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Floating Insurance Policy: A study of UAE Maritime Law No. 43 of 2023

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Abstract

This study is for the floating insurance policy in the new UAE Maritime Law No. 43 of 2023, as we noted that the UAE is a pioneer in the field of modern and beneficial legislation, whether for the merchant, insurance companies, marine carrier, or every relevant person, and it can be said that the package of legislation issued in the UAE Recently, legislation has been supportive and polarizing for investors. The floating insurance policy is defined as "a document that covers all shipments that are transferred to the account of a specific merchant, provided that the merchant notifies the insurer of the details of each shipment." One of the most important distinguishing characteristics of floating insurance is that it does not precisely specify the goods covered by the insurance when concluding the contract, and the insurer guarantees coverage. Insurance is provided in advance without the need for issuing any new agreement or acceptance that guarantees the insurance of all shipped goods immediately after they are shipped and exposed to the dangers of the sea. We have clarified the legal definition of this legal act: is it a final contract, a promise to contract, or a contract contingent on a suspensive condition? Then we also clarified that the insurer's obligations The effects of the insured are similar to the effects of a traditional insurance contract, with the exception of some peculiarities of the floating insurance policy that we explained in the research. Finally, we reached several results, which is that the UAE legislator called this document the subscription policy, which is the same as the floating insurance policy, and knowing the type of the document affects the obligations of the parties. We have reached several results, the most important of which is that marine insurance documents always need to be developed to meet market requirements, as 95% of global trade comes from maritime shipping. We have recommended establishing a floating port on the high seas to distribute goods and reduce the cost of maritime shipping to contribute to curbing inflation. We have recommended the necessity of establishing a cooperative fund to protect the global maritime economy, whereby countries contribute shares to the fund to contribute to promoting and protecting maritime trade in the event of catastrophic losses, so as to support what maritime insurance companies cannot cover.

Keywords: floating insurance policy, subscription policy, insurer, insured, marine insurance policy.

1. Introduction

Foreign maritime trade has become fraught with risks, so maritime insurance was necessary for this trade. All current banks do not accept any foreign maritime dealing unless it is accompanied by maritime insurance. They basically require a bill of lading accompanied by an insurance policy on the goods against all risks of transportation

The marine insurance policy does not differ from the ordinary documents of insurance contracts, as the insurer is obligated to cover the risks as soon as they occur, and in return, the insured is obligated to pay the insurance premiums or pay the insurance amount in one lump sum, and this is what is stipulated in Article 280 of the UAE Maritime Law No. 43 of 2023, which states: "1 - The marine insurance contract is the contract under which the insurer is obligated to compensate the insured for marine losses resulting from marine dangers. 2- The insurance contract may be concluded for the benefit of a specific or non-specific person. 3- The insurance broker may contract insurance for the benefit of the insured. 4- It is not permissible to. Only those who have a legitimate interest in the risk not occurring will benefit from marine insurance.

This document was initially concluded once for each trip, but in view of the complexity, popularity, and abundance of trade, merchants became in dire need of several insurance operations to cover all sea freight operations, so a new type appeared called the floating insurance policy, which is a "contract whose subject matter is insurance during A specific period for multiple shipments for the insured," or "a document that covers all shipments that are transferred to the account of a specific merchant, provided that the merchant notifies the insurer of the details of each shipment." It is noted that these definitions indicate that the insurer is responsible for covering the goods that are shipped to his account, but the reality is It appears that the insurer covers all goods shipped to him, whether for his own account or for another account, or even all the goods he receives, during the period agreed upon in the contract .

2. The problem of the study

This issue raises several problems, including:

1- The extent to which the new UAE Maritime Law No. 43 of 2023 addresses floating insurance and whether it fulfills its full rights.

2- If there is a deficiency in the UAE maritime law, where do we return to complete this deficiency?

3- There are often complex terms used in the field of maritime transport and in the field of marine insurance and floating insurance. What is the solution to them means how they are interpreted.

What is a floating insurance policy?

