



# **INSURANCE PROFESSIONALS, HOW ARE YOU COPING WITH THE HEALTH CRISIS ?**

MOLITOR Avocats à la Cour gives you a few key steps to reassure you during this turbulent period.

**MOLITOR**

Avocats à la Cour





SPUERKEESS





# REGULARLY CONSULT PUBLICATIONS ISSUED BY REGULATORY AUTHORITIES

Since the beginning of the health crisis, the European Insurance and Occupational Pensions Authority (EIOPA) has issued a number of recommendations aimed at ensuring better crisis management by professionals and protection of insurance consumers. To this end, the Commissariat aux Assurances (CAA) has created a dedicated page allowing you to immediately locate in one click a compilation of these recommendations as well as other information related to Covid-19:

<https://www.caa.lu/fr/covid-19>.

While you are no doubt familiar with the new reporting calendars, have you implemented the numerous recommendations made by the regulators? You can test your familiarity with the following quiz:

- Do you have a business continuity plan? (1 point)
  - Have you activated it? (1 point)
  - Have you proactively informed your clients of the emergency measures you have taken and the impact of these measures on your contractual relationship and the services you provide? (1 point)
  - Do these measures cover at least one of the following topics? (1 point)
    - Continuity of services
    - Validity of insurance contracts
    - Changes to the claims handling process or other customer services
    - Organisational arrangements for handling customer inquiries regarding Covid-19
  - Have you communicated clear and timely information to your clients on the extent of their coverage, the exceptions that apply, and the impact of Covid-19 on their insurance policy? (1 point)
  - Have you been careful in the way you communicate with your clients to ensure that you express yourself clearly by avoiding the use of terms that are vague, open to interpretation or confusing? (1 point)
  - Have you made sure you treat your customers fairly? (1 point)
  - In your communications, have you considered how consumers may react to market volatility? (1 point)
  - Have you continued to apply Product Oversight and Governance (POG) requirements, taking into account the impact of the outbreak and, where appropriate, conducted a review of your products? (1 point)
  - Have you taken into account consumers' interests and shown some flexibility where possible, particularly in terms of process and deadlines? (1 point)
- Total score:**            / 10 points
- Bonus question for insurers:**
- Have you temporarily suspended all discretionary dividend distributions and share buybacks to compensate your shareholders? Have you taken care to contact the CAA if you felt you were legally required to pay dividends or significant amounts of variable compensation?
- If you have scored less than 5/10, a review of the recommendations issued by the regulators in the context of the health crisis may be appropriate and we will of course be happy to assist you in this regard.



# MAKE SURE THAT THE CONTENT OF THE INSURANCE CONTRACTS YOU MARKET IS ADEQUATE

The current situation does not necessarily have only negative impacts as it can be used as an opportunity to innovate and offer new solutions and/or products to your partners and customers. We note that a good number of players in the sector have announced the implementation of electronic signature solutions on their platforms to allow for completely remote underwriting of insurance contracts and simplified interactions with partners and customers.

The conclusion of distance insurance contracts is perfectly permissible under Luxembourg law, as long as the additional provisions applicable to distance

insurance contracts provided for in Chapter V of the Law of 27 July 1997 on insurance contracts (Articles 62-1 to 62-11) are complied with.

These provisions will apply only to a consumer, i.e. a policyholder who is a natural person acting for purposes which do not fall within the scope of his trade, business or profession.

Policyholders concerned cannot waive the application of these rules and any clause to the contrary will be considered unfair, and deemed null and void and unwritten.

You should therefore ensure that the terms and conditions of the

product to be distributed in a distance selling transaction have been adapted to include the list of pre-contractual information specifically prescribed by law for such contracts. In addition, insurers will also have to ensure that the policyholder has prior, easy, direct and permanent access to a whole range of technical information.

You should also be aware that a specific cooling-off period of 14 days (30 days in the case of a life insurance contract) without penalty and without the need to provide a reason has been introduced in favour of the policyholder for such contracts.







## INCREASE AWARENESS OF CYBER SECURITY ISSUES AMONG YOUR STAFF, CUSTOMERS AND PARTNERS

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, both in terms of the frequency of attacks and the number of potential victims, facilitated by the massive increase in the number of people working from home and various online services generated by the lockdown measures.

