



5th June 2020

SATIB has been exploring all available options to drive the claims process forward and find a favourable outcome for each of our clients.

To ensure a balanced and thorough approach, we have sought a second legal opinion from Senior Counsel on the matter of Business Interruption Insurance cover and the validity of COVID-19 claims.

We had hoped through this second legal opinion to clarify Insurers' requirements for substantiating a claim, namely meeting the following conditions:

1. Identify the presence, at the relevant time, of COVID-19 at or within the required radius of the premises (depending on the policy wording).
2. Provide proof that the interruption of the business was due to the presence of that COVID-19 manifestation itself and not some other cause.

The policy is very clear with regards to the first requirement that the disease must have broken out on your premises or within the stated radius, depending on the applicable wording.

However, while the second requirement is not explicitly written into the policy wording, the second legal opinion notes that wording must be considered within context.

Moreover, both legal opinions we have received agree that **the Insured must link their losses with the specific outbreak either at their premises or within the required radius (depending on the wording).**

The latest opinion states that, in most cases, losses were as a result of the government's actions in imposing lockdown conditions and not as a result of the outbreak of COVID-19 in a particular area or at a particular premises.

In addition, the lockdown regulations were not promulgated because of the presence of COVID-19 in a particular area or at particular premises. Instead, the regulations were implemented by government to prevent the spread of COVID-19 while the country prepared itself to respond. The regulations have been applied indiscriminately throughout the country, including in areas where there was as yet no COVID-19 cases. This illustrates that the government lockdown and quarantine – as stated in various policy wordings – are not one and the same.

Regrettably, the legal opinion we have received from both Senior Consels concurs with messaging from Insurers. No one could reasonably have anticipated that there would be a national and global lockdown and that all economic activity would cease. As such, the policy's intention was never to cover losses due to a global pandemic and subsequent national lockdown.

Nonetheless, SATIB will continue to do whatever it can to ensure that the treatment of your claim is handled fairly. Your dedicated claims handler and/or your Accounts Executive will be contacting you personally to discuss the way forward in respect of any claims that have been submitted.

You may have seen in the media recently that the Financial Sector Conduct Authority (FSCA) has summoned short-term Insurers to share their policy wording relating to business interruption cover after receiving complaints about claims stemming from the COVID-19 lockdown.

The FSCA has said the responses will determine whether it would approach the courts to seek a declaratory order to speed the payment of the claims. We will keep close to this and advise you of any updates. Click [here](#) to read the full article.

We are also keeping a watchful eye on the outcome of legal action instituted in the Western Cape High Court as well as that in the UK as we believe this will have a significant impact on the way forward.

In our capacity as your broker, and to bring urgent relief to the wider tourism and hospitality industry, we are in discussions with Insurers and other industry players to reach a mutually beneficial compromise, outside of the claims process. We are reminding Insurers' of their corporate social responsibility and seeking their participation in a fund to help the industry survive this crisis.

Meanwhile, the other recourses available to you include approaching the Ombudsman (subject to the jurisdiction of the Ombudsman and their terms and conditions), seeking your own legal action, or joining other action groups in the market.

We will keep you updated as to the progress of our discussions with Insurers and all other options that arise. We are, as always, still doing everything in our power to support you every way possible.

Please contact us if you would like more information on the details of the second legal opinion.

Lastly, together with SATSA, we have compiled a [Business Interruption Insurance FAQ](#) which outlines many of the key points we have shared with you previously.

Kind regards,

A handwritten signature in black ink that reads 'Dewald Cillie'.

SATIB Insurance Brokers, Executive Head - SATIB