier to attain.

Usually in finite reinsurance, transfer of risk is done by pooling with a large number of risks of the same nature. The risk will be limited by risk sharing of the parties. Since individual risks will be spread over time, they are written on a multiyear basis.

The DFSA Rulebook Prudential (PIN), which is also one of the two types of licence available to insurers in the DIFC, the other being a category 4 licence, sets out the principles on insurance special purpose vehicles (ISPVs). An insurer cannot transfer insurance risk to ISPVs into capital markets, except by way of a waiver from the DFSA. The DFSA must be satisfied that the ISPV is authorised by the DFSA or that it is regulated by its jurisdiction’s
financial authority, that there is an effective transfer of risk and that there was an analysis of the potential risk that would revert to the reinsurer (PIN rule 5.8.2).

5.2 Derivatives, ILWs and wagering agreements
5.2.1 What constitutes insurable interest?
The insurable interest would be the profit derived from these financial instruments. These profits themselves may be insured.

5.3 Side cars and CAT bonds
5.3.1 To what extent are these governed by the law relating to insurance contracts?
Under the DIFC regulations, captive insurance companies insure the risks of their parent company. The parent will receive some of the profit from investments. The reinsurer can accumulate profits by reinsuring their policies or parts thereof. Captive insurance companies have a regulated risk management framework, which protects their cash flow for reserves, for unpaid claims or for unrealised premiums. If captive insurance is practised by a group of companies, the regulators require them to be of the same insurance class. The captive (subsidiary) is controlled by the parent (insurer), thus they could be seen as being a form of self-insurance for the parent.

According to the DFSA Rulebook Glossary Module, there are three types of captive insurer allowed in the DIFC:
- class 1, which can only insure risks from its parent company or related companies;
- class 2, which must derive at least 80 per cent of their written business from group risks; and
- class 3, which only insure groups within the same business activity and own the captive as a group.

A protected cell captive (PCC) separates the assets and liabilities of each member of the group and can be used by non-insurance companies. Moreover, different financial instruments can be used by different cells (asset-backed securities). According to the regulation, only risks within the DIFC can be insured by a PCC.

5.4 Other ILS and ART products
Other ILS and ART products are not used within the UAE; only the international market caters for these products. Therefore, foreign reinsurers or reinsurers operating within the DIFC will be approached by insurers. The DIFC is at present the only vehicle in the UAE regulating entry into the capital market.

6. COMMISSIONS
6.1 What commissions and brokerages are permissible? What disclosure of commissions is required?
The percentage that commissions and brokerages are to receive is not specifically provided for in the Insurance Law, thus they are agreed
individually by the insurer and broker. The payment of commission is set out in Articles 13 and 15(3) of Circular no. 48 of 2012 from the Authority, which suggest that commissions to brokers should be paid to them within seven days of receipt of the premiums. A broker’s advice to a client must not be dictated by the commission he receives from the insurer. Disclosure of the commission is only required by the Authority, which must receive records of all of the commissions that a broker has received or which are still outstanding from the different insurers for the previous financial year (Article 18). There is no requirement to disclose the commission to the client or the amounts received from the insurers. The Insurance Authority Decision no. 15 of 2013 (the Insurance Brokerage Regulation) has recently implemented these suggestions.

Contrary to UAE law, the DIFC requires in DFSA Rulebook COB, clause 7.6.4, that the broker must disclose all commissions received from the insurers to the client if requested. This only applies where the broker acts for more than one insurer.

7. HOW ARE AGENTS (BROKERS AND UNDERWRITING AGENTS AND THIRD PARTY CLAIMS ADMINISTRATORS) REGULATED?

The Insurance Authority

The Insurance Law created the Insurance Authority to regulate and oversee the insurance sector. This is a government body, with a legal personality and financial and administrative independence. It consists of three bodies, namely the Board of Directors, the Director General and an executive body. Its aims, as laid out in Article 7 of the Insurance Law, are:

- to promote economic development of the insurance sector;
- to protect the national economy by securing persons, property and liabilities against risks;
- to collect and invest national savings in order to develop the economy;
- to promote fair and effective competition between the insurance companies; and
- to use their independent state funds to support and invest in the national economy and to nationalise the jobs in the market.

The powers invested in the Authority allow it to regulate the licensing of companies, agents, brokers and related professionals, with the aim of granting licences to those who fit the requirements and removing licences from those who breach the requirements.

