

GLOBAL INSURANCE LAW CONNECT

APPROACHES TO CORONAVIRUS



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This document does not present a complete or comprehensive statement of the law, nor does it constitute legal advice. It is intended only to highlight issues that may be of interest to customers of Global Insurance Law Connect. Specialist legal advice should always be sought in any particular case.

Welcome

Even as 2020 began, few of us imagined that the world was about to face one of the largest pandemics in history, changing the way we live and the economies our businesses operate in. While countries around the globe endure different stages of handling the pandemic, it is undeniable that the impact will be felt long term.

As events unfold, COVID-19 has also changed the priorities for insurers in the short term. We are seeing similar issues raised around the globe, but always reflecting differing local cultural, political and geographical challenges.

There are common issues with lines of business – travel, life and event cancellation are all seeing the limits of coverage being pushed in respect of losses associated with COVID-19. Disputes involving business interruption policies have triggered coverage challenges in numerous jurisdictions. While the conduct of governments falls under scrutiny, we are also seeing the conduct of company leadership coming under the microscope as businesses try to navigate their way back to financial strength.

This special report brings together the latest views on COVID-19 from the members of Global Insurance Law Connect. Our network of like-minded insurance specialists provides guidance grounded in well-recognised expertise in the markets where we operate.

Of course, the lives that are being lost to COVID-19 put into perspective the economic challenges wherever they may arise. Health services everywhere have seen unique demands being made. We have decided to focus on some of the common themes of coverage, legal and regulatory issues our members have seen, as well as looking at the potential claims emerging and the impact on the local insurance industry.

GILC is uniquely well placed to advise in these unprecedented times. Further detailed reviews on business lines will be published over coming months, together with a series of webinars focussing on views and updates from our regional teams.

We hope you find this report useful.

Jim Sherwood
Chairman, Global Insurance Law Connect

SPARKE HELMORE

AUSTRALIA

The way we do business in a COVID-19 world is changing almost daily, including how we deal with courts and tribunals and other related services.

Most courts and tribunals have moved online and to virtual meetings. While the continuation of matters using technology is welcome, what is challenging is the varied operating regimes each distinct court or tribunal is imposing, as well as the wide-ranging technology platforms being mandated to replace the in-person appearances.

How expert witnesses are dealt with in the current environment also depends on the court or tribunal in question and many of the courts are receiving expert testimony by phone or videoconference. The court is allowing the relevant expert to dial in from their "home" location, with the message being that the expert witness does not need to be physically in the room with counsel.

What industry regulatory changes are you seeing?

The Insurance industry in Australia has in recent times been under the microscope courtesy of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services industry (Royal Commission).

Coming out of the Royal Commission were 15 recommendations relating to the insurance sector, which sought to bring the sector in line with the more heavily regulated area of financial services.

Off the back of those recommendations, on 20 January 2020 the General Insurance Code of Practice (Code) came into effect, just ahead of COVID-19 hitting Australia in earnest. The Code requires insurers to adopt it within 12 months. This is important to note as one element of the Royal Commission recommendations included making the Code legally enforceable.

Under the Code, customers having difficulty meeting their financial obligations are suffering financial hardship. Persons who may also be identified as suffering financial hardship include third party beneficiaries or a third party that owes money to an insurer. Monies owing could be in relation to unpaid excess or a recovery from a third party.

Under the new Code, insurers are required to:

- have internal policies and training to help identify persons suffering financial hardship
- provide a form to apply for financial hardship support if the insurer is informed a customer is suffering financial hardship or the insurer identifies that the person is suffering financial hardship
- assess the request for support while considering all reasonable evidence including illness, disability, Centrelink status and unemployment
- place any recovery action on hold while considering the application or if the customer is identified as experiencing financial hardship, and
- train employees and agents involved in debt collection in the financial hardship requirements of the Code.

Customers have the right to ask their insurer to fast-track a claim if they have an urgent financial need. If a person is entitled to financial hardship support, then the insurer may:

- delay the date on which payment may be made or agree to accepting a reduced lump sum
- agree to an instalment arrangement and delay one or more instalments for an agreed period

- deduct excess from the claim amount paid, and
- release, discharge or waive a debt.

Many insurers have acted immediately to respond to the financial devastation caused by the COVID-19 pandemic. Measures adopted include placing moratoriums on instalment arrangements, immediately accepting a claim of financial hardship if informed that the person has lost their employment due to COVID-19 without needing supporting evidence, waiving debts (where appropriate), deferring premium payments for up to six months for small businesses experiencing financial hardship, and employing additional staff to cope with the surge of enquiries and requests.

Given the new Code aims to commit insurers to high standards of service, promote better relations between insurers and their customers and, most importantly, maintain and promote trust and confidence in the general insurance industry, the immediate and compassionate response of many insurers to the financial hardships being suffered in the Australian community shows insurers are already working to achieve those outcomes while helping to alleviate some of the widespread financial pain being experienced on an unprecedented level.

Any early considerations on where claims will fall?

