7 RULES OF INTERPRETATION

After reviewing our "key steps", you may have had the opportunity to check and update your insurance contracts. You probably noticed that some of them, concluded several years ago, no longer met the current needs of your business or have proven to be unsuitable to the specific needs you have in times of a health crisis. You may have wondered about the actual scope of some of the policies you have taken out.

In order to avoid such issues, we advise setting up an internal plan to ensure regular periodic review of all insurance contracts in force once they have been listed. This review, which can of course be extended to all contracts concluded in your line of business, does not necessarily have to be carried out every year, but we advise you not to exceed a period of three years between each review, due to the speed at which legal changes take place but also because of the needs of your business, which are constantly evolving.

In this respect, if you notice that a policy you have taken out is no longer in line with the needs of your business, consider contacting your insurance company, or your intermediary, who will be able to give you useful advice on the insurance cover best suited to your situation.

Similar action should be taken in case of doubt as to the contractual scope of a clause, in particular an exclusion or forfeiture clause. If, after referring to the general and special terms and conditions of a policy, as well as information sent to you by your insurer - via its website, your customer area or any other means of communication - a contractual clause remains unclear, do not hesitate to contact your insurer or intermediary to resolve any ambiguity or question.

In order to help you in the analysis of your insurance cover - an essential but not very obvious exercise - it is useful to refer to the main rules of interpretation of insurance contracts which have been established by Luxembourg case law on the basis of the provisions of the Civil Code (Articles 1156 to 1164):

(i) In application of the principle of freedom of contract, Luxembourg judges refuse to interpret contractual terms which are clear and precise: if they are lawful, the judges will apply them purely and simply so as not to distort the contract. If clauses are contrary to mandatory provisions of the law or general principles of law, these will be declared null and void (Court of Appeal, Civil, July 15, 2015, Pas. 37, p. 579). As a result, only clauses that are lawful but obscure, ambiguous, equivocal or contradictory are subject to judicial interpretation;

(ii) Based on the nature of the insurance contract as a contract of adhesion, pre-drafted and imposed by the insurer, case law considers that clauses must be interpreted in favour of the insured (Court of Appeal, Civil, July 15, 2015, Pas. 37, p. 579 and Court of Appeal, November 16, 1971, Pas. 22, p. 82);

(iii) The limitations on the application of the insurance contract are subject to a restrictive interpretation by the courts and tribunals (Court of Appeal, Commercial, October 30, 1985, Pas. 26, p. 362).

The points above reflect the main principles of interpretation and do not predict the position that may be adopted by the Luxembourg courts, whose power of interpretation remains sovereign.

They are also understood to apply outside the context of individual cases. Although an insurance policy is often drafted on the basis of a general contractual model, the contracting parties remain free to negotiate specific contractual provisions to adapt to the activity in question. It is therefore still essential to analyse ones' own contractual documentation.

In this context, it is worth mentioning the Order for interim relief issued on 22 May 2020 by the Paris Commercial Court in respect of "Business interruption" insurance (Commercial Court, Paris, May 22, 2020, n° 2020017022).

The judges declared the summary proceedings brought by a restaurant owner seeking compensation for business interruption resulting from the administrative closure of his restaurant in the midst of the health crisis admissible and well-founded. The insurer refused to respond on the grounds that the pandemic risk was not insurable both economically and legally. After recalling that they had to "*rule on the application of a specific insurance contract containing general conditions, special conditions (...) the whole constituting the law of the parties (...)*", the judges noted that the pandemic risk had not been excluded from the contract signed by the parties. The Court also rejected the insurance company's argument that "*the application of the administrative closure clause must result in the prior occurrence of an event covered by the business interruption guarantee*", as this assertion was not supported by any contractual reference.

If compensation for business interruption is traditionally provided in the event of damage covered by the insurance contract (fire, storm, water damage, etc.) and if the risk of a pandemic is generally expressly excluded, there is nothing to prevent the parties from providing for a specific extension of coverage.

This decision of the Paris Commercial Court perfectly illustrates the need to carry out an in-depth analysis of each insurance policy. It is important to identify what is covered or excluded from the insurance policy and, in this respect, generic advice cannot be given.

Therefore, if your insurer should not lend you an attentive ear in the event of difficulties with your insurance coverage, MOLITOR Avocats à la Cour will be able to advise you and set up an individual strategy adapted to your particular case.

Our team of specialists is at your service

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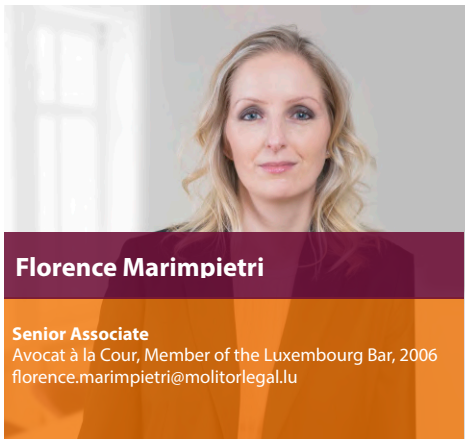

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