The Insurance Authority Board has since passed three board resolutions to further regulate and clarify the law relating to insurance intermediaries. These are:

- Insurance Authority Board Decision no. 8 of 2011 relating to insurance agents (the Insurance Agents Regulation);
- the Insurance Brokerage Regulation; and
- Insurance Authority Board Decision no. 9 of 2011 concerning Directives for Licensing Third Party Administrators for Health Insurance and
Organisation and Supervision of their Operations (the TPA Health Regulation).

**Third party administrators (TPAs)**
As mentioned above, TPAs are governed by the TPA Health Regulation in relation to health insurance. They are regulated and registered by the Authority and the relevant health authority (HAAD, DHA), and are required to renew their licence annually (Article 13 of the TPA Health Regulation). TPAs can take the form of a public joint stock company, a private stock company or a limited liability company in line with the Commercial Companies Law, or can be set up as a branch of a foreign company that is at least two years old (Article 5). They are required to abide by certain capital requirements and must take out professional liability insurance. Under Article 6, TPAs may not market or sell health insurance, and cannot hold or contribute to the capital or management of a health insurance company. Unlike insurance agents, they may work for more than one insurance company simultaneously (Article 14), but they must maintain separate accounts for each of them.

**Insurance agents**
Insurance agents are regulated by the Insurance Agents Regulation. They act and sign on behalf of the company or branch they have contracted with (Article 1). The Insurance Agents Regulation excludes those agents licensed in the free zone, thus the DIFC applies different rules on agents registered within the DIFC (Article 2 of the Insurance Agents Regulation).

Article 69 of the Insurance Law provides that an agent must have concluded a contract with an insurance company that explicitly states that he is their authorised agent and acts only on their behalf. Furthermore, this contract must be submitted to the Director General of the Authority. As the agent may act only on behalf of the particular company with which it signed the agreement, the agent may only conclude a contract with one insurance company at a time.

**Insurance brokers**
An insurance broker is an independent mediator between the person seeking insurance coverage and the insurance company offering such cover. A broker will be awarded a commission from the insurance company for each insurance policy he underwrites (Article 1 of the Broker’s Regulation). Moreover, unlike an insurance agent, a broker may be contracted by more than one insurance company. Brokers are regulated by the Insurance Brokerage Regulation.

Article 70 of the Insurance Law stipulates that insurance or reinsurance brokers, damage surveyors and assessment experts, insurance advisors or actuary experts must be entered into a register, which has been established for this particular purpose, before they can carry out any insurance operations. The board of the Authority sets out conditions regulating
their activities, limiting their responsibilities and regulating the process of registration.

Cabinet Resolution no. 543 of 2006 regulating the Insurance Brokers’ Profession laid down further rules for brokers, such as the requirement to maintain a high standard of transparency when it comes to client funds. Article 24(2) of the resolution sets out that the broker’s licence may be revoked if he fails to pay any money owed to the insurance company within three months of receipt of funds.

All agents, brokers, advisors, experts or actuaries must comply with Article 30, which states that they may not have been convicted of any offences or misdemeanours relating to a breach of honour, honesty or public morals under UAE law. Neither may they have been declared bankrupt, without bankruptcy later being discharged. Additionally, they must comply with the Insurance Authority Board Decision no. 2 of 2010 which stipulates that they must have a licence from the Authority in order to carry out their business. Insurance companies may not deal with intermediaries who do not hold a licence (Article 3(8)), thus they may only deal with locally licensed and registered intermediaries and may not deal with foreign intermediaries or DIFC licensed intermediaries, except for reinsurance activities.

Compared to the UAE insurance law, the DIFC places the same rules and regulations on insurance companies, agents, brokers or other intermediaries. The DFSA imposes stringent rules on insurance intermediaries incorporated in the DIFC, particularly on capital requirements, the duty of disclosure (Rulebook COB, clause 7.5) and the duty to make sure that a client is classified as either a retail client or a professional client and that they act and sell products according to that classification (Rulebook COB, clause 7.8). Moreover, intermediaries must make sure that the insurance or reinsurance companies they deal with are regulated in accordance with the laws of the country where the company and the risks are located (Rulebook COB, clause 7.10).

8. IS TAKAFUL POSSIBLE?

Takaful is possible in the UAE. The Authority produced Board Resolution no. 4 of 2010 concerning Takaful Regulations (the Takaful Resolution) since the Insurance Law does not cover takaful. Therefore, an explanation and distinction to conventional insurance was needed. It should be noted that the law on takaful must be applied according to the Insurance Law and the Takaful Resolution. The regulations are a guide giving instructions, but are not currently being implemented by insurance companies as this field is still very small and in need of development. Takaful insurance activities can only be exercised by takaful insurance companies and not by any conventional insurance company (Article 3 of the Takaful Resolution). In addition, the Takaful Resolution established a Sharia Supervisory Board, the task of which is to supervise insurance products to ensure that the insurers and their products comply with Sharia standards. It was granted the power to issue
legal opinions, called *fatwas*, which guide insurance providers in relation to takaful products.

