



Practical tips to prepare your loss claim resulting from unforeseen crises

Business interruption
Pandemic
COVID-19
Claim
Insurance
Rioting
Vandalism
Lockdown
Floods
Destruction
Loss
Looting
Fire
Loadshedding

The COVID-19 pandemic and recent outbreak of riots and looting is causing further uncertainty in South Africa. Organisations are facing or have faced various challenges in terms of health and safety of employees, the complications of working from home, supply chain disruption and liquidity, to name a few.

As organisations navigate the latest setback, it is important for them to consider mechanisms to recover losses incurred. While the legal mechanism may not yet be clear, it is important to know what the steps to undertake now to support possible future loss claims; and at the same time to prepare for claims anticipated against your organisation.

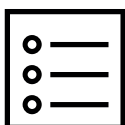


Start collecting evidence of losses sooner rather than later

Organisations are currently suffering losses in connection with the COVID-19 pandemic and the destruction of property, infrastructure and stock. It may be possible to pursue compensation for losses under various mechanisms, including against business partners or in terms of insurance policies. The mechanism to be pursued is something that would need to be assessed with legal advisors. Irrespective of the mechanism, the process to quantify the losses is similar — and this should be done sooner rather than later.

From the point of view of mechanisms aimed at compensating for losses, whether actual or lost profit, there is generally an obligation on the injured party to prove the losses incurred — specifically, the occurrence and the value of losses, as well as the causal link between the loss and the loss event or breach of duty. The injured party would also need to prove that it had taken reasonable steps to mitigate the losses incurred and disclose whether these losses have already been fully or partially compensated in other ways.

While cash flow management is currently crucial for organisations to keep running, they should also be preparing for the remediation process. It is important to act now and start collecting evidence in relation to potential losses as it may be difficult to go back and recreate and capture all of the information retrospectively. Furthermore, by delaying your response, you may miss documents and information that would have supported your position.



Five steps to quantify losses effectively

1.

Review any contracts/policies/regulations that may give rise to a claim for compensation for actual loss or lost profit, or an obligation to reimburse a counterparty.

In our experience, this is often an overlooked element in times of crises and early identification of possible obligations to pay a counterparty result in more efficient and cost effective dispute resolution. It is also important to examine the terms of the contracts that relate to the current situation(s) that could lead to a limitation or cancelation of the right to compensation.

2.

Identify the documents required to substantiate the loss and the deadlines by which the claim, including the documentation, is to be submitted. If the required information is not

entirely clear, communicate it with your insurance company, insurance broker, or contact a lawyer.

3.

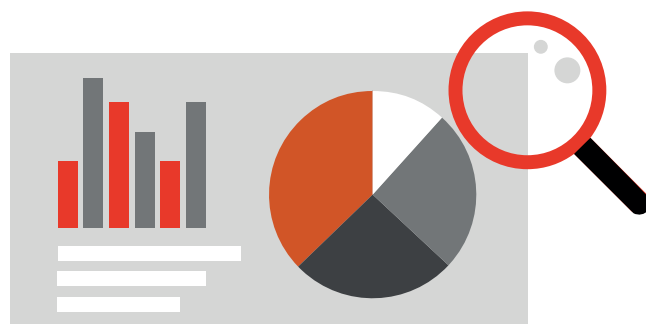
Set up internal processes so that the information you need to prove the loss liability is stored in one place. Then, you won't have to search for it when you need it. It is better to have more data and documents than less, but all of them should be relevant.

4.

If the compensation includes lost profit or consequential type losses, it is appropriate to obtain the services of an expert ahead of time and to discuss with them the documents they will need to calculate the loss. The necessary supporting documents may vary depending on the calculation method applied, which will be dependent upon the given situation. Consideration will also need to be given to the period over which the losses will be incurred and whether permanent losses need to be assessed.

5.

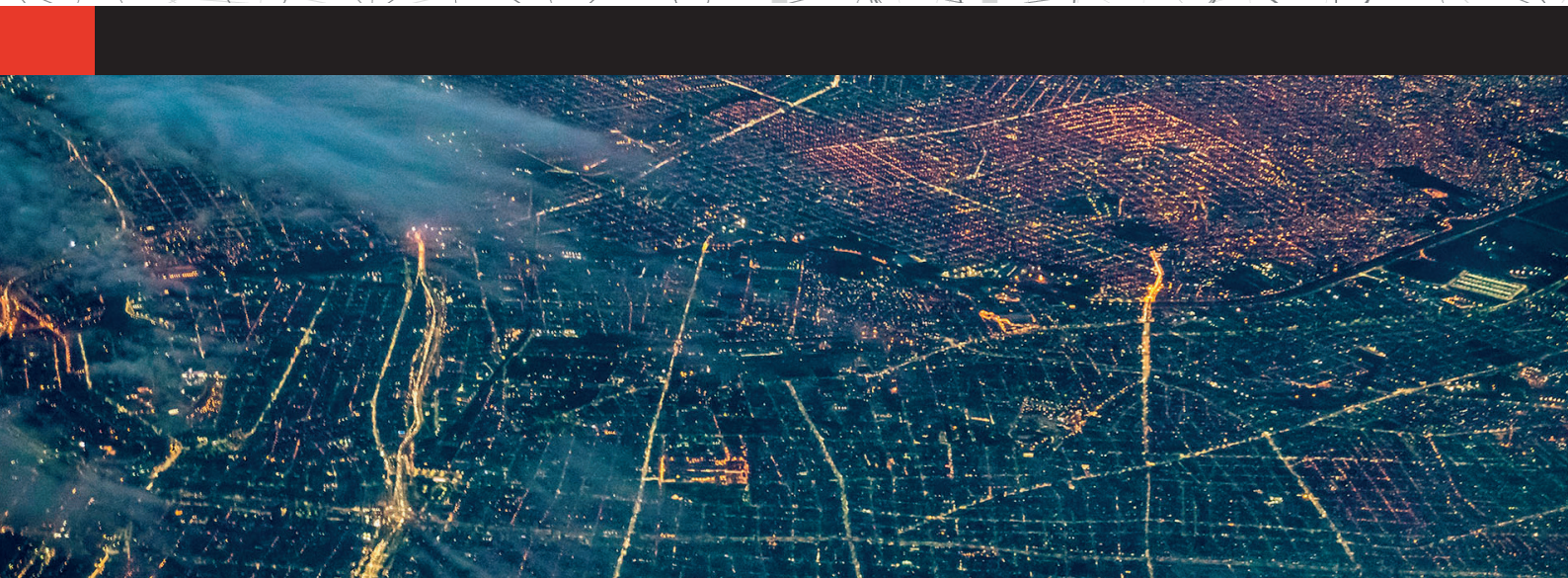
Make a request for compensation in a timely manner, within the time limit specified under the applicable contract, policy or regulation, and ensure it is as thorough as possible. This needs to be done in conjunction with your legal advisors.



