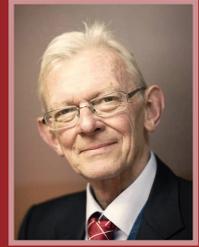


CORONA VIRUS INSURANCE CONCERNS



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- With the advent of the national state of emergency as a result of the Corona virus and the resultant “lockdown” requiring businesses to cease operation (except for certain limited essential services) and limiting the movement of persons, a number of business and insurance related concerns arise. Not only in South Africa, but also globally, such a cessation of commercial activity is unprecedented. Amongst many questions and issues raised as a result, are a number of concerns relating to businesses and their insurance.
- In common with other places around the world, South Africans have sought to adapt to these new and challenging conditions by carrying on their work, to the extent this may be possible, from home, thereby complying with the lockdown emergency regulations.
- Inevitably, the consequence of lockdown, be it laying off staff, supply chain failures or anything else, is that business across the board suffer at the very least loss of revenue or even worse, are forced to shut down.
- Are such losses of revenue or business closure covered by insurance? There is no simple answer. The harsh reality is that in terms of the majority of commercial policies issued in South Africa there will in most cases be no protection against loss of revenue. However certain extensions of cover were available in the South African market but on the other hand exclusions from cover were sometimes contained in policies
- The first step for any business will be to find out if it is entitled to any insurance benefits against the consequences of the state of emergency. Businesses may not know what their position is without taking professional advice.
- A business either has insurance protection against loss of revenue caused by the Corona virus or it does not. It is too late to attempt to obtain coverage now. One cannot insure against a known event.
- In the context of insurance policy benefits the consequences of Corona should not be confused with the consequences of a *force majeure* situation where a contract cannot be performed or a sports event cannot take place for reasons beyond anyone’s control.
- A large number of individuals have transported computers, printers and other electronic and working equipment to their homes. With businesses being under severe financial pressure as a result of this crisis, it is important to highlight that, generally speaking, insurance

contracts covering such equipment will ordinarily have been taken out in the context of such equipment being physically located at a certain place (usually the office location of the business in question), and that a change in this location is a material change in the circumstances relating to the risk undertaken by the insurer. As such, depending upon the particular terms of a policy, as a general principle, businesses should ensure that, where their employees have taken equipment home, this has been notified to the relevant insurer in the manner prescribed by the relevant insurance contract.

- For example, the physical location of a computer system is material to the risk of such system being damaged by lightning, or other physical damage, as well as the risk of such system being stolen or lost. Office premises are regarded as being more secure than home premises, and many insurance policies specify that the office premises in question will have twenty-four hour security systems and other like measures which materially reduce the insurer's risk. Importantly, where items are removed from the office location without notifying the insurer, there is a very high likelihood that the insurer will not be liable for any loss or damage to such items outside of the office.
- It is also very important to check the terms of the policy in question, and it should not be assumed that an insurer may simply be notified of the change in risk – unless the policy has a provision catering for this, or the insurer specifically agrees thereto (which would be unusual on ad hoc basis), the insured is not entitled unilaterally to alter the terms of the policy. In such circumstances, where existing policies will not cover equipment taken outside of the office location, arranging separate insurance or additional cover should be considered.
- No insurer will provide cover for COVID-19 related losses now: it is a fundamental principle of insurance that it is undertaken to cover potential occurrences or fortuities, and not ones which have already eventuated. Where an insured has cover for business interruption, this may well include as a result of national states of emergencies such as those caused by an infectious disease or pandemic but, once again, this would have to be evaluated in the light of the particular insurance contract in question.
- There is no industry-wide standard in the insurance industry at the moment as to the treatment of claims notified or incurred during this national crisis period. Whilst insurers are emphasising that each claim will be dealt with on its own merits, we would emphasise that, at the heart of the merits of any claim will be the written insurance contract between the parties. Legal advice should be taken in relation to such written agreement, and appropriate extensions of cover or additional cover considered in the light of this crisis and its consequences.

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