

Insurance Act, 2017 (Act No 18 of 2017)

Joint Communication 5 of 2020

Covid-19 – Regulatory response: Business Interruption Insurance

Objective of this Communication

The purpose of this Communication is to set out the Financial Sector Conduct Authority (FSCA) and Prudential Authority's (PA) (jointly referred to as the Authorities) position on certain aspects of Business Interruption (BI) insurance as well as the Authorities' expectations on non-life insurers and intermediaries as to how they should communicate with policyholders in respect of BI claims related to Covid-19.

The Authorities are engaging with the insurance industry on BI insurance to understand, amongst others, the full impact of BI claims on insurers and reinsurers following the outbreak of Covid-19. This Communication is based on the Authorities' engagements with insurers to date, on notifications to endorse policies by adding certain exclusions to BI policies, the reaction of reinsurers to the Covid-19 outbreak, as well as on some complaints that have been received by the Authorities to date.

The Authorities will continue to engage with the insurance industry and all other relevant stakeholders during this time.

1. Purpose

This Communication sets out the Authorities' current position on certain aspects of BI insurance cover. It further sets out the Authorities' expectations of non-life insurers and intermediaries as to how they should communicate with policyholders in respect of BI claims to ensure that the processing of these claims is not unduly delayed, and that terms and conditions of insurance coverage are not varied without taking a balanced approach to ensure fair outcomes.

2. Engagements with insurers

The Authorities have engaged with a number of non-life insurers on the BI insurance that they provide. These engagements revealed that the BI insurance provided can be classified into two broad categories. The first category is standard BI insurance (i.e. a physical damage trigger) and the second category is where a BI policy has an extension for infectious/contagious diseases. Each of these categories are discussed separately in this Communication.

2.1 Standard BI Insurance

From the engagements with insurers to date, it is clear that the large majority of BI policies relate to standard BI insurance where a policyholder should, in terms of the policy, prove physical damage to the business premises covered under the policy. The Authorities are of the view that an insurer would be obliged to indemnify a policyholder for loss of income only if a policyholder is able to prove physical damage, together with other requirements of the cover being met in order for a claim in respect of this cover to be honoured by an insurer.

In the absence of such physical damage, an insurer is not contractually bound to provide policy benefits to a policyholder. Covid-19 will not be covered in the standard policy and the Authorities see no reasonable grounds to intervene since this is what a policyholder and insurer agreed upon when the insurance contract was concluded. Insurers are required to communicate exclusions clearly to their policyholders and quote the relevant provisions of the policy document.

Should the insurer fail to pay a claim, the policyholder may, if the claim is within the jurisdictional limit of the Ombud and the policyholder is of the view that the repudiation was an incorrect decision, approach the Ombud for appropriate relief. In the case of a claim which exceeds the Ombud's jurisdictional limit, the policyholder may approach a court of law for appropriate relief and these options should be made clear to the policyholder.

2.2 BI Insurance with extensions

Based on the Authorities engagements with insurers it seems that there is a small percentage of policies with BI cover in the industry that have specific extensions for infectious/contagious diseases. Engagements seem to indicate various interpretations as to what the trigger is for valid claims and how exclusions for pandemics should be applied.

The Authorities understand that insurers and reinsurers are interpreting the infectious/contagious disease extension and in relation to the Covid-19 pandemic to apply only where the loss of business income was due to the business being interrupted as a result of a localised Covid-19 infection and not as a result of other related actions such as lockdown introduced by government.

Clear communication with policyholders regarding the impact of Covid-19 on their coverage should help deepen confidence and trust in the insurance sector and contribute to the longer-term economic recovery efforts. Insurers must communicate this clearly to policyholders, either directly or through their intermediaries.

Should the insurer fail to pay a claim or the interpretation of the wording or exclusions are challenged, the policyholder may, if the claim is within the jurisdictional limit of the Ombud, approach the Ombud for appropriate relief. In the case of a claim which exceeds the Ombud's jurisdictional limit, the policyholder may approach a court of law for appropriate relief and these options should be made clear to the policyholder.

3. Endorsements to policies

The publication of the *FSCA Communication 12 of 2020 (General)*, required that if any new exclusions or requirements are introduced during the period of the Covid-19 pandemic crisis, such exclusions must be discussed with the FSCA. The FSCA has and continues to receive notifications from various insurers signalling their intention to endorse BI insurance policies by adding general exclusions for infectious or contagious diseases.

Whilst the Authorities are still engaging with insurers on these notifications, it is clear that most insurers intend withdrawing cover related to infectious or contagious diseases mid-term.

We expect insurers to consider the following if they intend to vary their contract terms and conditions:

- a. Whether there is a term in the insurance contract permitting unilateral variation of the terms and conditions;
- b. Whether contractual due process has been applied to the terms and conditions, in accordance with contractual requirements (for example, by complying with any notice period set out in the insurance contract);
- c. Whether due regard has been given to the interests of their policyholders and the principles of the treating customers fairly conduct regime, and that the information is communicated clearly, fairly and is not misleading;
- d. Whether insurers through the intended variation have balanced the interests of policyholders with that of their own interests and other relevant stakeholders. Insurers should be able to evidence that the decision to vary terms and conditions was indeed the most appropriate decision in the circumstances, that it provides for a fair outcome and is easily demonstrated to the Authorities; and
- e. Whether there is any other reason in law or any other relevant regulatory requirement, and whether they are complying with them.

4. BI pending claims

From the Authorities' engagements with insurers, we noted that insurers received BI claims on policies with standard BI insurance and on those with BI extension for infectious/contagious diseases as discussed above.

We reiterate that in respect of policies with standard BI insurance, insurers must communicate clearly to policyholders that policy benefits will be provided only if physical damage is proved and provided that all other policy requirements for cover are met.

In respect of policies with BI coverage with an extension for infectious/contagious diseases, we note that some insurers are still seeking legal advice and engaging with their reinsurers on these claims. We expect insurers to provide regular feedback to policyholders with regards to these claims. The Authorities will be following up with insurers in respect of feedback to policyholders on these claims. Insurers must also ensure that they make decisions on these claims within a reasonable period after receipt of the claims in line with the Treating Customers Fairly Principles.

5. Conclusion

The Authorities are continuing to engage with insurers and other stakeholders on some of the aspects referred to in this Communication, particularly the mid-term withdrawal of cover for infectious/contagious diseases.

Insurers should inform customers, when renewing existing policies, if there are any contractual variations to the terms and conditions of these policies arising from COVID-19. Furthermore, insurers should engage with intermediaries to keep them fully informed at all times about the implications of COVID-19 for existing and new policies.

The Authorities are also analysing the feedback provided by insurers following the recent BI survey that was issued by the PA and may issue another communication on BI cover in due course.

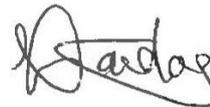
The Authorities are not considering initiatives to require insurers to retroactively cover Covid-19 related losses, such as business interruption, that are specifically excluded in existing insurance contracts. Requiring insurers to cover such claims could create material solvency risks and significantly undermine the ability of insurers to pay other types of claims. Such initiatives could ultimately threaten policyholder protection and financial stability, further aggravating the financial and economic impacts of Covid-19.

Requests for further information about this joint communication may be submitted via email to Makgomp.Raphasha@fsca.co.za and Kerwin.Martin@resbank.co.za.



FINANCIAL SECTOR CONDUCT AUTHORITY

DATE: 12 May 2020



PRUDENTIAL AUTHORITY

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