As we mentioned, floating insurance has become an urgent necessity, and the floating insurance policy differs from the open insurance policy. UAE Maritime Law No. 43 of 2023 defines the floating insurance policy in Article 325 of it, which states: "Insurance of goods shall be under a policy for one voyage or through an insurance subscription policy." For several sea voyages or for a period of time specified by the policy. “As for the open insurance policy, it is an agreement between the insurer and the insured under which the insurer covers all shipments occurring during the period specified in the policy. The premiums are paid when the insurance certificate is issued and there is no need to amend the premiums.” This means that the open insurance policy is broader . From a floating insurance policy.

2.1 Definition of floating insurance policy

Some jurisprudents have defined this document as, as some of them consider that the floating policy is “the contract whose subject matter is insurance during a specific period of multiple consignments belonging to the insured.”

We find that part of the jurisprudence sought to give a comprehensive definition of the floating policy, as it was defined as “the document that covers all shipments of the insured, provided that the insurer receives the details of each shipment upon learning of its shipment by the supplier (if the insured is an importer of the goods), or when he By shipping it (in the event that the insured is the exporter of the goods . Some laws call this policy a floating insurance policy, while others call it a subscription policy .

As for the modern Omani law issued in the year 2023, it gave a special definition to the floating insurance policy, as it was mentioned in the first article of the first chapter on definitions and general provisions as (the insurance policy on

Goods for more than one trip, and includes conditions that both the insurer and the insured adhere to, the maximum amount that he pledges to pay for each shipment, and insurance premiums) .

Therefore, it can be said that the most important characteristics of floating insurance are:

First - The goods covered by insurance are not precisely specified when concluding the contract, when signing the document, and this demonstrates the inability of the insurer to determine the insurance premium accurately, as it is determined based on the risks that the insurer takes on. This is clear from the text of Articles 325-328 of the law. UAE Maritime No. 43 of 2023 indicates the different types of goods that may be shipped, the geographical boundaries of the shipments, and the types of means of transportation involved .

Second - Return shipping:

The supplier relies on the availability of general data related to insurance, including the total insurance amount that covers the value of the shipments expected to arrive. Each shipment is carried out separately, and the relationship between it and the next shipment is regulated in accordance with general insurance conditions. The document usually includes special conditions related to the scope of insurance coverage when there are multiple

Shipments, which are accompanied by a table detailing the quantities, types and value of the goods shipped, making floating marine insurance the best for import, export and recurring operations .

Third: Automatically implementing insurance coverage.

The insurer's guarantee of insurance coverage in advance, without the need for issuing any new agreement or acceptance, guarantees the insurance of all shipped goods immediately after they are shipped and exposed to the dangers of the sea. However, a distinction is made between insured shipments in accordance with Article 331 of UAE Maritime Law No. 43 of 2023, which is divided into:

1- The first type relates to shipments that are shipped to the account of the insured personally or in implementation of a contract requiring insurance. In this case, insurance is applied from the moment the shipment is exposed to risks.

2- The second type relates to shipments that are shipped on behalf of others and the insured has an interest in them as an agent or trustee of the goods. In this case, insurance is not applied except from the moment the insured is notified of them .

Fourth - Forced assignment of shipments:

The insured is not allowed to ignore any of the included shipments, and in both cases mentioned previously, the insured must commit to the allocation, and this ensures accuracy in dealing with the insurer for all parties concerned with the policy, as they must comply with specific obligations .

Fifth: The floating insurance policy is easy to trade

When a marine bill of lading is transferred, the rights related to it are transferred to the person entitled to the bill while maintaining insurance on them without the need for the process of re-insuring the goods. This is what distinguishes the floating marine insurance policy .

2.2 Legal adaptation of the floating insurance policy

Several opinions have emerged regarding adapting the floating insurance policy according to the following:

Some commentators believe that the floating insurance policy is a contractual promise and not a final contract, as the insurer promises the insured to insure all of his shipments with the same insurer. These commentators are based on the fact that the floating insurance policy does not accurately explain the insured goods, and does not obligate the insurer to insure all future shipments. Conclusively and indicates that the UAE legislator discussed the issue of the promise of a contract in Article 146 of the UAE Civil Transactions Law, as that article stipulated the necessity of specifying all the essential issues of the contract to be concluded and the period within which it must be concluded, and this did not happen in the floating insurance policy

2- The floating policy is considered a final insurance contract and is not a promise

Contrary to the first opinion, some other jurists argued that the floating document is a final insurance contract and not just a promise in the contract, and they described it as forming a final contract similar to other marine insurance contracts.

