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THE CEE LAW FIRM

INSURANCE AND COVID-19

The COVID-19 outbreak in Bulgaria and the subsequently declared state of emergency by the Parliament ('**State of Emergency**') have already affected various aspects of doing business. Many businesses are concerned about the potential financial impact of the outbreak on their activities.

In this extraordinary situation, checking available insurance policy(-ies), is a step a company can take, among others, towards managing the risks of exposure to potential damages related to the COVID-19 outbreak, for example, when reorganizing its business processes.

Below, we have outlined our thoughts on a few of the topics that are likely to be considered as some of the main insurance-related questions being raised nowadays.

NON-PAYMENT OF PREMIUM INSTALMENTS

It could not be excluded that because of the current circumstances some businesses may experience difficulties with payments of the instalments due under their insurance contracts. According to Bulgarian law, in case of a default on even one premium instalment with more than 15 days after payment is due, the respective insurance company can terminate the insurance contract. Often the general terms and conditions of the insurance policy provide even for an automatic termination of the contract in case of such non-payment. In this case, the law does not require any additional action from the insurance company in this regard.

It should be noted, however, that the recently-adopted legislation on the measures during the State of Emergency¹ ('**New Law**') states, among other things, that the consequences of a default on contract payments (including penalties for late payment, cancellation of contracts, etc.) will not apply during the State of Emergency. Although it is not completely clear from the wording of the legal act, a possible interpretation of that provision is that it applies to insurance contracts as well. Therefore, it seems that insurance policies will not be terminated due to non-payment of premium instalments during the State of Emergency (as of today, the State of Emergency covers a period of 1 month, i.e., until 13 April 2020).

Nevertheless, in case of inability to pay a premium instalment, it seems recommendable for a policyholder to approach its insurance company in advance and try to re-negotiate the terms of payment in order to mitigate potential complications in this regard.

¹ *Act on the Measures and Actions during the State of Emergency Declared with a Decision of the National Assembly as of 13 March 2020, promulgated with the State Gazette as of 24 March 2020*

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FORCE MAJEURE

The Bulgarian Insurance Code does not provide specific requirements for the application of the concept of force majeure to insurance contracts. The New Law also does not prescribe any specific rules in this regard.

Thus, in order to assess whether force majeure will apply in a particular insurance relationship, one must consider the general legal rules governing force majeure events as well as the wording of the force majeure clauses (if any) of the respective insurance policy (for example, in the general terms and conditions) in light of the particular circumstances. Since the assessment of these questions may have a significant impact on the insurance relationship, it seems recommendable to address them in a timely manner in order to mitigate the risk of denied insurance coverage.

INSURANCE OF COMPANY'S PROPERTY/EQUIPMENT WHEN USED OUTSIDE OF BUSINESS PREMISES

Nowadays, employers are not only entitled but even encouraged to introduce a remote form of work where possible (for example, home-office). In practice, although this is not a new concept for Bulgarian employment law, for many employers the option for such remote work is rather new and its establishment is performed ad hoc. Among the issues that should seriously be considered by the employers in this regard is the use of the companies' property/equipment (for example, laptops) during the remote work. As we see it, an important aspect of this issue is the question whether this equipment is insured when used outside of the business premises.

This question is not explicitly regulated by the applicable insurance legislation. In practice, insurance companies have adopted different approaches when dealing with such situation – for example, some require an advance notification by the respective company in case the insured property is moved outside the business premises, while others simply provide coverage in such cases (i.e., no notification is needed), however, usually for an additional premium.

In view of the above, when introducing the option for remote work, it seems highly recommendable for the respective company to check, among others, its insurance contract(s) in order to be in compliance with the insurer's requirements and, if necessary, to discuss potential amendments to the policy so that it ensures coverage to its business property, e.g., when used by the employees while working from home.

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FILING OF INSURANCE CLAIMS

Other difficulties businesses may face in these extraordinary times are related to the filing of claims for insurance compensation. Basically, under the law, policyholders must notify the respective insurer within 7 days after becoming aware of an insured event. However, a particular insurance contract may provide for another appropriate term but no less than 3 days after becoming aware of an insured event. In certain cases (for example, theft or burglary) this deadline may be limited to 24 hours.

Nevertheless, in practice, nowadays, the approach adopted by many insurers on the market is to prolong these deadlines for some of their products (for example, property insurance) in view of the State of Emergency. The prolonged deadlines however are not applicable for all risks.

Given the above, and since it is recommendable to stay at home in order to avoid unnecessary trips/visits, it seems recommendable for policyholders to become acquainted with the deadlines adopted by their insurance companies and apply them accordingly. Additionally, it should be noted that many insurers have limited face-to-face meetings with clients, and thus, this should also be considered if planning a trip to such office.

GENERAL REMARKS

Generally, some insurance products available on the market afford insurance coverage in case of financial losses due to a decrease in income, unexpected expenses, lost/destroyed information/data, etc., i.e., products that may provide coverage in case of business disruption. However, these products are quite specific. Thus, it is rather impossible to apply a general approach towards them. Since there are also no general rules in the applicable legislation (including in the New Law), the particular provisions of those contracts should be considered in light of potential COVID-19-related damages.

Apart from the above matters, companies may be facing other additional unclarities in relation to their insurance contracts (for example, establishing whether an insured event has occurred or whether certain damages are covered under their policy).

This document is for informational purposes only and may not be considered a legal opinion or advice.

For any legal matters arising in these special circumstances, please do not hesitate to contact our COVID-19 Help desk at the following e-mail address: covidhelpdesk@peterkapartners.com.