While not seeking to be alarmist, we consider it is likely that all classes of business will be affected. We think the majority of the claims will be long tail claims, which will be seen both during the pandemic phase but also when the recovery begins.

The obvious impacts will be seen in the travel, life, health, event cancellation and business interruption classes. It might also be the case that liability, defence costs, financial lines and directors & officers classes are impacted, depending on the success of the Australian Government's intervention measures aimed at reigniting the economy and relieving directors & officers of liability for certain decisions in these extraordinary times. Success will also turn on how long those measures are in place while the economy seeks to recover from the effects of the pandemic.

The types of claims that may be presented could be in respect of any number of issues including holiday postponement or cancellation, loss of trade, event cancellation, defence costs for litigation arising from distressed decisions, insolvency as well as post-hoc scrutiny of decisions made by directors & officers particularly given the devastating fiscal impacts of the pandemic.

We have been advising clients on the operation of contingent business interruption extensions in property policies, most of which provide cover where diseases cause loss without the need for actual physical damage under the "section 1" property cover. If we think outside of the box, insureds may also try to get cover wherever available and based on a number of the environmental liability protection wordings we have seen, a daring insured might even seek to make a claim under these policies!

It is almost certain that we will see insurance businesses fail and quite possibly in significant numbers.

LYDIAN

BELGIUM

The Belgian courts and tribunals have not been exempt from emergency measures because of the Covid-19 virus. In the past weeks, they have been looking for a balance between continuity and the proper functioning of justice on the one hand, and protection of health on the other hand. Legislative actions were taken to achieve this balance (for example Royal Decree no. 2, published on 9 April 2020, "RD No. 2").



Initiation of proceedings – extended limitation periods

Since the beginning of the Belgian lockdown (15 March 2020), it has already been impossible to initiate ordinary cases in most courts. Only urgent cases (e.g. interlocutory proceedings) could be initiated.

Limitation periods and other time limits for bringing an action (before a civil court) that expire in the period from 9 April 2020 to 3 May 2020 (the end date can still be adjusted) ("Covid-19 Period") are automatically extended to one month after the end of that period as a consequence of the RD No.2. There is therefore no need to issue a writ of summons during the Covid-19 Period for this reason. In concrete terms: if a limitation period would normally have expired on 20 April 2020, it will now expire on 3 June 2020 (or a later end date).

The course of proceedings

Once a procedure has been initiated, it normally follows a process of exchanging written submissions (briefs) according to a set timetable. A late submission is penalised by exclusion from the debates.

Such timetables for briefs and, in general, all procedural deadlines under penalty of disqualification or any other sanction, that expire during the Covid-19 Period, are also extended to one month after the expiration of that period. Any subsequent periods will be automatically adjusted in accordance with the duration of the first extension. If this results in the expiry of the last term being less than one month before the hearing, that hearing will be adjourned to the next available hearing one month after the expiry of the last term. This may therefore result in an undesirable delay of the proceedings.

In order to escape the postponement of the time limits, a party may, by a reasoned request to the court, claim that the continuation of the proceedings is urgent and that a delay is dangerous. In that case, the other party will be given the opportunity to respond. It is the court that will ultimately decide. No appeal is possible against its decision.

Parties' lawyers can also agree to keep the initial time limits, or agree on new binding time limits. This is encouraged by the courts and tribunals.

Elimination of pleadings

Normally, each case is concluded with an oral hearing, during which the lawyer will plead the case and the court may ask questions. This approach has now been temporarily modified.

Cases that have been determined for hearing up to and including 3 June 2020 (the final date can be adjusted) in which all parties have filed their briefs and (possibly) exhibits, will automatically be dealt with in writing. If all parties argue that they wish to plead anyway, the case will be postponed to a later date. If not all parties object to a written approach, the judge will decide entirely at her or his discretion whether or not an oral hearing (possibly by videoconference) will take place. No appeal is possible against this decision.

In any case, a judge has the possibility to ask for certain oral explanations when treating a case in writing, possibly by videoconference.

BELGIUM

Filing an appeal

Deadlines for legal remedies (mainly opposition or appeal) that expire during the Covid-19 Period are automatically extended to one month after the expiration of that period.

Enforcement of an enforceable judgment In principle, it remains possible to enforce an enforceable judgment. However, the Belgian Chamber of Bailiffs has asked its members to only serve deeds and to only proceed to enforcement in cases of urgency. In practice, depending on the situation, it may therefore be difficult to have a judgment served on a counterparty or to obtain its enforcement.

What industry regulatory changes are you seeing?

Since the beginning of the Covid-19-virus outbreak, Belgian, EU and international insurance regulators have taken various measures to respond to the crisis.

In Belgium, the National Bank of Belgium ("NBB") took different initiatives with regard to the Coronavirus, such as the establishment of the Economic Risk Management Group ("ERMG"). With regard to the insurance sector, the NBB will focus its supervision and regulation on critical and essential tasks related to the impact of the Coronavirus. In particular, it has decided to:

- suspend the NBB Insurance Stress Test 2020;
- limit audits and prioritise audits with regard to risks related to the Coronavirus and compliance with laws and regulations;
- postpone the publication of circulars with regard to governance and cloud outsourcing;
- delay the application of Circular NBB_2020_3 on the impact of deferred tax under the Solvency II Directive (but the NBB accepts voluntary compliance);
- collect qualitative and quantitative data regarding the impact of the Coronavirus on a weekly basis;
- collect data regarding possible intentions to distribute profits to shareholders and policyholders.

