

BUSINESS INTERRUPTION (BI) POLICY CLAIMS



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Key Points to consider for Business Interruption Claims

The current pandemic is having a significant impact on numerous businesses around the world. From mandatory lockdowns, travel restrictions, curfews and social distancing guidelines, nearly every country in the world has been affected. The lockdown has generated huge uncertainty for many businesses, whether in the location in which they operate or as a result of issues in the supply chain. Most governments have put measures in place to assist businesses with their attempts to survive from easier to obtain business loans, postponing payments of taxes and rates, and paying the salaries of staff who can be furloughed.

One of the key protections that a business may possess is Business Interruption (BI) coverage in their insurance policy. Whilst there are media stories that BI policy claims are being declined by insurers, mainly as a result of coronavirus not being covered as a disease by the policy that had been written before the virus had even come into existence, it is still an avenue that most businesses should consider.

It may be worth taking legal advice as to the particulars of the policy and whether any coverage denial would be fair and whether the insurers' view can be challenged. There may also be other areas of a policy that could be applicable to claim under, such as a denial of access clause.

If you can or are likely to be able to make a claim, there are some important issues to think about and documents to start to gather, as follows:

- Consider taking legal advice on the policy wording to assess the best route for a recovery under your insurance policy.
- Consider putting together a team to issue the claim and liaise with the insurance company and their loss adjusters. The team could include the relevant individuals from within the business (from legal, accounting, and operation teams) as well as potentially external experts to assist with valuing the claim.
- Put in place systems to identify the main documentation that will be needed to support a claim, as well as systems to collect and organise the data. It is much easier if you can flag key documents whilst you are going along rather than have to resort to a review exercise later. Being able to identify additional costs incurred and record them under separate codes within an accounting system can also make life easier in the long run.
- Consider and document the mitigation efforts the business has undertaken to minimise their losses.

The most important information you will require is that which will support lost sales and lost profits, extra expenses that have been incurred and any profits generated by actions taken by the business to mitigate their losses. It is important to gather budgets and forecasts for the affected period as well as evidence from previous years that shows that the business has a reasonable track record of budgeting and/or forecasting. Details of the financial performance of the business during the interruption will also be important, including sales and profits the business has been able to make, as well as the extra costs that have been incurred as a result of the interruption. It may even be worthwhile setting up new codes within an accounting system to track additional costs related to the interruption.

In my experience, it is also important to be transparent and responsive with the insurance company and their representatives. It is much better to quantify the claim on a realistic and wholly supportable basis, rather than trying to inflate a claim as the insurers will “only pay half!”. A claim that is well supported, with reasonable assumptions for unknowns has a much better chance of being paid in full than a claim that the loss adjusters can start to pick holes in as it’s easier for them to quickly unravel it.

How HKA can assist with your BI claim

At HKA, we approach any claims preparation work in the same way as we approach an expert witness assignment, giving the insured independent advice and putting together a claim that we would be happy to support in front of a judge in court.

Whilst our main service areas are assisting as experts on construction and engineering projects, we have a growing forensic accounting and commercial damages practice. Many of our experts have worked on putting together business interruption claims, as well as numerous damages assessments for disputes. With forensic accounting and commercial damages teams in Europe, the United States, Asia and Australia, we assist owners, construction companies, and a broad variety of businesses with claims for BI insurance or damage quantifications.

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About David Saunders

David Saunders, Partner, Forensic Accounting and Commercial Damages Expert at HKA.

David is a Chartered Accountant with over 30 years of experience in forensic accounting. He has been appointed to act as an expert on numerous occasions and has been appointed to prepare and consider business interruption claims. David has given oral testimony (including being involved in witness conferencing) in both litigation and arbitration and has appeared before the courts and tribunals across Europe, Asia, the Middle East and North America. He has been appointed under AAA, ICC, LCIA, SCC and UNICITRAL rules and as a damages expert in bilateral investment treaty cases.