How can companies reduce operating risks through insurance in an era of post-pandemic

❖ Overview

Since the beginning of 2020, COVID-19 has broken out and spread around the world, the global economy has been faced with a recession. According to the "Follow-up investigation and analysis report on the impact of COVID-19 on the operation and development of enterprises (IV issue)" issued by the China Enterprise Reform And Development Society on November 4, 2020, companies' expectations for the full-year operating results in 2020 have slightly increased compared with the previous period, but the decline in demand is still the biggest challenge faced by businesses. A variety of factors have increased the impact on enterprises which deserve attention, such as the rising prices of production factors, upstream and downstream pressure on industrial chains, growing risk of default, and increased legal disputes,etc.

In the present era of post-pandemic, insurance is expected to become one of the main ways for shifting and diluting business risks. For this reason, the China Banking and Insurance Regulatory Commission has issued a series of new regulations on the insurance industry during the pandemic in order to ensure the regular operation of enterprises. So what legal issues are noteworthy for companies to buy insurance and settle insurance claims?

❖ Legal risks that enterprises should pay attention to when insuring important business-related insurance

I. Insured enterprises should pay attention to the scope of insurance liability - taking "Business Interruption Insurance" as an example

The scope of insurance liability is the scope of liability for compensation to economic losses or personal insurance payments undertaken by the insurer. The scope of insurance liability is the core content of an insurance policy, which directly determines whether the insured has the right to demand compensation from the insurer for the damage caused by the specific disaster or accident and whether the insurer should undertake the obligation of compensation.

For example, enterprises are facing the risk of closing its business premises again upon discovering that its employees or customers are diagnosed with COVID-19, and whether this risk falls within the scope of insurance liability is the main issue of claims of business interruption insurance.

For example, the policy of business interruption insurance of a foreign insurance company cannot be issued individually, it is based on the primary property insurance policy (such as basic property insurance, comprehensive property insurance, all-risks property insurance, machinery damage insurance, etc.).The policy covers material loss of property in the business premises due to the risks covered by the primary insurance policy during the insurance period (hereinafter referred to as "material insurance loss"), causing operation of business to be disrupted or interrupted, and the insurer shall be responsible for compensation of the loss of gross profit related thereto in accordance with this insurance policy. According to the insurance coverage, if the company's resumption of work is delayed, business premises are closed, or business is interrupted due to the epidemic, but the company's property itself has not suffered material losses due to the epidemic, the accident covered by the primary insurance has not occurred at this time, and the company's losses due to the suspension of business does not fall within the scope of insurance liability and insured cannot get compensation.

If the property insurance policy is associated with a business interruption insurance clause for public health emergencies, the insurance liability can be expanded——Where a public health emergency occurs in the business premises covered by the primary insurance policy during insurance period, which directly leads to the suspension of business by order of the competent government department, the insurer shall be responsible for compensating loss of cost during period of interruption in accordance with the policy after deducting deductible period for each accident. The definition of a public health emergency here refers to a major infectious disease epidemic, a group of unknown cause disease, major food and occupational poisoning, and other events that seriously affect public health occur suddenly and cause or may cause serious damage to the public health. Public health emergencies are recognized in accordance with the State Council's "Regulations on Public Health Emergencies". The COVID-19 is defined as a public health emergency.

It is worth noting that the coverage of additional clause for public health emergencies only covers public health emergencies occur in the business premises of the insured. The loss of forced suspension of business due to public health emergencies occur in other places rather than in the business premises of the insured is exclusion and cannot be compensated.

Considering the different nature of business of various industries, the corresponding insurance compensation conditions depend on various size of business interruption and the type of risks of enterprises. Taking the hotel industry as an example, many situations may result in the complete or partial closure of business premises, causing economic losses; however, due to concern of premium, enterprises will not insure against all risks that may cause business interruption, instead they choose to cover risks which are considered to be more risky. At this time, enterprises can choose additional clauses to ensure that the risks they may face in their operation of business are covered. Common additional clauses include government decree clauses, infectious disease clauses, passage blocking clauses, etc. Even if there is an extended clause added to business interruption insurance, the establishment of business interruption insurance liability still needs to be based on "material property losses".

II. Choosing an appropriate policy is essential for claim settlement -- Taking "Product Liability Insurance" as an example

In many countries, the principle of "Strict Liability" is adopted for product liability. Producers, wholesalers, and retailers will be all held accountable once a product accident occurres, regardless of whether any fault is found. Moreover, the final compensation amount determined by court is often extremely high, which may greatly affect the production and financial status of a manufacturer or seller. Therefore, buying product liability insurance is an important part of risk management. Product liability insurance refers to a type of liability insurance that takes the product liability of product manufacturers, sellers, and repairers as underwriting risks. According to the requirements of international practice, exported goods usually must be insured with product liability insurance to meet the requirements of importers. Some foreign-funded companies are also accustomed to insuring product liability insurance when conducting business activities in China, so this type of insurance has been paid growing attention.

There are two main methods of underwriting a product liability insurance: claim basis and occurrence basis.

The claim-based policy refers to that in an insurance claim case, regardless of the time when the accident causing personal injury or property damage of a third party or the insured's fault behaviour occurs. As long as the third party who was infringed filed a valid claim to the insured for the first time within the insurance period, the insurer shall make compensation in accordance with the insurance contract.

The key to determining whether the insurer has compensation liability in the claim-based policy is whether the time when the third party who has been infringed in the insurance incident makes a claim to the insured is within the valid insurance period. As for the time when an insured accident occurs, it can be within the insurance period or before the insurance period.

The advantage of the claim-based policy is that the factor of the retrospective period is added to the judgment standard of accident compensation liability, and the premium is lower, and if the enterprise continues to insure with the same insurance company, the retrospective period is usually longer, and it can even achieve the same insurance protection effect as occurrence-based policy.

The occurrence-based policy refers to take the time of occurrence of the insured incident as the underwriting basis. The insurer is responsible for compensation for losses that occur during the validity period of the insurance policy and should be borne by the insured. The insurer does not consider when the responsible accident is discovered or when the claim is filed. Compared with the claim based policy, the key to the occurrence-based policy in judging whether the insurance liability should be fulfilled lies in whether the time of the insured incident itself is within the valid insurance period.

A characteristic of occurrence-based policy is that the key to determining whether the insurer shall compensate is whether the time of occurrence of the insured event is within the valid insurance period. It is less important whether the time of filing a claim by a third party who is infringed in the accident is within the valid insurance period.

Of course, the characteristics of an occurrence-based policy may bring the insurer a greater risk of unpredictable claims if the insured incident occurrs a long time ago. Therefore, with a view to managing the risk of an excessively long time between the time when an insurance claim is filed and the time when an insured accident occurs and to further avoiding unnecessary disputes, an insurer usually stipulates a deadline for claims based on the length of the insurance period.

The advantage of an occurrence-based policy is that it covers any accident occurring within the scope of the insurance policy, regardless of when the accident is discovered and when a claim is filed. It is favorable for businesses exposed to relatively implicit and complex risks.

In summary, the above two underwriting methods feature their own advantages. An enterprise should choose a model according to the specific risks it faces so that its operation can be safeguarded by the insurance more effectively.

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