They justify not specifying the goods in the floating document, by saying that the goods that are the subject of the contract may be specified in the contract and may be capable of being identified or specified, and therefore this matter does not justify describing it as merely a promise of insurance, as the general rules allow this

3- The floating document is considered a contract subject to a suspensive condition.

This approach believes that the floating insurance policy is nothing but a contract contingent on a condition that is suspended and the content of this condition. In the floating insurance policy, there are shipments in the future that will be shipped to the account of the insured, or shipments that the insurer will ship to the account of another, as long as there is an interest for the insured in insuring them, and in return, the insurer must The insured may provide notification of a specific shipment and may not refrain from providing notifications .

Therefore, what we are going to do is that this document is a contract subject to a suspended condition, because the insured will not obtain insurance coverage for any shipment unless notification is provided about it within the period specified in the document.

3. The effects of a floating insurance policy

This contract imposes obligations on both parties, the insurer and the insured, as follows:

3.1 Obligations of the insured

In order for the insured to be able to obtain appropriate compensation if the insured risk occurs, he must perform several obligations before that, which are:

1- The insured's obligation to provide notifications about shipments:

The insured undertakes to provide notification regarding every shipment subject to insurance coverage. This obligation has been clearly specified in the second clause of Article (293) of UAE Maritime Law No. 43 of 2023. Notice means the set of information that the insured is obligated to provide to the insurance company and includes everything that contributes to understanding The nature of the goods shipped and covered by insurance, such as the quantity, type, value, marks, numbers, name of the ship and details of the voyage it undertakes .

The notification provided by the insured is simply considered a means of informing the insurer of the shipment to be insured. The legislator has set a date in which the notification must be submitted. This date varies depending on whether the shipment was made for the account of the insured or for the account of others. In the first case, Article (331) Paragraph A of the second clause stipulates From UAE law

No. 43 of 2023, stipulating that the insurance includes these shipments automatically in the event that they are exposed to danger, provided that the insured submits notification of this on the date specified in the insurance contract. Marine insurance companies usually specify the period in which notification must be provided of shipments made for the account of the insured in the floating insurance policy. The same, for example, these companies can specify the period as (7) days from the date the insured learns of the shipment of the goods, or (3) days, or any other period specified in the policy .

With regard to the second case, i.e. the insurance policy for goods on behalf of others, Article (331) Paragraph B of the second clause of UAE Law No. 43 of 2023 stipulates that insurance does not include these shipments except from the time the insured is notified, in other words, if these goods are exposed to a disaster or Marine risk before submitting the notification, there will be no benefit in submitting the notification in this case.

The UAE Maritime Law has established a condition that stipulates that the insured must have an interest in insuring shipments made on behalf of others. This interest may be manifested by being a commission agent, custodian of the goods, or in any other appropriate capacity, or by being part of a specialized shipping company. By transportation.

If the insured fails to implement his obligation to provide notification at the time specified in the document, the first two paragraphs of Article (272) of the UAE Civil Code stipulate that in contracts binding on each of the parties, if one of the contracting parties does not implement his obligation, the other contractor, after warning the negligent contractor, has the right He has the right to demand the contract be implemented or cancelled, and the judge has the authority to implement the contract, give an additional opportunity, or cancel it with compensation in both cases if there is a need for that. If the insurer has the right to cancel the insurance contract, he also has the right to demand compensation, and the floating document clearly specifies the method of compensation that may be made. It is the collection of insurance premiums for shipments that have not been notified.

2- The second obligation can be said to be a general obligation, which is to pay the insurance compensation, which may be in installments paid with each shipment, or it may be a total amount, paid one time. This obligation is the reason for the insured's obligation to pay the insurance compensation when the risk insured against is realized, so if the insurer does not pay The amount required of him, the insured can request cancellation and compensation if he has a need.

