

FAQ: Insurance Claims for Business Losses

for LexisNexis Resource Hub – COVID-19



This FAQ has been prepared as part of a series addressing the areas of law that have been affected by the COVID-19 pandemic. It addresses queries relating to business-related losses and insurance, as well as personal life and health insurance.

Q1. Can I claim for business losses suffered during the RMO under my business interruption or consequential loss insurance policies?

A: Generally, there must be direct physical loss or damage to property before these types of policies are activated. Therefore, it usually does not respond to pure economic loss suffered as a result of events such as the RMO. Each policy must be looked at on a case-to-case basis.

Q2. Can I extend my insurance coverage to cover losses arising from the Covid-19 situation?

A: Some insurers offer policy extensions that provide coverage in response to denial of access to business premises, or contagious/infectious disease, or the closure of suppliers'/customers' business.

If coverage is extended, numerous issues may arise as to the quantification of loss. E.g., losses due to the general downturn of economy would not be payable, or reduced demand due to the fear of virus etc., would have to be factored into the computation of loss.

In most cases, the expertise of experts is required to study the past financial standing of the insured party as well as the business trends of the insured against those in a similar market/industry. The outcome is therefore very fact sensitive. For example, it may be possible for an insurer to decide that it is liable to fulfil a claim, but post-analysis, the quantum computation might amount to zero.

E.g., in *Orient-Express Hotels Ltd v Assicurazioni General SpA (UK)* [2010] EWHC 1186 (Comm), a hotel claimed under their business interruption policy following damage to their hotel in New Orleans as a result of Hurricanes Katrina and Rita in 2005. The policy was only triggered because the hotel itself had suffered property damage. However, the court held that most of the hotel's losses resulting from the curfew imposed by the authorities and/or the wider damage caused by the hurricanes to the city, were not payable. In other words, there were reduced visitors to the city (and consequently the hotel) due to the hurricanes even if the hotel had not been physically damaged by the same.

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In *New World Harbourview Hotel Co Ltd & Ors v ACE Insurance Ltd & Ors* (2012) 15 HKCFAR 120, [\[2012\] HKCU 419](#), the hotel chain did not suffer an outbreak of SARS on its premises and therefore attempted to claim under the other limb of its business interruption policy which covered loss as a result of a 'notifiable' disease occurring within 25 miles of the premises. The Court of Final Appeal in Hong Kong held that, in the absence of a policy definition of 'notifiable disease', the hotel could only claim for losses it had sustained after SARS had been added into the 1st Schedule of the Quarantine and Prevention of Disease Ordinance on 27 March 2003.

Therefore, you are advised to check with your insurers regarding your coverage, possible extensions and the corresponding limitations.

Q3: My event has been cancelled because of the Covid-19 situation, can I claim for insurance?

A: As organisers, it depends on whether your event cancellation policy is worded generally to cover all cancellation beyond the organiser's control, or only worded to respond specifically to certain events.

Some common exclusions include contagious/infectious disease. Each policy must be looked at on a case-to-case basis.

Q4: If I am diagnosed with Covid-19, can I claim under my life or health insurance policies?

A: The Life Insurance Association of Malaysia (LIAM) and its member companies have devised additional reliefs for policyholders diagnosed with Covid-19, including cash relief, special cash benefits for hospitalisation and special lump sum death benefits. See news report [here](#).

Under the Economic Stimulus Plan recently announced by the Malaysian Prime Minister on 27 March 2020, insurance and takaful companies will set up a RM8 million fund to bear Covid-19 screening test costs of up to RM300 each for qualified policyholders. Read more [here](#).

You are however advised to check with your respective insurers for the applicable terms and conditions.

Q5: Is there a moratorium for payment of premiums as I am cash-strapped due to the Covid-19 situation? Can I delay paying insurance premium?

A: Some insurers offer flexibility in this respect. In addition, provision was made for deferment of insurance premium payment for those affected by the Covid-19 outbreak under the Economic Stimulus Plan, as recently announced by the Malaysian Prime Minister on 27 March 2020. You are advised to contact your insurer to enquire for more details.

In light of the constantly changing circumstances, this is a general overview and should not be treated as legal advice. The information presented is correct to the date of its publication.

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Tan Sixin is an insurance partner at Messrs Azim, Tunku Farik & Wong. Her dispute resolution work focuses on general insurance and takaful, reinsurance and re-takaful. She is currently a graduate member of the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) and a member of LAWASIA and the International Bar Association (IBA). She is passionate about her practice and this has attracted numerous invitations to speak at events specially designed for insurance companies and law students, as well as to judge moot competitions at both national and international levels. More recently, she authored the 2016 updated for the Malaysian Precedents and Forms (General Insurance and Takaful Chapters) and the 2017 updates for Halsbury's Laws of Malaysia (general Insurance Chapters except marine insurance) in collaboration with LexisNexis Malaysia.

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