

DEMYSTIFYING BUSINESS INTERRUPTION INSURANCE

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The impact of COVID-19 and the resulting government lockdown on the hospitality industry has been devastating. Owners and operators of establishments have been turning to their insurance companies for assistance, to claim compensation for the loss of income - often to their disappointment.

In this article, we will attempt to demystify Business Interruption insurance.

An insurance policy is a binding contract between the insurer and the insured, with certain terms, conditions and requirements. When requirements for a claim are not met, there will be no claim. The converse is also true - where contract terms are met, then the insurance company have no option but to pay a claim. Insurance companies really have little to no discretion in the payment of claims when the contract is clear.

It must also be noted that insurance companies in South Africa have had to become a lot more consumer centric than before, driven largely by the introduction and enforcement of new fair-play legislation, and the development consumerism brought about by better customer awareness and social media. But there is

little doubt that insurance policies are complicated contracts. So it is very important to make use of a competent insurance broker for advice and guidance.

Some insurance companies in South Africa offer specialised hospitality insurance products aimed at guesthouses, restaurants, tour operators etcetera - all providing some level of cover for loss of bookings, but only in very specific circumstances as will be unpacked in this article.

What is Business Interruption insurance?

Business Interruption insurance (sometimes called Loss of Income, Loss of Profit or Consequential Loss cover) is an optional section in any business insurance policy - meaning that you must specifically select the cover, and pay a premium for it. If you did not select this cover, then there is no possibility of a valid claim.

Cover under the Business Interruption section is not "blanket" cover - i.e. it does not cover every single eventuality. Rather, it provides cover for the consequential loss of income as a result of very specific events (called insured perils), which is listed and defined under the Buildings and Contents section of a policy. Examples of these insured perils are fire, storm, water, lightning, explosion, earthquake, etc - all specifically listed and defined. Simply put, a Business Interruption claim always follows a valid claim under the Building and Contents section.

To explain, by example: Your building is damaged due to a fire. Fire is listed as one of the insured perils under the Building and Contents section of the policy.

You submit a claim for damages to the building due to the fire, and the claim is approved. But you are also suffering a loss of income as a consequence, because your business is closed while the building is under repair. If you have selected Business Interruption cover, then you are now able to also submit a claim for the loss of income or profit.

COVID-19, pandemics and government lockdown are not insured perils on any business insurance policy - at least not the ones we've seen - and we've seen quite a few! Therefore, no valid Business Interruption claim can follow.

Truth be told, insurance underwriters probably never contemplated the possibility of a pandemic of this magnitude (who has?), and insurance policies were simply never written to contend with the situation we find ourselves in.

There is a little good news.

The specialist hospitality insurance policies mentioned in this article have special "extensions" in the Business Interruption section. Policy "extensions" are specific benefits brought into the insurance contract by insurers, to cater for one or more specific need of the industry to which the product is targeted. It is what makes an insurance product unique; special features which makes the product better than the average market standard.

Some of the main extensions found in the leading hospitality insurance contracts will now be explained. But remember, as noted before - the Business

Interruptions section must have been selected for these extensions to apply.

Business Interruption Extensions

1. Infectious disease at the premises

“Loss following interruption of or interference with the business in consequence of murder, rape, suicide, food or drink poisoning, contagious or infectious diseases, vermin, pests, or defective sanitary arrangements occurring at the premises or shark attack or wild animal attack within 5 kilometres or bomb threat or oil spill within 20 kilometres of the premises to which this insurance relates.”

Here, infectious diseases like COVID-19 is covered, but there must be an outbreak at the establishment itself - which means that the insured received cancellations due to the outbreak at the premises. There would be no cover as a result of a general outbreak somewhere else or a lockdown under this extension.

2. Cancellation of major events

“Loss following the interruption of or interference with the business resulting from the cancellation of a sporting or cultural or other such event within 50 kilometres of the premises to which this insurance relates.”

Policyholders should have cover if they received cancellations of bookings due to the cancellation of a specific sporting, cultural or other such events, but only for those confirmed bookings lost. The insurer will request some proof of cancellation of the event, such as a notice from the event organiser.

3. If the “key” member contracts the virus.

“Loss following interruption of or interference with the business following the hospitalisation and recuperation period as a result of illness of a “key” member of the business being a spouse, partner or manager. The company will not be responsible for the first seven days of such loss but where the period of hospitalisation and recuperation exceeds seven days the company shall be liable for the full period but in every case limited to 21 (twenty one) days from date of first hospitalisation.”

