



A SET OF SIX KEY STEPS TO MANAGE YOUR INSURANCE CONTRACTS EFFECTIVELY DURING THE HEALTH CRISIS

MOLITOR

Avocats à la Cour





CHECK AND UPDATE YOUR INSURANCE CONTRACTS

"The exercise is not easy as the conditions of the guarantee and the causes of exclusion or lapse are numerous"

We have all, at one time or another, entered into an insurance contract whose specific contractual terms and conditions and in particular the exclusion clauses may not be clear to us, especially several years after subscription. There are many general insurance policies, whether applicable to our private life (car insurance, travel cancellation insurance, extended stay insurance, supplementary health insurance, provident contracts, home insurance, etc.) or to our professional life (directors' liability insurance, professional liability insurance, business interruption insurance, event cancellation insurance, etc.).

In the context of a health crisis, it is essential to review your contractual documentation and draw up a list of all contracts in force taken out with the various insurance companies, either directly or through an insurance intermediary such as an agent or broker. Once this review has been completed, make sure you have the general and special conditions relating to each of these contracts.

This contractual documentation is essential in order to assess your actual insurance coverage.

The next and most delicate step is to determine whether your insurance coverage corresponds to your needs and whether or not it covers you in the event of a claim relating to the current health crisis. In particular, it is important to identify what is actually covered by the insurance policy, but even more useful to understand what is excluded. The exercise is not easy, as the conditions of guarantee and the causes of exclusion or lapse are numerous.

In this respect, however, it should be noted that insurers have been invited by their regulator to provide their clients with clear and timely information on their contractual rights and, more specifically, the scope of their coverage, the exclusions that apply and the impact of Covid-19 on the insurance policies in question.



IMMEDIATELY INFORM YOUR INSURER OR INTERMEDIARY IF YOU ENCOUNTER DIFFICULTIES IN PERFORMING YOUR

"In the event of difficulties in fulfilling your contractual obligations, the first action to take in this context is to contact your insurer or intermediary in order to discuss your difficulties"

An analysis of your active insurance contracts will also allow you to identify your contractual obligations and which obligations may be impacted by the current crisis. We are thinking, for example, of difficulties in the payment of insurance premiums that you may encounter following a significant decrease, or even a complete cessation, of your activities.

While it may be tempting to refuse to fulfil your obligations by relying on force majeure, which is very often invoked

during a health crisis, this argument should be used with great caution: as a matter of principle, "the debtor under a contractual obligation to pay a sum of money who fails to pay cannot be exonerated from that obligation by invoking a case of force majeure" (Cass. fr. com., 16-9-2014, n°13-20.306 F-PB : RJDA 11/14 n° 886 ; Cass. Belgium, 28 June 2018).

In the event of difficulties in fulfilling your contractual obligations, the first action to take in this context is to contact your insurer or intermediary in order to discuss your difficulties. Your usual contact persons will be able to inform you of the various options available to you.





STAY TUNED TO THE MEASURES ADOPTED BY YOUR INSURER OR INTERMEDIARY

"Several insurers, boosted by the current situation, have, for example, announced the implementation of electronic signature solutions on their platform"

The insurance industry is maintaining essential services but is also being impacted by the current health crisis, which is forcing them to make massive use of home-working and, as a result, to take specific measures that may interfere with the way they interact with you or the way they manage the services they

provide to you. It is therefore important to check the communications which may have been sent to you in order to understand these measures. Several insurers, prompted by the current situation, have, for example, announced the implementation of electronic signature solutions on their platform in order to allow a completely remote subscription of insurance contracts as well as a simplified interaction with their partners and customers.



BEWARE OF THE RISE IN CYBERCRIME AND ANTICIPATE THE RISKS

"The need to be covered by a cyber-insurance policy in order to protect yourself against these risks may also arise; therefore, consider discussing the advisability of entering into such a contract with your insurer or intermediary in order to get the best advice"

Several recent reports issued by Europol, Interpol and the FATF have demonstrated that the current health crisis and the spread of the virus have been rapidly exploited for criminal purposes. This has led to a significant increase in cybercrime, in terms of both the frequency of attacks and the number of potential victims, facilitated by the mass implementation of home-working and various online services arising as a result of the lockdown measures. It is therefore important to make your workforce, and even your clients, aware of these issues so that they can be more vigilant. Also make sure that you have adequate IT protection

against cyber-attack threats. The need to be covered by a cyber-insurance policy in order to protect yourself against these risks may also arise; therefore, think about discussing the advisability of entering into such a contract with your insurer or intermediary in order to get the best advice. Beyond the traditional indemnity aspects, this type of insurance also provides several types of services for better crisis management, in particular in the event of a personal data breach requiring notification to the National Commission for Data Protection (CNPD) and which may lead to an investigation by the regulator.



DON'T MAKE INVESTMENT DECISIONS IN A PANIC

"As pointed out by the regulatory authorities, before taking any action, it is preferable to have a conversation with your insurer or intermediary if you are concerned about the drop in the value of your contract or if you have questions about the suitability of the product you have taken out"

If you have taken out insurance where performance is linked to underlying assets, such as a unit-linked life insurance policy, you will have seen that the markets are extremely volatile - and may continue to be so in the coming months - resulting in the global stock market being downgraded to half-mast, which could have a significant impact on your portfolio. As pointed out by the regulatory authorities, before taking any action, it is advisable to have a conversation with your insurer or intermediary if you are concerned about the drop in the value of your contract or if you have questions about the suitability of

the product you have taken out. Also remember that this is long-term insurance and that a decision to surrender all or part of your policy during the contractually-defined initial period can be extremely costly. It is important to check your general terms and conditions in order to have a clear view of the charges applicable to your insurance policy. For example, some insurers charge a fee for each transaction carried out under the contract: remember to check this point before considering a transaction such as an arbitrage between several investment funds.



MAKE SURE YOU SURROUND YOURSELF WITH THE RIGHT PEOPLE

"Your lawyer remains at your disposal to advise and assist you in all your questions, difficulties or actions"

If you have any questions about an insurance contract that you have taken out, your first contact is of course your insurer and/or your intermediary. Their professional obligations require them to act in your best interests and to provide you with clear and timely information.

Should the information provided to you by your insurer and/or intermediary be unsatisfactory, there are also a number of other points of contact that may be useful to you:

- Commissariat aux Assurances 7, boulevard Joseph II, L-1840 Luxembourg (www.caa.lu; tél: (+352) 22 69 11 - 1, fax: (+352) 22 69 10), email: caa@caa.lu)

- Insurance ombudsman: Association des Compagnies d'Assurances, c/o Médiateur en Assurance, B.P. 448, L-2014 Luxembourg (www.aca.lu/en/insurance-obudsman; email: mediateur@aca.lu)
- European Insurance and Occupational Pensions Authority (EIOPA), whose website can be consulted at the following address: www.eiopa.europa.eu.

Of course, your lawyer remains at your disposal to advise and assist you in all your questions, difficulties or actions.

Our team of specialists is at your service

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