BUSINESS INTERRUPTION INSURANCE – AN OPPORTUNITY TO AMEND THE INSURANCE ACT FOR THE 21ST CENTURY

Issue

COVID-19 led many businesses to scramble to find ways to address the interruption their businesses faced due to government-mandated shutdowns. They were unfortunately left with unsavoury answers, realizing that there was no assistance from the private sector, namely the insurance industry to which lofty premiums have been paid for many services. Due to the failure of the private sector, government needed to step in by borrowing at alarming rates to financially support businesses and individuals due to suspended economic activity. While many businesses have various insurance policies in place to cover losses, pandemics, diseases, and viruses are not among them.

Background

In the past, governments have legislated that insurance companies must cover certain perils. Peril is an insurance term for an event that could cause damage to property, items, or belongings insured. Examples of different perils in home insurance are fire, hail damage, flooding, earthquake, and theft. Certain perils that are legislated to be covered include fire, wildfire, and flood. These risks were not always required to be covered by insurance companies but have been legislated in order to protect society.

In 1996, the BC Government created legislation that ensured any insurer that covered fire damage had to provide coverage for a resultant fire caused by lightning or explosion[1] under the Insurance Act Chapter 226, Part 5 – Fire Insurance[i]. While many exclusions exist, the benefit is that businesses are covered for losses as a result of fire, lightning, and explosions from natural, coal, or manufactured gas. This legislation creates a system where the government does not need to take on unheard of amounts of debt in order to protect businesses and the private sector.

We were faced with a calamity that stalled the world – COVID-19. While we have faced plagues and pandemics in the past, the globalization of markets, ease of transit between nations, and many other factors led to an unprecedented global shut down. Without adequate market supports in place, such as insurance, governments were forced to take on massive debts in order to keep the economy afloat, and prevent anarchy. Additionally, government needed to support the healthcare system, coordinate personal protective equipment procurement and dispersal.

A private sector mechanism exists to prevent the overburdening on government to provide support for the business community during government-mandated shut-downs: business interruption insurance. Business interruption insurance responds to many perils such as[2,3]:

- Physical damage to property;
- Failure or breakdown of public utilities;
- Transportation related accidents;
- Physical damage to neighbouring premises;

[1] Except when explosion results from the application of heat
[2] http://www.ibc.ca/nt/business/risk-management/business-interruption
[3] https://park.ca/business-insurance/business-interruption/

- Loss caused to property of major suppliers or key customers;
- Actions of regulatory authorities; and,
- Ancillary causes such as strikes.

When regulatory authorities require a business to shut down, business interruption will respond to pay for ongoing expenses that includes mortgage payments, insurance payments, key personnel salaries, and even net profit that is lost because of a partial or total interruption to the business.

A business is able to purchase two types of coverage for business interruption insurance: Gross Earnings Form; and Profits Form. The Gross Earnings Form represents the American Approach to Business Interruption insurance. In this approach, the Indemnity Period[4] commences at the time of the loss and ceases immediately upon the reinstatement of the lost or damaged property. By ceasing payment at this time, the Gross Earnings Form assumes that the Insureds are returned to the competitive position they enjoyed immediately prior to the loss.

The Profits Form represents the British Approach to insuring business interruption losses. The Indemnity Period commences at the time of the loss and continues until income is restored to the level that would have resulted had the loss not occurred, subject to the Indemnity Period selected.

The Cost

It should be noted that when a new insurance product is introduced or peril covered, costs will go up as the risk an insurer bears increases. With pandemic business interruption coverage, there will be an increase to insurance premiums. However, this cost versus the cost on governments and future generations having to pay for a mass accumulation of debt should be considered. Additionally, we do not know when the next pandemic will happen. The accumulation of premiums into the pot for payment could be large enough to cover all businesses that suffer a loss due to the pandemic, as we saw. The calculation for how much a certain business will receive will also be based on the calculations made by insurers for other interruptions based on the Gross Earnings Form and the Profits Form.

We need to be prepared for insurance companies not having enough assets to support all of the businesses that elect to purchase business interruption insurance. To do so, governments should build their own type of fund to protect businesses that suffer a shutdown similar to the Disaster Financial Assistance Arrangement. Currently, one does not exist for pandemics.

While insurers can cover loss as a result of natural disasters, the Federal Government also has a fund set aside to provide support through the Disaster Financial Assistance Arrangement. The provinces and territories use the funds to repair public infrastructure and to provide financial assistance to affected residents, small businesses, and communities. Although financial assistance is only available for damages due to uninsurable events, like landslide, it is possible for the purpose of pandemic coverage for the Governments to provide funding when insurance is unable to fully cover the loss experienced by a business.

[4] The period of indemnity, or indemnity period, is the length of time the insurance company is obligated to make payments to cover the losses insured under the policy.

THE CHAMBER RECOMMENDS

That the Provincial Government work in coordination with the federal government and territorial governments:

1. Update the Insurance Act to legislate insurers to provide business interruption coverage as a result of a pandemic if the pandemic leads to government-mandated shutdowns, similar to how lightning and explosions from coal, natural, or manufactured gases are legislated to be covered under Fire Insurance; and,
2. Create a Disaster Financial Assistance Arrangement for pandemics similar to that provided by the Federal Government for pandemic disasters.

Submitted by the Surrey Board of Trade

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[i] https://www.bclaws.gov.bc.ca/civix/document/id/consol7/consol7/96226_05