



Maritime, International Trade and Insurance Law Team

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Our Cox Yeats Maritime, International Trade and Insurance Law Team is committed to keeping you informed on pertinent legal issues, as well as developments within our firm.

SASRIA INSURANCE COVER (2)

The surge of civil unrest and public disorder in Gauteng and Kwazulu-Natal since Monday 12 July 2021, and the consequent destruction of property, has brought the issue of Sasria (South African Special Risks Insurance Association) insurance cover sharply into focus.

Emergence of Sasria

In 1979, and in response to increased incidents of damage to property arising out of politically motivated acts and political riots, Sasria was incorporated as a 'not for gain' association under s 21 of the 1973 Companies Act. The State was its sole shareholder. In 1989, the perils insured by Sasria were extended to include damage to property caused by non-political riots, strikes and labour disturbances. In 1999, Sasria was converted into a public company, known as Sasria Limited, with the South African Government remaining the sole shareholder.

Sasria Cover

Sasria cover is procured at the insured's election at the inception of the underlying policy - it is not automatic cover issued in terms of the underlying policy. The mechanism for procuring insurance through Sasria is the issue of a coupon by a duly authorised agent of Sasria, usually a private insurer or an underwriting manager. Once in effect, a Sasria policy will either exist as a stand-alone policy, with its own terms and conditions, or it may attach to the underlying policy in which case it will incorporate the terms, conditions and warranties of the underlying policy (with some exceptions).

With regard to present circumstances, the most relevant perils insured under Sasria are quoted below:

"Loss of or damage to the property insured directly related to or caused by:

- (i) any act, whether on behalf of any organisation, body or person or group of persons calculated or directed to overthrow or influence any State or Government or any provincial, local or tribal authority by force, or by means of fear, terrorism or violence;*
- (ii) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State or Government, or any provincial, local or tribal authority or for the purpose of inspiring fear in the public or any section thereof;*
- (iii) any riot, strike or public disorder, or any act or activity which is calculated or directed to bring about a riot, strike or public disorder;*
- (iv) any attempt to perform any act referred to in clause (i), (ii) or (iii) above;*

- (v) *the act of any lawfully established authority in controlling, preventing or suppressing or in any other way dealing with any occurrence referred to in clause (i), (ii), (iii) or (iv) above.*

In respect of the treatment of Sasria policies by our courts, surprisingly, only a few case authorities dealing with Sasria coverage issues exist.

In the case of *Sasria v Elwyn Investments (Pty) Ltd*, the Court had to determine what type of conduct would constitute strikes or riots or public disorder under a Sasria policy. The court resolved that there would need to be a large number of people acting unlawfully, violently, threatening violence or disturbance of the public peace by violence and tumult or strife. The phrase “public disorder” was deemed to include civil commotion, labour disturbances and lockouts.

In *Slabbert Burger Transport (Pty) Ltd v Sasria Limited*, the Court remarked that:

“‘riot’, ‘public disorder’ and ‘civil commotion’ clearly indicate large-scale public upheavals, and ‘labour disturbances’ and ‘lockouts’ which are ‘deemed’ to be included under the terms ‘public disorder’ probably also entail an element of public behaviour or misbehaviour.”

Regarding these concepts, Sasria itself has commented as follows:

“Civil commotion can be defined as an outbreak of lawlessness of a fairly considerable scale amongst the citizens of the state and is interpreted by the courts to mean something between a riot and total insurrection. By implication, public disorder is something of a greater nature than civil commotion. Public disorder, therefore, should be taken to mean an outbreak of lawlessness amongst the citizens of a state, and is something of a greater degree than of a riot and of a lesser degree than anarchy.”

Affected insureds must be cautious of the Standard S.A.I.A (South African Insurance Association) Exceptions, which are generally included in the underlying policies, and which exclude cover for loss of or damage to property related to or caused by those risks effectively covered under Sasria policies. The effect of these exclusions is that insureds may not be able to rely on their underlying policy covering fire, theft or damage to property or goods.

South African Civil Unrest

Our preliminary view is that what has occurred, generally speaking, amounts to civil commotion and public disorder – falling at least within (iii) of the Sasria perils.

It would therefore appear to be that claims for loss of or damage to property arising out of the civil unrest will probably not be covered by the underlying policy issued by private insurers if the Standard S.A.I.A. Exceptions apply but will probably be covered under the Sasria policy. Ultimately, however, each policy will turn on its own terms and conditions and advice in respect of specific claims should be sought on the basis of the merits of such claims and applicable policy terms and conditions.

What Next?

Suggested Steps to Follow

1. Check with your broker whether you have Sasria cover under your insurance policy and the extent of such cover.
2. Give notice to the insurer of the claim as soon as possible, this is critically important. Claims under a Sasria policy must generally be made within 30 days of the insured event. However, an insured must also check whether the terms and conditions of the underlying policy are applicable and whether any shorter notice period applies. Of course, notification of a claim does not automatically mean that Sasria will accept the claim, with each claim being determined on a case-by-case basis.
3. In addition to enabling a successful claim, early notification is also necessary so that steps can be taken to reserve estimates, appoint adjusters or surveyors to assess damage, engage in recovery or salvage of goods (where possible) and to quantify the claims.
4. Report the incident to the police within 48 hours and get a case number. If 48 hours has passed and you have not yet reported the incident, we suggest doing so as soon as possible.
5. Pending determination of the claim response, an insured must act as a “prudent uninsured”. This means an insured must take such steps as are reasonable to mitigate further losses or damage to goods or infrastructure as well as the preservation and protection of undamaged goods or infrastructure. If an insurer comments on expected mitigation steps, clear boundaries between what costs and expenses that may be covered in this exercise must be discussed to ensure both insured and insurer are not prejudiced.
6. Only to the extent that it is safe to do so, obtain video and photographic evidence of the damage/loss, preserve any available CCTV footage and relevant documents, record sketches, produce tally reports (pre- and post-

damage) and obtain statements from staff at the property or from those who were first to respond to the property. In essence, compile comprehensive evidence of any damage/loss to both property and stock.

7. Liaise closely with both the appointed surveyor and the broker in respect of all steps that you are taking in respect of the insured property and deal with any queries from the assessor or surveyor as promptly as possible (this should also assist in minimising delays in the claims handling process). Ensure that there is an email record of these exchanges.
8. The extent of damage caused in both KZN and Gauteng may mean considerable delays and capacity constraints in assessing and quantifying claims. It is worthwhile asking your insurer whether an interim insurance payment is possible, with a final payment to be made once the claim has been finally adjusted.
9. You will be concerned about keeping parts of your business operational, if at all possible. Prepare a business continuity plan. This should deal with the interim period (i.e. the period from the damage occurring to the payment or interim payment of the insurance claim) when your business will be under the most financial pressure.
10. Should you feel that it is necessary, seek legal advice or guidance regarding the claim submission process. Cox Yeats is available to offer such guidance or assistance as well as to provide advice on the rejection of any claims and any ensuing litigation against Sasria.

As a final word, we truly hope that you and your families are safe and well during this difficult and uncertain time for our country. We are positive that we will all pull through this and once again show the resilience of our nation.

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