

# The Lawful and Reasonable Excuse and the Importance of Incident Notification under Life Insurance Policies: A Recent Case in the Dubai Court of Cassation

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The article clarifies how notification periods set by the insurer are dealt with by Courts of law in the UAE and how the Courts may interpret “lawful excuses” in respect of a lapse of time for notification.

In this particular Court of Cassation case, an insurance company (the “Defendant”) refused an indemnify to a beneficiary (the “Claimant”) under a life insurance policy (the “Policy”).

The Dubai Court of Cassation considered and examined whether the Claimant may still be indemnified by the Defendant, despite the failure of the Claimant to notify the Defendant of the occurrence of the insured’s death within the time frames under the policy , due to a “lawful excuse” for the delay in notification.

## Facts of the case

On July 2000 the Claimant’s brother, the insured person, passed away following a car accident. On January 2015 the Claimant notified the Defendant of the death of the insured and claimed the insurance value. The Defendant refused the claim.

On October 2015, the Claimant filled a substantive case against the Defendant after the Defendant had refused to indemnify the Claimant under the Policy. The Claimant’s claim was on the basis the Claimant was mentioned as a beneficiary under the Policy between the deceased and the Defendant.

The Claimant filed a plenary civil claim against the Defendant in which he claimed an amount of USD 250,000 together with legal interest of 9%.

The Defendant had refused to indemnify the Claimant and rejected to pay any amounts under the Policy for the following main reasons:

1. The Claimant had failed to notify the Defendant in accordance with the Terms and Conditions of the Policy which clearly provided that on the occurrence of death, the insurance company must be notified in writing within (7) days from the date of the death, and in case of failure to fulfill this requirement, the insurance company may refuse to indemnify the beneficiary; and
2. The claim is considered to be barred under law by the elapse of time, referring to Article 1036/1 of the UAE Civil Transactions Law which provides: “Claims arising out of contracts of insurance shall not be heard after the expiration of three years from the occurrence of the incident out of which the claim arose, or from the person concerned having knowledge of the occurrence thereof”.

## **The Claimant's Argument - lawful and reasonable excuse**

The Claimant argued that the term of the Policy in relation to the notification period, which states that the beneficiary's right shall subsist if due notification is not given in accordance with the Policy, is arbitrary and that the Claimant had not agreed to it. The Claimant also argued that he was not aware of the insurance policy at the time of the incident.

The Claimant relied on two Articles from the UAE Civil Transactions Law, firstly, Article 481 of the UAE Civil Transactions Law, which states:

1. The running of time for prescription shall be suspended if there is a lawful excuse whereby the claim for the right could not be made.
2. The period during which that excuse subsisted shall not be taken into account in the prescription period."

And secondly, the Claimant relied on Article 1028 of the UAE Civil Transactions Law, which provides:

"(1) Any of the following provisions appearing in a policy of insurance shall be void:

(b) a provision whereby the right of the assured shall lapse by reason of his delay in giving notice of the incident insured against to the parties which should be notified or to provide documents in the event that it appears that there is a reasonable excuse for the delay.."

The Claimant filed his claim before the Dubai Court of First Instance on the above mentioned basis and claimed that he is therefore entitled to be indemnified under Articles 481 and 1028.

## **The Courts Decision**

On February 2016, the Dubai Court of First Instance rendered and based its judgment on the following basis:

1. The Court considered the Claimant's excuse to be valid under law;
2. The Court found that the Claimant had a lawful excuse in failing to notify and file the claim within the time specified by Article 1036/1 of the Civil Transactions Law. The Court found that the time limit under Article 1036/1 shall be suspended in the event of a valid lawful and reasonable excuse. Accordingly, any period of "excuse" should not be taken into account when calculating the limitation period stated in Article 1036/1 of the Civil Transaction Law.
3. However, the Court dismissed the Claimant's claim despite finding the Claimant's excuse to be lawful and valid. The Court found that the Claimant had still failed to comply with the terms and conditions of the Policy after the period of excuse since it was established that the Claimant notified the Defendant of his claim some seven months following the expiration of the excuse period. It was determined that the Defendant should have been notified in writing within seven days from the date of the expiration of the excuse period under the Policy. The Court considered that the Defendant had the right to refuse paying the insurance value to the Claimant due to this reason. Had the Claimant notified his claim within 7 days of the end of the excuse period, the Court may have considered the case differently.
4. The Dubai Court of Appeal and Court of Cassation upheld the Dubai Court of First Instance's judgment by accepting it was established based on a valid legal reasoning.

## **Comment**

The importance of this judgment is twofold. It demonstrates that any lawful or reasonable excuse accepted by the Court should also suspend the limitation period mentioned in Article 1036/1 of the UAE Civil Transactions Law.

Moreover, the Court of Cassation applied Article 1028 and Article 481 of the Civil Transactions Law.

Accordingly, notwithstanding that a beneficiary under an insurance policy may have missed the contractual stated deadline to notify the insurers, provided that a lawful or reasonable excuse is demonstrated to the satisfaction of the Court, an insurance policy may still be valid.

However, the existence of a lawful excuse will not prevent the Court from applying the incident notification period stated in insurance policies and any such contractual period may be deemed to commence after the excuse period has lapsed. In this particular case, due to the fact that the Claimant failed to comply with the contractual notification period set out in the Policy after the excuse period had lapsed, the Court could not find the Claimant to be entitled to be indemnified by the Defendant.