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**COVID 19 AND THE ROLE OF INSURANCE:
EMERGING ISSUES FOR YOUR BUSINESS**

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INTRODUCTION

The outbreak of the Corona Virus (COVID-19) pandemic has had a devastating economic effect on several businesses. Although businesses may have continuity and contingency plans in place, those plans may generally not protect the business from some losses occasioned by travel and movement restrictions and disruptions to the supply chain.

There is no gainsaying the fact that the pandemic will affect sectors in different ways, however, it is envisaged that affected businesses in the various sectors would have similar enquiries as to the role of insurers and insurance in mitigating their business losses.

ANY RESPITE FROM THE BUSINESS INTERRUPTION INSURANCE POLICY?

Insurance companies offer a range of business interruption policies to protect a business upon occurrence of an agreed disastrous or catastrophic event. During the occurrence of this event, business operations might be put on hold resulting in a loss of income. Business interruption coverage generally allows a business to recover certain losses in the event that the business suffers physical damage or loss that prevents it from carrying out its operations by covering for actual or potential loss of earnings and additional expenses incurred as a result of material loss during this period.

The question as to whether a company would be able to claim insurance cover for business interruption due to the pandemic would depend on the wording and the terms of the policy. Insurance policies are contracts between the insurer and the insured and, like any other contract, would be interpreted by the courts in light of the parties' clear intentions as conveyed by the language (wordings) of the policy.

Where the policy expressly excludes the outbreak of communicable diseases, pandemics and/or epidemics, it is unlikely that the courts will enforce an insurance claim for business interruption due to COVID -19 outbreak. Interestingly, a recent claim filed against an insurance company in the United Kingdom, revealed that the policy expressly covered business interruption occasioned by restrictions from a public authority following an occurrence of a notifiable human disease.

Flowing from the above, the position on whether or not a business would be able to claim insurance under a business interruption policy would depend on the terms of the policy. Thus, business owners should begin to review their insurance policies to determine if they have coverage for loss occasioned by COVID-19.

TRADE CREDIT INSURANCE POLICY IN THE LIGHT OF COVID-19

Companies that are involved in trading are exposed to several risks, and the failure or inability of its customers to pay for goods or services purchased is not the least of these risks. Trade Credit insurance is a key risk management tool that assists in managing the risk of bad debts by customers and purchasers. It is a policy that protects an insured from protracted defaults, insolvency of customer or purchaser, defaulting letters of credit, political risks, pre-export and export finance, and contract frustration.



Globally, insurance companies have adapted their trade credit insurance offers to accommodate the varying risks that businesses may have and have provided bespoke trade credit insurance policies in addition to the standard traditional policies.

The impact of COVID -19 as well as the restrictive emergency orders, regulations, and guidelines that have been issued by many governments have significantly increased the risk of the inability of customers to settle their outstanding obligations as well as the risk of bankruptcy or insolvency. This situation would beg the question of whether the insured can claim for customer defaults arising from COVID-19 or the lockdown order. Again, this would depend on the provisions of the insurance policy on circumstances that would lead to coverage as well as exclusionary clauses.

On a related note, it would appear that, despite its attractive potential, trade credit insurance is largely untapped in Nigeria's insurance sector apart from the export credit insurance facilities offered by insurance companies and governmental export credit agencies (such as the Nigerian Export-Import Bank) that is designed to protect exporters from the risks of non-payment for goods and services exported on credit terms. Beyond the duration of the pandemic, it is hoped that businesses and insurance companies will begin to tap into the opportunities of trade credit insurance for intra-trade in Nigeria given its many benefits to the private sector and the huge boost it will provide to the insurance sector in Nigeria.

TRAVEL INSURANCE: IMPLICATIONS AND TRENDS

Travel insurance is an insurance product that covers unforeseen risks and financial losses that may occur while traveling. These losses range from last-minute trip cancellation to medical emergencies. The main issues that have been arising since the outbreak of the pandemic with respect to travel insurance are whether trip cancellations and medical emergencies due to COVID -19 are covered under the policy.

It is important to note that travel insurance policies and their terms of coverage will differ from one another and, like all other insurance policies, must be reviewed thoroughly to determine the rights of the parties.

Generally, with respect to trip cancellations due to COVID - 19, in addition to the terms of the policy, it must also be determined whether, at the time the policy was issued, trip cancellation due to COVID 19 had become a foreseeable event. Some insurance companies have declared a date after which they consider trip cancellations due to COVID -19 to become a foreseeable event. It will be difficult to enforce an insurance policy to protect an insured against foreseeable risk after these dates.

It is submitted that the above position would also be the same for the cost of medical expenses arising out of a COVID -19 infection while on a trip. Coverage under travel insurance for these medical expenses would depend on the date the policy was issued and the terms of the policy, amongst others.

Interestingly, due to the impact of the pandemic, while some insurance companies have ceased to offer travel insurance policies at the moment, some have reviewed the terms of the policy to exclude pandemics and government action in the future.



