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COVID-19 and business interruption insurance: is your business covered?

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Following the declaration of a national state of disaster on 15 March 2020, and the subsequent lockdown imposed by the President from 26 March 2020, businesses have been forced to close their doors, and are contemplating whether they will survive the coronavirus outbreak, and the consequent measures taken by the government to curb the spread of the virus. The phased approach to lifting restrictions announced by the President means that the operations of many businesses, especially those which are not designated as level 5, 4 or 3, will continue to be negatively impacted by the forced closures.

Many businesses have property insurance in terms of which the business is covered for physical damage to its commercial property arising from a defined event such as fire or flood. On its own, property insurance ordinarily does not cover indirect losses. Thus, most commercial property insurance policies provide coverage for business income loss by adding an endorsement to the insured's property policy. Business interruption insurance is designed to compensate the business for the financial impact of an insured interruption or interference.

An important consideration for business entities during this time is whether their businesses are covered for economic loss occasioned by the imposition of the national lockdown in terms of their business interruption insurance policies. Generally, an insured's right to claim under a business interruption policy is triggered by physical damage arising from an event, such as fire or flood, indemnified under another section of the policy. In other words, there must be a link between the physical damage (caused by fire, flood, or some other natural disaster) and the consequential loss of revenue. The physical damage, rather than the insured's own commercial decision or some other external event (such as the imposition of a national lockdown), must have caused the business interruption loss. The intention of business interruption insurance is to restore the business to the same financial position as it would have been in, if the insured loss had not occurred.

Although there have been unfortunate criminal activity reports regarding damage to property, in most instances, it is unlikely that the disruptions caused by the spread of the coronavirus will result in physical damage to property. Thus, many businesses may find themselves unable to rely on their insurance policies to help them weather the purely financial impact of the COVID-19 storm. Furthermore, as a result of previous viral outbreaks, such as the SARS and Ebola outbreaks of 2003 and 2014 respectively, many business interruption policies specifically exclude loss caused by a pandemic.

Businesses must however take note that not all business interruption coverage requires physical damage to property. Some policies only require loss caused by an insured peril or, in the case of all-risk policies, a non-excluded peril. Such policies may very well cover income loss and business interruption resulting from closure of the business as result of pandemics and acts of state, for example, the imposition of the national lockdown. Additionally, some insurance policies may include extension clauses, which expressly provide cover for loss stemming from infectious and contagious diseases. However, even in these circumstances it is important to note that cover may be subject to certain limits outlined in the policy. Businesses are encouraged to carefully consider the wording of their policies in order to determine the extent of coverage available to them.



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