

FSCA Press Release

24 July 2020

FSCA's latest stance on Business Interruption insurance cover

The Financial Sector Conduct Authority (FSCA) and the Prudential Authority (PA) (Authorities) have reached an understanding with non-life insurers that are most affected by business interruption cover claims that they will consider interim relief to their policyholders who have the appropriate contagious disease extension, while legal certainty on this matter is being sought from the courts. This interim relief will take the form of once off payments to policyholders to enable them to continue running their businesses while waiting for the outcome of the legal process. This arrangement follows discussions between the Authorities and the non-life insurers. The discussions were primarily aimed at addressing two main issues which are of concern to the FSCA. The first is the impact of the repudiation of contingency business interruption cover claims by some non-life insurers (and delays in processing policyholders' claims) and the second is the impact of this matter on the reputation of the non-life insurance industry.

The Authorities acknowledged in previous communications that business interruption cover is a complex issue. There are different business interruption policies, i.e. standard business interruption cover and those that have an extension for infectious/contagious diseases and the latter constitutes approximately 3 – 5% of the policies. It is the view of the FSCA that claims in respect of covers with an extension for infectious/diseases in terms of these policies should be honoured where they meet the terms of the contract and that lockdown should not be used as a ground to repudiate these claims. This approach has also been adopted by some international conduct regulators but is being challenged by insurers and reinsurers globally and locally which means that legal certainty will have to be obtained from the courts.

The legal certainty will undoubtedly take time to achieve, with dire consequences for policyholders who have already been impacted severely by Covid-19 and the National

Transitional Management Committee:

AM Sithole (Commissioner) DP Tshidi CD da Silva JA Boyd MM du Toit LP Kekana K Gibson OB Makhubela P Mogase

lockdown and it is in their interest that the Authorities and the affected non-life insurers have reached understanding that interim relief payments should be made.

The interim relief to be provided by non-life insurers will differ from case to case dependent upon reinsurer support, financial impact and the number and types of policyholders. Based on the above, the Authorities have established the following guiding principles to be applied in determining the interim relief:

- The interim relief should at the very least focus on those businesses most impacted by lockdown (for example, the hospitality industry) and also on small businesses;
- The funds provided to a policyholder as interim relief shall not be claimed back by any non-life insurer from a policyholder should the courts decide in favour of insurers. However, should the courts find in favour of policyholders, these funds will be deducted from the total claim amount payable to a policyholder by a non-life insurer; and
- This relief should be on either an interim basis pending legal certainty or if non-life insurers wish to offer a full and final settlement, such settlement should reflect reasonable value to a policyholder and the implications thereof should be clearly explained in writing should a policyholder wish to accept the settlement on this basis.

The Authorities support the relief measures that will be provided by many of the non-life insurers that offer business interruption with the extension for infectious/diseases in line with these principles and view them as a necessary and appropriate interim response to the current situation, particularly when one considers that the said non-life insurers are providing financial relief to their policyholders without the support of their reinsurers at this stage. The exact details of relief measures by insurers to their policyholders will be communicated directly by each insurer to their brokers and policyholders.

The Authorities have agreed with the most affected non-life insurers that, despite the time barring clauses in the business interruption policies, non-life insurers would not raise the defence of prescription should policyholders decide to lodge court actions against non-life insurers at a later stage. For reinsurance purposes, non-life insurers may require policyholders to lodge their claims before certain dates and the Authorities request policyholders, their brokers and legal representatives to co-operate with non-life insurers in this regard.

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The Authorities will continue to work with non-life insurers that are most affected by these business interruption cover claims to ensure that business interruption claims are resolved as quickly as possible and that trust and confidence in the non-life insurance industry can be restored. The efforts by these insurers to provide interim relief to their policyholders with no intention of claiming the funds back from their policyholders is appreciated by the Authorities. When necessary, further media statements will be issued.

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