Tips



In addition to evidence about the losses incurred, it is important to clearly document the decisions made by the organisation in reaction to the crisis that were implemented to mitigate any losses, including governmental countermeasures. Whereas it would be preferable for the claim to be robust, the submission of the application within the deadline is more important, as in many cases it will be possible to supplement the application during the process. In case you are a multi-country business, it is important to precisely monitor restrictions in all countries in which your organisation is operating, as restrictions impacting them may have different timescales.



Case study: What evidence to collect

A Company operates a luxury hotel and restaurant, which targets mainly affluent foreign clientele. In addition to hotel guests, the hotel restaurant is also open to the public, which accounts for about 50% of sales.

As a result of the extraordinary measures imposed due to the outbreak of COVID-19, the company has suffered significant financial losses:

- The hotel was closed for a period of five weeks and all reservations during this period were cancelled and refunds paid to clients.
- Clients cancelled bookings beyond the five-week period. In good faith, the hotel decided to refund the clients their full deposits, despite being allowed under the contract to charge a 'cancellation fee'.
- The restaurant had to close its premises to the public, resulting in a decrease in sales. The restaurant also had to discard or donate part of its inventory that it could not use.
- In order to mitigate the decrease in sales, the restaurant has begun to offer its customers takeaway food.
- The average spend of customers on takeaways is only around 30% of the pre-crisis level, mainly due to a lack of the hotel clients from abroad.
- The company has a contract with its key food supplier that sets a minimum value of goods that it is obligated to purchase each month. If it fails to do so, the supplier has the right to demand the payment of a penalty.

Due to the restriction of business activities, the company reduced its purchases of goods and services, as well as labour costs, by combining lay-offs and forced holidays with voluntary pay cuts for management and executives.

Examples of documents relevant to the case

Actual losses

- Costs of spoiled/expired goods/products that are no longer usable due to limitation/closure of business activities, including proof of disposal/donation;
- cancelled reservations of clients requesting to return deposits, including communication with them and the bank account statements confirming the refunds
- sanctions/penalties from trading partners relating to/ caused by the crisis;
- additional costs that would not have been incurred if the crisis had not occurred (increased cleaning requirements, disinfection needs, purchase of protective equipment); and
- documentation of penalties, sanctions, late payment interest, including consequences of non-compliance with bank covenants and other financing terms.

Lost profit

- The business and marketing plans of the company and pre- and post-crisis budgets and their changes in relation to the evolution of the situation reflecting expected sales and the number of hotel and restaurant guests during normal operations and during the crisis, including post-crisis prospects; and
- documentation of savings due to limitation/closure of business activities, documentation of the 'usual' costs and revenues vs an overview of actual expenditures and revenues.

Mitigation measures

Documentation of the steps taken to mitigate the effects of the crisis and their evolution as the crisis develops, such as: seeking to reduce wages and other fixed costs, finding alternative suppliers, changing distribution channels (takeaways), changing assortment, negotiating deferrals of contractual obligations and loan repayments, transfer of employees to other jobs; and

The impact of government measures in limiting the losses caused by the crisis.

Types of documents

The types of documents that are relevant to your unique situation will vary but consider:

- Financial and no-financial information
- Internal and external sources
- Actual and forecast information and how this develops over the period
- Information demonstrating both long and short term impacts
- Internal and external communication
- Hard copy and electronic information
- For electronic information both structured and unstructured data may be relevant. For example, financial and operational systems (generally structured) as well as email and customer relationship management systems (more often unstructured).

Tips



- For periodically-prepared documents such as cash flow reports, save versions for individual periods during the crisis, as well as shortly before and shortly after the crisis. Continue to capture the impact as and when restrictions are lifted and when businesses return to normal as there may be longer-lasting effects.
- Set up cost centres internally so that management can charge/allocate time to dealing with the crisis.
- Empower a person/team to drive the data collection and define data collection rules and procedures. This is of great importance, particularly in the remote working environment.



Contacts

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About PwC Forensic Services

We help clients prepare for, respond to, and emerge stronger from unplanned events.



Due to pervasive nature of economic crime and fraud; the intensity of globalisation and the pace at which business is evolving, organisations today face risks that threaten their very existence. They need a trusted advisor to navigate them through these challenges and help them formulate an effective response to threats to their business. With our advanced skills, vast experience and specialised technology, we are geared to provide you clarity and confidence in these trying times.



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