There are three categories of risks covered by takaful insurance: individuals’ takaful insurance, property takaful insurance and liability takaful insurance (Article 4). In line with Insurance Law, Article 25(1), individual takaful insurance may not be combined with property and liability takaful insurance (Article 7(1) of the Takaful Resolution).

A takaful contract is an Islamic insurance contract that complies with Sharia law as money is pooled in a fund. This fund consists of insurance premiums that are to be managed and invested. Since the contributors all agree from the start the amount of profits that they will share, it is in effect a *mudaraba* transaction. Moreover, if the insured risk does not take place the participant will be reimbursed. However, if the risk insured does take place the participant will be paid a contribution from the pool and will receive a percentage of money from the contributions of the other participants. This percentage will have been agreed beforehand by all participants privy to the fund.

The takaful fund is managed by an insurer, but the insurer does not have legal title of the fund and does not take any risks. The participants in takaful assume the risk, but may agree beforehand to recover their contribution if certain events take place. Unlike conventional insurance, takaful works on Islamic principles, thus the policyholders share responsibility of profits and losses.

Article 9 states that a takaful insurer must provide two policies: one detailing which model of takaful the participant is entering into, either *mudaraba* or *wekala*, and the other explaining the terms and conditions the participant is contracting into.

Retakaful is addressed by Article 29 of the Takaful Resolution. It allows a takaful insurance provider to opt for conventional reinsurance, either within or outside the UAE and DICF. They may only choose a conventional reinsurer if there is little availability of retakaful providers with the capacity needed to insure the risks or if the amount reinsured is so extensive that a larger number of reinsurance companies needs to be used to distribute the risks and amounts payable if the risk occurs. Since there are very few retakaful providers with a large enough capacity, mainly conventional reinsurance companies are used.

The Authority was awarded the power to evaluate whether a policy is in alliance with Sharia law. If the policy does not comply with Sharia law, the Authority may ask the takaful insurer to review the policy until it is within the compliance requirements.

A takaful insurance provider must open a separate *zakat* fund where shareholders and participants can deposit their shares; they must make an interest-free loan available (*qard Hassan*) that will cover the participants’ deficit in case of insurance claim payouts. The amount that covers the deficit is taken from the excess of profits belonging to the shareholders or from the excess of profits a fund produces. The policyholders’ deficit must be covered by a policy.
DIFC

Takaful and retakaful are governed by DIFC Law no. 13 of 2004 regulating Islamic Financial Business and the DFSA Rulebook Islamic Financial Services (IFS). Under these regulations a system for control is established which ensures that the insurers are in alliance with Sharia principles (Rulebook IFS, clause 4.1.1). Moreover, clause 4 of Rulebook IFS states that a manual on policy and procedures must be used by every takaful and retakaful insurance provider.

This manual should contain:
- how compliance function will be dealt with;
- how the Sharia Supervisory Board will oversee and advise on matters of Islamic financial business;
- how disputes between the insurance company and the Sharia Supervisory Board will be dealt with;
- the process for the approval of the company’s systems and controls on compliance with Sharia law and on providing investors with information to that regard;
- how conflicts of interest will be addressed; and
- if an insurance company operates Islamic financial products and conventional insurance products, how these two will be adequately separated.

9. WHAT SCOPE IS THERE FOR MICROINSURANCE?

The concept of microinsurance is a way to protect those with limited income against risks they may not be able to afford. It is also a way to protect small businesses and entrepreneurs who have been struggling due to the financial crisis. It is a concept that is not in common use in the UAE. Takaful is based on the Islamic principle of helping those with financial limitations, thus takaful insurance companies tend to offer microinsurance on a more frequent basis than conventional insurers. Microinsurance to assist those with limited financial means on a group insurance level is more common in North Africa and other countries of the MENA region than in the UAE.

10. EXIT SOLUTIONS – WHAT SOLUTIONS ARE AVAILABLE AND HOW DO THEY OPERATE? HOW ARE FOREIGN SOLUTIONS RECOGNISED?

10.1 Portfolio transfer

UAE

Articles 71 and 72 of the Insurance Law provide for portfolio transfer. Only companies practising within the same class of insurance may transfer their portfolio (Article 74), including the rights and obligations attached to insurance policies, to one another. An application for transfer must be submitted to the Director General of the Authority and be published in two Arabic and one English-language newspapers. If no objection from the insured, beneficiaries of a policy or creditors is received within the time-frame, the transfer will occur.
A special committee will be formed by the Director General that includes a representative of each company intending to merge, their auditors, experts and specialists. The assets, rights and obligations of the company wanting to merge shall be determined, thus establishing the shareholders’ net equity on the date fixed for the merger (Article 75). The resulting report and the company’s balance sheet shall be submitted to the Authority, which will then decide on the merger. If the merger is to proceed, an executive committee is to be formed (including the chairman of the board, members of the merging companies and their auditors) to execute the merger according to the law on mergers of the Commercial Companies law.