Professionals in the sector are not immune to these threats either, as evidenced by the recent case of Chubb, an insurer specialising in cyber-insurance solutions, which was targeted by the Maze ransomware group claiming to have encrypted the company's systems and threatening to disclose stolen data if a ransom was not paid.

Continued vigilance by professionals is essential in preventing and combating these new variants of financial crime.

It is therefore important to raise awareness of these issues among your employees, and even your customers, so that they are doubly vigilant. Make sure that you have adequate IT protection against cyber threats and consider taking out a cyber insurance policy. Beyond the traditional indemnity aspects, this type of insurance also provides several types of services for better crisis management, particularly in the event of a personal data breach that requires notification to the National Commission for Data Protection (CNPD) and may lead to an investigation by the regulator.

Experts are predicting an increase in claims in cyber-insurance; therefore, insurers active in this line of business can certainly expect an increase in claims and future underwriting.



## COMMUNICATE ABOUT YOUR PRODUCTS WHILE COMPLYING WITH ADVERTISING REQUIREMENTS

When you draw up marketing brochures for your customers or prospects, especially those announcing the release of new products that you have just designed or adapted for distance selling, make sure that you first define the target audience so that you can ensure compliance with the relevant rules. For example, if you provide services under the freedom to provide services regime to another EU Member State, make sure you find out about the legislation applicable in that Member State, as it may

contain specific principles and requirements that are sometimes very strict with regard to advertising directed at their residents.

On the domestic market side, commercial communications relating to the sale of insurance products must be accurate as to the nature, costs, conditions of access and characteristics of the insurance product or service. Make sure you comply with the legislation on misleading and comparative advertising (Law of

23 December 2016) and the Consumer Code.

You should be aware of the specific rules on commercial communications applicable to distance insurance contracts, which must also be scrupulously respected.





## PAY SPECIAL ATTENTION TO YOUR PRODUCTS AND TARGET MARKET

At this particular time, it is important that industry professionals continue to apply product oversight and governance (POG) requirements, taking into account the impact of Covid-19, and review products as appropriate.

As recommended by the EIOPA, product reviews should aim to assess, where relevant to the specific product, the impact of the pandemic on the main characteristics of existing products in order to determine whether they remain consistent with the needs, characteristics and objectives of the identified target market and, if not, to take appropriate action.

While insurers are encouraged to develop new products that meet insurance needs, they should adequately define the target market and assess how

these products correspond to the needs, objectives and characteristics of that market.

This review of the various products may also provide an opportunity for insurers to ensure that the products they offer comply with national legislation, as well as with the legislation of the country in which the risk is situated, in particular in the case of the exercise of activities under the freedom to provide services.

As the legal framework is evolving rapidly, this exercise can only be recommended. In this respect, your lawyer at MOLITOR is at your disposal to assist you in carrying out this health check and can also deliver a compliance letter that could be useful in your relationships with your business partners.





Our team of specialists is at your service

**Get in touch**

**MOLITOR Avocats à la Cour SARL**  
8, rue Sainte-Zithe  
P.O. Box 690  
L-2016 Luxembourg

Phone: +352 297 2981  
Fax: +352 297 299  
contact@molitorlegal.lu  
www.molitorlegal.lu

Follow us on [LinkedIn](#)



**Michel Molitor**

**Managing Partner**

Avocat à la Cour, Member of the Luxembourg Bar, 1985  
michel.molitor@molitorlegal.lu



**François Cautaearts**

**Partner**

Avocat à la Cour, Member of the Luxembourg Bar, 1996  
francois.cautaearts@molitorlegal.lu



**Jacques Wolter**

**Partner**

Avocat à la Cour, Member of the Luxembourg Bar, 1990  
jacques.wolter@molitorlegal.lu



**Sophie Lamothe**

**Counsel**

Avocat à la Cour, Member of the Luxembourg Bar, 2008  
PhD in Private Law  
sophie.lamothe@molitorlegal.lu



**Florence Marimpietri**

**Senior Associate**

Avocat à la Cour, Member of the Luxembourg Bar, 2006  
florence.marimpietri@molitorlegal.lu



**Ariane Wourwoukas**

**Senior Associate**

Avocat, Member of the Luxembourg Bar, 2019  
ariane.wourwoukas@molitorlegal.lu