3.2 The insurer's obligations

The insurer is responsible for fulfilling a set of obligations that fall on him due to the nature of the agreement binding on both parties, in addition to his obligation to compensate the insured for losses related to the insurance contract, which requires him to pay insurance amounts, as the insurer is also obligated to agree to insurance for all future shipments that serve his interest, and in this context it will be discussed The researchers make both of these commitments.

A- The insurer's obligation to insure all shipments

Maritime legislation in various countries emphasizes the need for the insurer to accept all shipments included in the floating insurance policy (subscription policy), and this principle has been clearly confirmed by UAE Maritime Law No. 43 issued within the framework of 2023.

The insurer is obligated to accept insurance on all shipments, whether they are for the account of the insured or for the account of others. This warning emphasizes the importance of providing insurance on all shipments included in the policy, regardless of who is the actual owner of the goods. Thus, this approach reflects the insurer's commitment to exercising his role based on the principles of integrity and justice in the industry. Marine insurance.

This practice is common in the marine insurance industry, as insurance companies often require their insured clients not to conclude insurance contracts for shipments covered by the floating insurance policy with other insurance companies, so that this condition comes as part of the company's goals to protect its commercial interests and to reduce the potential risks resulting from insuring the same. Shipments by multiple insurance companies. Under this condition, the insured is obligated to insure all shipments covered by the floating insurance policy and not to refuse to accept insurance for any of them, in order to fulfill contractual obligations and ensure that operations run smoothly without the occurrence of potential disputes in the future.

In the event that the insurer does not comply with its obligation to accept insurance on all shipments shipped for the account of the insured and for the account of others, as long as there is an interest for him (the insured) in that, the law does not specify the penalty that is applied to the insurer when he breaches that obligation. Then, one should refer to the general rules related to contracts. In such a case, the other party to the contract has the right to cancel the contract, meaning to terminate its obligations towards the violating insurer, with the right to claim compensation for the losses it suffers as a result of this breach.

The insured may not have a direct interest in requesting cancellation of the contract, but rather it may be in his interest to perform the contract in kind, as he can request insurance for that shipment from another insurance company at the expense of the insurer with whom he contracted to issue a floating insurance policy and who breached his obligation.

B - The insurer's obligation to pay insurance compensation to the insured or beneficiary when the risk insured against occurs.

The issuance of a floating insurance policy represents an explicit pledge by the insurer to compensate the insured for any damage to which the insured shipments are exposed as a result of the risks specified in the insurance. This compensation includes the loss of the shipment in whole or in part due to accidents covered by the insurance, so the insurer must commit to implementing this pledge in accordance with the terms and conditions stipulated. It is included in the insurance policy

The UAE legislator referred to this obligation in Article 314 of the Maritime Law , where the insurer is obligated to compensate the insured for losses resulting from the occurrence of accidents covered by the insurance, provided that the amount paid for compensation is within the limits of the insurance amount specified in the policy. Partial coverage of these compensations can be negotiated with approval. Parties In addition, the aforementioned article allows the insured to carry out additional insurances without the insurer's approval in order to cover the responsibilities resulting from damage that may befall the ship, which may exceed the insurance amount in the basic policy, and as we indicated, this amount may be paid to the insured in his capacity as a beneficiary, and the beneficiary is also He may be uninsured.

4. Conclusion

Through this study, we reached several results:

4.1 Results:

1- The UAE legislator called this document the subscription policy, which is the same as the floating insurance policy. Knowing the nature of the policy affects the obligations of the parties.

2- Marine insurance documents always need to be developed to meet market requirements, as 95% of global trade comes from maritime shipping.

3- Determining the premium depends on several criteria, including the nature of the goods and their quantity shipped, which requires the provision of accurate information by the insured.

4.2 Recommendations:

1- Establishing a floating port on the high seas to distribute goods and reduce the cost of sea freight to contribute to curbing global inflation.

2- Establishing a cooperative fund to protect the global maritime economy, whereby countries contribute shares to the fund to contribute to promoting and protecting maritime trade in the event of catastrophic losses, so as to support what maritime insurance companies cannot cover.

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