**10.2 Statutory portfolio transfer**

**UAE**

In the event of a company facing financial difficulties, which may lead to insolvency, the Director General may dissolve the board of directors and form a neutral restructuring committee by appointing a chairman and deputy chairman, experts and specialists (Article 77). This committee may, for no more than one year, manage the company and regulate its financial situation by negotiating on debts with creditors to form a restructuring plan. Similar to other restructuring plans, a statement in two Arabic and one English-language newspapers shall require creditors to submit a statement on debts owed. Once the restructuring plan has been published and creditors asked to approve the plan (in two Arabic and one English-language newspapers) the decision to restructure must be approved by creditors holding at least three-quarters of the non-preferential debts and debts not secured by mortgages. If the creditors do not approve the restructuring plan, the plan will fail and the Director General will have to step in and take action.

Pursuant to the Commercial Transactions Law (Federal Law no. 18 of 1993), ‘protective’ composition is available as a restructuring plan, although this will only apply to a branch of a foreign insurance company, not to a public joint stock company. This plan allows the debtors and creditors to reach an agreement to fulfil repayment obligations within the agreed time period set out in the agreement. This composition is supervised by court, thus it gives creditors the security of a fixed percentage on debts they will recover and on the time-frame within which these debts are to be recovered. Although this type of restructuring plan is available, it has not yet been used by companies experiencing financial difficulties in the UAE, thus there is no possibility of knowing how successful it will be in practice.

Liquidation may be instigated by the shareholders of an insurance company or by a court. Once a liquidator is appointed by the shareholders or the court, his appointment must be entered in the commercial register and published in two Arabic and one English-language newspapers. Once liquidation has been initiated, the board loses its powers to the liquidator (Article 81). The appointment of the liquidator may be disputed by other shareholders or creditors, but they cannot remove his powers until or unless the court decides on the matter (Article 82). The liquidator may be
removed by a decision of the shareholders or by a court judgment, and a new liquidator must be appointed at the same time (Article 83). Any court proceedings will be stayed for one year and pledges on assets will be stayed for six months. Any procedural and executive transactions will be terminated (Article 84). The liquidator is awarded a range of powers in order to carry out the liquidation. He may, for example, discontinue employee contracts but continue to pay them their salaries, and reach an agreement with the debtors as how best to proceed with repayment (Article 86). Claims submissions from creditors will be limited to a time period of three months from the date of publication of notice of liquidation in the newspapers (Article 90). The liquidator will sell off the assets of the company, usually by public auction. Shares of a company cannot be transferred except if they are sold as a whole, in effect selling off the whole company, for which the liquidator needs the approval of the shareholders (Article 89).

Preference on repayment will be given to certain creditors under Article 95:

- employee wages must be paid for the last four months before announcing liquidation;
- the liquidator’s expenses are to be paid;
- insured persons and beneficiaries from insurance policies; and
- other creditors.

**DIFC**

Insurers and reinsurers operating within the DIFC are subject to the Insolvency Law and the DIFC Insolvency Regulations, which cater for voluntary arrangements with creditors, receivership, voluntary winding-up, creditors winding-up and compulsory winding-up by DIFC courts. The laws and regulations are very closely based on the English Insolvency Act 1986.

A voluntary arrangement is in effect an independent contract entered into by the creditors and the debtors, which may lead to compromises on the amount to be paid back, the time-frame for repayment or whether repayment may be done in instalments. This restructuring plan must be approved by a 75 per cent majority of creditors present at the resolution and will be binding on all creditors, including those that voted against the proposal.

Certain information must be included in a proposal for a voluntary arrangement:

- an estimate of the value of the company assets;
- securities on assets in favour of creditors;
- extent of assets being excluded from the arrangement;
- property, other than company assets, to be included;
- nature and amount of liabilities to preferential creditors, secured/unsecured creditors and how this will be dealt with by the company;
- information on guarantees and guarantors;
- proposed duration of voluntary agreement;
- proposed estimates of repayment amounts and proposed repayment dates;
expenses to be paid to nominee;
expenses to be paid to supervisor of arrangement;
information on security interests and guarantees from directors;
details on investment of company funds;
information on how business will be continued during the arrangement period;
functions of the supervisor of the arrangement;
name, address, qualifications of supervisor and confirmation that he/she is qualified to act as an insolvency practitioner; and
likelihood of proceedings in other jurisdictions.