EMPLOYEE INSURANCE AND WORKMEN COMPENSATION

Globally, questions are arising as to the possibility of assessing COVID -19 as an occupational disease. Some jurisdictions (like Canada) have already recognised coronavirus infections as occupational diseases, and their social security institution will provide compensation for workers for COVID 19 upon a preponderance of medical proof that the worker diagnosed with the virus was exposed to the virus in the course of employment. In Italy and Germany, COVID -19 is recognised as an occupational disease for only workers in the health sector.

In Nigeria, the legal framework governing workmen compensation and/or social insurance for employees include the Employee Compensation Act (ECA) and the Nigeria Social Insurance Trust Fund Act with the Nigeria Social Insurance Trust Fund Management Board (NSITFMB) acting as a Compensation Board. The objectives of the ECA include the provision of an open and fair system of guaranteed and adequate compensation for all employees or their dependants for death, disease, disability or injury arising in the course of employment; establishment and maintenance of a solvent compensation fund managed in the interest of employers and employees amongst others.

Although the ECA does not expressly provide for COVID 19 in its list of recognised occupational diseases, it includes infectious or parasitic diseases that are contracted in an occupation where there is a particular risk of contamination. The list also includes respiratory diseases caused by an agent where there is a direct link between the exposure of the employee to the agent and the disease suffered. It is submitted that by implication, workers in the health sector and other high-risk sectors may be able to claim workmen compensation from the NSITFMB for COVID 19 infection.

By virtue of the ECA, to be eligible for compensation, an employee must notify his employer of the existence of an injury or disabling occupational disease within 14 days of its occurrence or receipt of notification of occurrence. Furthermore, the employer is obliged to report this notification to the NSITFMB within 7 days of receiving such information in the manner prescribed by the NSITFMB. Upon verification and assessment of the claim and ensuring that due process has been complied with, the NSITFMB would then make a decision on paying compensation to the affected employee.

However, in practice, it does not appear that businesses and employees are aware of their rights and reporting obligations under the ECA as there is little activity in the area of workmen compensation in Nigeria. Companies often have to make a decision between settling compensation claims by their employees for occupational diseases based on their employment policies and procedures whereas, a number of these companies would have been contributing to the Employees Compensation Fund managed by the NSITFMB. It would be interesting to see the impact of COVID 19 on the Nigerian workmen compensation regime, particularly for high-risk workers currently in the front line of the battle against COVID -19.

NO PREMIUM, NO COVER

A critical consideration to determine eligibility for cover under an insurance policy is the payment of premium in advance. Section 50 (1) of the Insurance Act makes the receipt of full payment of the premium in advance a condition precedent to a valid contract of insurance. Furthermore, the NAICOM Guidelines provide that all insurance cover must be provided on a strict "no premium. No cover basis". It also provides that "only cover which has been received



directly or indirectly through a licenced broker shall be recognisable as income in the books of the insurer.”

These provisions have been affirmed by a plethora of decisions at the appellate and apex courts. The Supreme Court has even gone on to hold that an insurer cannot waive this condition precedent. Thus, failure of the insured to pay the premium in advance will render the contract null and void and unenforceable.

On the question as to whether partial payment of premium will suffice for compliance with the provisions of the Insurance Act. The Court of Appeal has held that Section 50 of the Insurance Act did not contemplate instalment payment of premium in an insurance Act, and thus the partial payment of the premium will not satisfy the condition precedent for a valid contract of insurance.

Section 50(2) of the Insurance Act recognises the payment of premiums to brokers and provides that insurance premium collected by an insurance broker in respect of an insurance business transacted through the insurance broker shall be deemed to be premium paid to the insurer involved in the transaction. Thus, where the full premium has been paid in advance to an insurance broker, the condition precedent has been satisfied, and the insurer cannot resile from the contract whether or not the premium is remitted by the broker to the insurer or not.

Flowing from the above, in determining eligibility for insurance cover for loss occasioned by COVID-19, the Company must consider whether full payment of the premium for the cover period was settled before the insurance policy was taken out as the courts will not enforce an insurance contract where there is no evidence of full payment of premium for the cover period.

CONCLUSION

Based on the analysis above, below are the next steps for businesses that wish to take advantage of insurance in mitigating their exposures due to COVID- 19.

Firstly, the Company should review its insurance policy portfolio to determine the existence of a relevant insurance policy that may cover for loss as a result of the current pandemic or government lockdown order, including but not limited to business interruption, event cancellation, and trade credit amongst others. The Company must also ensure that the insurance contract is valid and enforceable.

Secondly, the terms and provisions of the relevant policy must be reviewed carefully not only to determine coverage and exclusions from coverage but to ensure that all reporting obligations by the insured have been complied with, or are adhered to strictly.

Finally, it is important to note that where it is decided that the Company has the right to file a valid claim with its insurer for losses occasioned by COVID -19, such claims must be submitted expeditiously and filed promptly in accordance with the terms of the insurance policy contract to avoid the likelihood of a denial by the insurer on the grounds of delay.

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