

Update on contingent business interruption insurance cover

The Financial Sector Conduct Authority (FSCA) provides a brief update on the steps that have been taken to date regarding the process of obtaining legal certainty on Contingent Business Interruption (CBI) Cover and related issues, such as time barring clauses and interim relief measures taken by some non-life insurers. These issues will be discussed separately below.

Legal Certainty

As indicated in previous communications, CBI cover is a complex issue that necessitates obtaining legal certainty through the courts and the FSCA has engaged with its representatives, and the non-life insurance industry, in an effort to establish the most efficient way of approaching the courts in order to obtain the required legal certainty. This process is ongoing.

Time Barring Clauses

Non-life insurers have clauses in their policies called time barring clauses, which require a policyholder to take certain legal steps or to institute legal proceedings against an insurer within a set time period. If the policyholder fails to abide by these time bars, his or her claim may be unenforceable.

In the Press Release of [24 July 2020](#), the FSCA advised that insurers had agreed to waive these time bar periods but through the consultations referred to above, we have been advised that this is not possible for all insurers due to reinsurance contracts. Since the process to gain legal certainty may be lengthy, the FSCA advises policyholders to check the time barring clauses in their CBI policies with their brokers and legal representatives and establish from their insurers the terms under which, if any, indulgence may be granted on the time barring clauses.

Interim Relief Measures

In the Press Release of [24 July 2020](#), the FSCA also indicated that it had, with the Prudential Authority (PA), reached an understanding with some non-life insurers that provide CBI cover and, that they would provide interim relief to their policyholders while legal certainty on this matter is being sought from the courts.

The FSCA is pleased to report that a good number of non-life insurers have announced that they will be making interim payments to assist struggling policyholders and further that they have communicated the exact details of their interim relief measures to their brokers and policyholders.

Policyholders have expressed appreciation to the FSCA of the efforts of the affected non-life insurers which have provided interim relief to date.

For more information about this press release, please contact Mr MakgOMPI Raphasha at MakgOMPI.Raphasha@fsc.co.za

ENDS

Enquiries: Financial Sector Conduct Authority
Email address: fscacommunications@fsc.co.za
Telephone: 0800 203 722

Transitional Management Committee:

AM Sithole (Commissioner) DP Tshidi CD da Silva JA Boyd MM du Toit LP Kekana K Gibson OB Makhubela P Mogase