Pursuant to Article 3.4 of the Insolvency Regulations, an insurance company is not eligible for a moratorium.

Receivership is regulated by section 4 of the Insolvency Regulations. There is receivership, which appoints an office holder, who may sell off some of the assets of the company in order to pay back the creditors and reduce the debts owed, and there is administrative receivership, which appoints an administrative receiver, who may sell off all of the company assets and ultimately wind up the company.

Schedule 2 of the Insolvency Law grants an administrative the following powers:
• to take possession of all the company properties;
• to sell the property;
• to borrow money and grant security;
• to bring or defend legal proceedings; and
• to take all actions necessary in order to wind up the company and distribute the assets to the creditors.

An administrative receiver is granted the power to sell off secured property, but only with the consent of the DIFC court. Consent will only be given if the court is satisfied that, by selling the secured property, a benefit towards the winding-up will be achieved, and the proceeds of the sale of the secured property must be sufficient to pay off the debts owed to the secured creditor (Part 3 of the Insolvency Law).

The members or shareholders of a company may resolve to liquidate a company; this is called a members' voluntary liquidation (MLV). Creditors may also decide to wind up a company if the directors of the company do not initiate a statutory declaration or if a liquidator determines during an MVL that a company cannot pay off its debts. This is called a creditors' voluntary liquidation. In both cases the directors lose their powers to the liquidator and the business will stop unless it is decided that continuing the business will increase the revenue needed to pay back the creditors.

A compulsory winding-up will be initiated by the DIFC court if a company can no longer pay back its debts or if the voluntary arrangement proposals have been refused by the creditors. Only the DIFC court can decide to transfer assets or shares of a company, and all other legal actions and proceedings will be stayed by the court.
10.3 Novation
This contractual right is provided for in Article 102 of DIFC Law no. 6 of 2004 (the Contract Law). The process of statutory novation is often used to transfer a portfolio in order to set off an insurance company. This will require the approval of the Authority or the DFSA in order to substitute the rights and obligations to another insurer. The policyholders do not need to consent, but an expert report will be required to ensure that the policyholders are not discriminated against by this transfer. The new insurer will either continue or wind up the business, depending on the advantage he may receive from either action.

10.4 Commutation
Commuation is usually used in finite reinsurance and allows the risk to be discharged and obligations to cease if a lump sum is paid. It is in effect a provision or clause in an agreement that will allow the reinsurer to step out of the agreement before the insurer can request its profits under a share profit agreement and require payout.

The concept is not defined in the Insurance Law or any additional regulations, but is frequently used. For single reinsurance policies, a one-off payment is made, which will require an individual negotiation. In the case of many policies or portfolios, this would fall under statutory procedures such as mergers or liquidation, as discussed above. Since mergers lead to a transfer of shares and all assets and liabilities of the shareholders are transferred, the existing shareholders exit the business.

Moreover, once all the insurance liabilities are discharged and all policies are paid off, the company could become attractive to buyers wishing to enter into the UAE insurance market. Many companies cannot acquire a licence as new licences are not easily granted by the Insurance Authority. As the capital requirements for insurers are relatively high (UAE Cabinet Resolution no. 42 of 2009), a commutation may reduce these requirements.

10.5 Policy buy-back
This option is mainly used by insurers that wish to set off their company in order to sell the company as described above. No particular provisions provide for buy-back. Existing policies will be bought back, thus discharging the existing liabilities.

10.6 Solvent scheme
Run-off is a method favoured in the industry for transferring from one insurance class to another, as the combination of classes is not allowed under the UAE Insurance Regulations. The insurer stops underwriting new business and may pay off existing policyholders to discharge any future obligations (commutation).

10.7 Assignment
Assignment is not specifically provided for in the Insurance Law, but it is an implied term of contract law generally used by insurance companies.
The DIFC provides for assignment and novation in the Contract Law. Pursuant to Article 92 of the Contract Law, the assignor’s right to performance ceases wholly or partially, and the assignee acquires the right to performance. Hence the obligations under a policy of the insurer or reinsurer are transferred to another. Moreover, the interest arising out of the policy is assigned, thus the assignee takes over the premium as well as the liability. Assignment is usually used for loans and absolutely assigns the rights and delegates obligations of a loan to the assignee, thus becoming irrevocable.