

Dubai Court Judgment- Are Foreign Investment Products legal if offered by Insurance Brokers in the UAE?

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Are Foreign investment products legal if offered by insurance brokers in the UAE? That is the question that the Dubai Court of First Instance answered in judgment 4720 of 2020. This article provides an overview of an important judgment in relation to the sale of foreign investment products in the UAE.

Background to the case

In 2016, the claimant, an expat working in Dubai, met with a financial advisor to discuss the available investment options that would secure the claimant's retirement in his home country. After considering the claimant's financial position and needs, the financial advisor convinced the claimant to purchase a policy offered by an insurance company incorporated and licensed in the Isle of Man. However, the claimant decided to buy the policy through an insurance broker licensed in the UAE.

The claimant was a partner in an international law firm and was in receipt of a generous income. This meant that the monthly premium chosen by the claimant was quite high. The claimant paid the premium for almost a year. However, he then stopped paying the premium payments, and submitted a complaint against the insurance broker before the UAE Insurance Authority ("**IA**") on the grounds that the policy was void because one cannot take out insurance with an offshore insurer over assets or property located in the UAE. The claimant claimed that the insurance broker who sold the product was therefore unlicensed and illegal in the UAE.

The IA decided to suspend the license of the insurance broker for three months. Although the decision of the IA did not set out the grounds for the license suspension, it is assumed for the purpose of this article that the suspension was related to the sale of unlicensed products.

The claimant then sought to sue the insurance broker and the foreign insurance company in an attempt to recover the monthly premiums that he had paid. The claimant first filed a complaint against the insurance company and the broker before the Dubai Insurance Dispute Resolution Committee ("**DRC**"). However, the DRC rejected the complaint for lack of jurisdiction because the complaint was brought against a foreign insurance company and foreign insurance broker that are not licensed in the UAE (claims brought against unlicensed insurers and brokers falls outside the ambit of DRC's jurisdiction.)

The claimant then pursued his claim before the Dubai Courts. The claimant filed a claim against the foreign insurance company and the insurance broker seeking a declaration that the investment policy sold to the claimant was null and void, and an order against the respondents to refund all amounts that were paid by the claimant pursuant to the investment policy. The claimant argued that the investment product that was sold to him is considered null and void in the UAE based on provisions of Law No. (6) of 2007 pertaining to the Establishment of Insurance Authority & Organization of Its Operations, in particular articles 24 (4) and 26(1) of the law which provide:

"Article 24(4): Any insurance contract concluded by a company not registered according to the provisions

hereof shall be invalid; aggrieved parties may claim compensation for such invalidity.

Article 26(1): It is not permissible to carry out insurance with an insurance company outside the state on property in the state, or on the liabilities arising from the same. It is not permissible either to broker for insuring such property or liabilities except with a company registered in accordance with the provisions hereof'.

Based on these provisions of Law 6 of 2007, the claimant argued that the selling of the foreign investment products through the insurance broker to a customer in the UAE was void and entitled the claimant to be put in the position he was in before purchasing the policy, i.e., a refund of all the monthly premiums that were paid to the foreign insurance company.

Investment product or insurance policy

Al Tamimi & Company acted on behalf of the insurance broker, who was the first respondent, and defended the claim against the broker based on the following main grounds;

- That the broker was a licensed insurance broker and acted in that capacity at all times.
- The Claimant was aware of the policy terms and conditions from the outset (especially considering that he was at the relevant time a partner at an international law firm).
- The policy was specifically selected by the claimant as it met his personal requirements (i.e., to leave the UAE and retire in his home country).
- The broker was not a party to the investment policy. The contracting parties were the claimant and the foreign insurance company. It followed that the premium payments for which the claimant was seeking to refund, could only be claimed from the foreign insurance company.
- The investment product purchased by the claimant was not void under Law 6 of 2007 because it was a pure investment policy with no insurance element. Hence, the policy did not breach the requirements of articles 24 and 26 of Law 6 of 2007.

The Dubai Court of First Instance appointed an insurance expert to opine on the claim. After considering the parties' submissions and evidence, the expert made the following findings:

1- The investment policy was issued by the second respondent, which is a foreign insurance company, in favour of the claimant who signed the policy applications and was fully aware of the applicable terms and conditions.

2- The policy was an investment product which had no insurance element or coverage.

3- The policy did not violate Law 6 of 2007 as it was not an insurance policy;

4- The Claimant stopped paying the premiums during the Nil Allocation Period (being the first 18 month from the date of the first premium), and as per the policy terms and conditions, the policy terminated without value.

After reserving the case for judgment, the Dubai Court of First Instance decided to reject the claimant's claim. The court upheld the expert's findings and reiterated that the policy was legitimately concluded, and that the claimant was not entitled to any amounts because the policy lapsed due to the claimant's own breach.

Importance of this Judgment

This judgment highlights the position that foreign investment products that are executed pursuant to correct procedures and sold in the UAE by foreign insurers do not violate Law 6 of 2007 as long as the products do not include an insurance element. Although the court decision is not final, it provides an indication on the courts approach in relation to such products.

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