Claims under this extension involves a key individual of the establishment being hospitalised due to COVID-19, or any other health event for that matter. This is not just about getting ill, but the key member must be hospitalised and not able to manage the establishment. The resultant loss of income should be covered.

4. The guest had no control over the decision to cancel

“Loss of revenue following the cancellation of accommodation by a guest by any reason over which the guest has no control and which specifically prevents the insured from being able to fulfil the booking. In respect of any event giving rise to such claim the insured must produce satisfactory proof that no alternate arrangement could have been made. The insured will be responsible for the first R500 of any such loss.”

If the client decides not to travel due to the threat of disease and cancels his booking, then this will probably not be a valid reasons for a claim. The

decision not to travel was in the control of the client (even if it was logically/morally the correct decision). However, if the client cancels due to his flights being cancelled, then there should be a valid claim - provided there was a valid booking in place, and no other booking could replace the opening. Here the client had no control over the airline’s decision to cancel the flight, and he had no other way of getting to the venue.

5. Guests already at the establishment who needs to cancel

“Loss of revenue following the cancellation of reservation by a guest in the event that their trip is curtailed (either shortened or altered) due to:

a) The unexpected death, injury or illness of any of the travelling party residing at the insured’s establishment or the unexpected death, injury or illness of a close business associate or family member.

b) ...

In respect of any event giving rise to such claim the insured must produce satisfactory proof that no alternate arrangement could have been made.”

The insured will be responsible for the first R500 of any such loss.”

As before, it is clear that there is no cover as a result of the lockdown under this extension. The cover provided is very specific.

6. Infectious Diseases/Pollution/Shark Attack

“Loss as insured by this section resulting in interruption or interference to the Insured’s business due to:

- a)...*;
- b) Notifiable disease occurring at the Insured’s premises (or within a 50km radius of the Insured’s premises) or as a result of contaminated food or drink supplied from the Insured’s premises;*
- c) ...”*

If a group booked to stay and one of the members contracts the disease, and the group is now unable to stay, then cover should be provided. However, key words here are: *“...at the premises or within 50km radius.”* The difficulty is, of course, to establish a direct causality between some unknown ill person residing somewhere within 50km of the insured property, and the cancellations. This must be argued during each claim.

7. “Cancellation of bookings

“The Company will pay the Insured for the loss of the value of deposits up to the limit stated in the schedule any one event received for the reservation (booking) of accommodation as a result of returning such deposits following cancellation or curtailment of the relevant bookings due to a cause listed below provided that such deposits cannot be recovered from any other source by or on behalf of the person/s cancelling or curtailing the booking:

1 Accidental injury, illness or death of:

1.1 The guest who booked the accommodation or any person with whom the guest has arranged to travel

1.2 A close relative, fiancé or close business colleague of the guest

1.3 ...

1.4 Compulsory quarantine or jury duty in a court of law applying to the guest or any person with whom the guest has arranged to travel

1.5 ...”

This clause is fairly self-explanatory. A claim is only valid if the guest or any of their companions traveling with them is ill themselves. It does not include government or advisory travel bans, and the claim is also for the deposit only. This is an optional extension on the policy (i.e. cover must have been selected) and limited to the sum insured stated on the contract. The indemnity period is for 3 months from the date of first loss.

As can be seen, cover under all these special extensions are limited, and for very specific circumstances. In fairness, insurers offered these extensions to provide cover for localised incidents of sickness and disease, but not for a global pandemic, as discussed.

The Broker’s Advice

As always, a broker’s advice during times like these is: -when in doubt, submit a claim! We believe policyholders should submit all claims where clients have cancelled due to the announcement of the lockdown. Each claim will be handled on its own individual merits.

The explanations provided here is our interpretation of the current policy contracts, based on our professional views as experienced and registered insurance advisors. Olive Insurance Brokers act on behalf of its clients, and these are the advises we would fairly and objectively provide our clients. The Insurers’ opinions may well differ.

NB - Virtually all insurers have since issued circulars to the effect that no new cover against pandemics in general, and Covid-19 in specific will be provided. Current valid claims will be honoured as they should, but it will be impossible for anyone to buy new or additional cover against Covid-19 or any other pandemics going forward. We expect that general exclusions against pandemics will be introduced into insurance contracts as standard by insurers across the globe. The premiums required to cover the risk of a pandemic will simply not be viable. The reasons for this are the subject of another article.

