## The real Twin Peaks

The real Twin Peaks of insurance law are illustrated by the current debate regarding cover for grid failure. The real Twin Peaks are found in the Financial Sector Regulation Act. The objects of the Act and the objectives of the Prudential Authority and the Financial Sector Conduct Authority include the safety and soundness of insurers and the fair treatment and protection of their customers which includes the risk that the insurer may fail to meet its obligations. Similar objectives are to be found in s 3 of the Insurance Act, 2017. The safety and soundness of insurers from a prudential point of view is protected by about 25 Prudential Standards that deal directly with financial soundness of insurers and there are many related obligations.

Reference to treating customers fairly is found in one description or another throughout all insurance legislation with the specific outcomes and values embodied in the Policyholder Protection Rules. Although these relate to personal lines business they are recognised by insurers as appropriate to all business.

The intersection of the two is illustrated by the underwriting approach that insurers must necessarily but fairly adopt in relation to grid failure. If there is grid failure in the true sense, that is a total blackout for the whole country, the number of possible claims and the amount of the losses would be astronomical and this risk is uninsurable. Systemic risks of this nature have been excluded for centuries in the case of war risks and since the cold war in the 1950's in the case of nuclear risks. The fact that cover is excluded does not mean the event will or is likely to happen. All the experts say that grid failure is very unlikely. But prudent underwriting requires that no matter how unlikely such a massive risk is, it cannot be accepted by any insurer.

The Authorities cannot under any circumstances object to a total grid failure exclusion. They will however look over the shoulders of insurers to see that what is excluded does not take away so much of the cover provided by an assets or business interruption policy for instance that little is left. A major utility failure as a result of fire, flood or earthquake or even loadshedding for instance can be dealt with by means of policy limits, higher premiums or deductibles and policy provisions that encourage good risk management by the policyholder. Risk management could take the form of giving cover or better premiums for those who have backup systems or preventive mechanisms for instance.

It all comes down to the age-old balance between risk spreading, risk management and risk avoidance and careful decisions have to be taken to see that neither peak collapses.

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