Furthermore, the NBB has implemented the EIOPA's Covid-19-virus Recommendations with regard to the extension of delays in reporting and public disclosure (discussed above) and communicated the new deadlines in its Communication of 31 March 2020.

The Financial Services and Markets Authority ("FSMA") has published a newsletter regarding the Coronavirus addressed to insurance intermediaries. The FSMA announces not to take any initiatives that could hinder the business continuity of insurance intermediaries, such as comprehensive requests for information.

Fair treatment of consumers

In Belgium, the insurance industry has taken an own initiative to support policyholders affected by the Coronavirus.

Assuralia, the umbrella organisation for insurers and reinsurance operating on the Belgian market, has announced extraordinary measures to protect vulnerable consumers and companies. The NBB, the FSMA and the Belgian Government support this initiative.

In particular, the industry allows a deferral of repayment of mortgage credit loans and loans to businesses until 20 September 2020 and a deferral of premium until 30 September 2020 for group insurances, fire insurances connected to mortgage credit and other b2b insurances.

Solvency and capital position

The NBB has implemented the recommendations of EIOPA by its Circular of 7 April 2020. It has urged (re)insurers to suspend all dividend distributions and share buy backs until (at least) 1 October 2020 and to act in a prudent and conservative manner with regard to variable remuneration and profit participation.

Any early considerations on where claims will fall?

Many life insurers are willing to paying indemnities in claims related to Covid-19-virus. However, these payments are excluded – based on most of the policies – as pandemics are mostly listed as an excluded risk.

Under business interruption policies, a case by case assessment must be made, but there are in many cases good arguments to have the loss due to the Covid-19-virus measures covered.

IN BELGIUM, THE INSURANCE INDUSTRY HAS TAKEN AN OWN INITIATIVE TO SUPPORT POLICYHOLDERS AFFECTED BY THE CORONAVIRUS.

MANY LIFE INSURERS ARE WILLING TO PAYING INDEMNITIES IN CLAIMS RELATED TO COVID-19-VIRUS. HOWEVER, THESE PAYMENTS ARE EXCLUDED – BASED ON MOST OF THE POLICIES – AS PANDEMICS ARE MOSTLY LISTED AS AN EXCLUDED RISK.

UNDER BUSINESS INTERRUPTION POLICIES, A CASE BY CASE ASSESSMENT MUST BE MADE. BUT THERE ARE IN MANY CASES GOOD ARGUMENTS TO HAVE THE LOSS DUE TO THE COVID-19-VIRUS MEASURES COVERED.

SANTOS BEVILAQUA ADVOGADOS

BRAZIL

Judicial deadlines are suspended, face-to-face hearings are not taking place, and now it seems we will start to see an increase in virtual hearings, which whilst permitted previously, were not usual.

On the other hand, the remote work of justice officials and judges is showing results, with several decisions being handed down. This is perhaps because most of the lawsuits in Brazil, even before the pandemic, were already electronic.

The Federal Supreme Court (Supremo Tribunal Federal - our Constitutional Court), has held virtual sessions, building on the existing practice of virtual judgments in certain situations. This has set a precedent which other Courts are following.

What industry regulatory changes are you seeing?

Currently, social relationship restrictions have made it difficult to discuss and the progression of regulatory changes, but initiatives started before the pandemic have been moving forward. It is worth noting that, at the time the pandemic began, several initiatives were already underway.

Examples of this are the edition of rules on the electronic registration of insurance policies, the authorization for pension funds and health operators to contract reinsurance directly, without the triangulation of an insurance company, amongst other changes.

A law was also under discussion to eliminate or reduce the reserves in the insurance intermediation market in favour of insurance brokers. The measure, which had already been proposed to the National Congress by President Jair Bolsonaro, lost its effect on April 20, because, among other factors, difficulties due to communication restrictions, adjust the timing of the necessary political discussions to the deadlines of the Brazilian federal legislative process.

Any early considerations on where claims will fall?

Most of the life insurers are committed to paying indemnities in claims related to COVID-19, even though many policies treat pandemics as an excluded risk. This seems to be a mistake, as it could become a technically incorrect precedent for other lines of insurance.

Regarding property and casualty insurance, there is exceptional business interruption coverage of external events. However, in Brazil business interruption is generally associated with the loss of covered assets, which mitigates the risk that losses will be covered.

With regard to civil liability, warranty and other coverages, specific cases must be evaluated, and there is certainly much discussion to come.

COVID-19 – The Payment of Non-Covered Events

COVID-19 is one of the most challenging events in the history of humankind and its welfare and protection systems.

The lack of paradigms and precedents, in turn, generate responses, with a maturity and technical accuracy level that varies greatly.

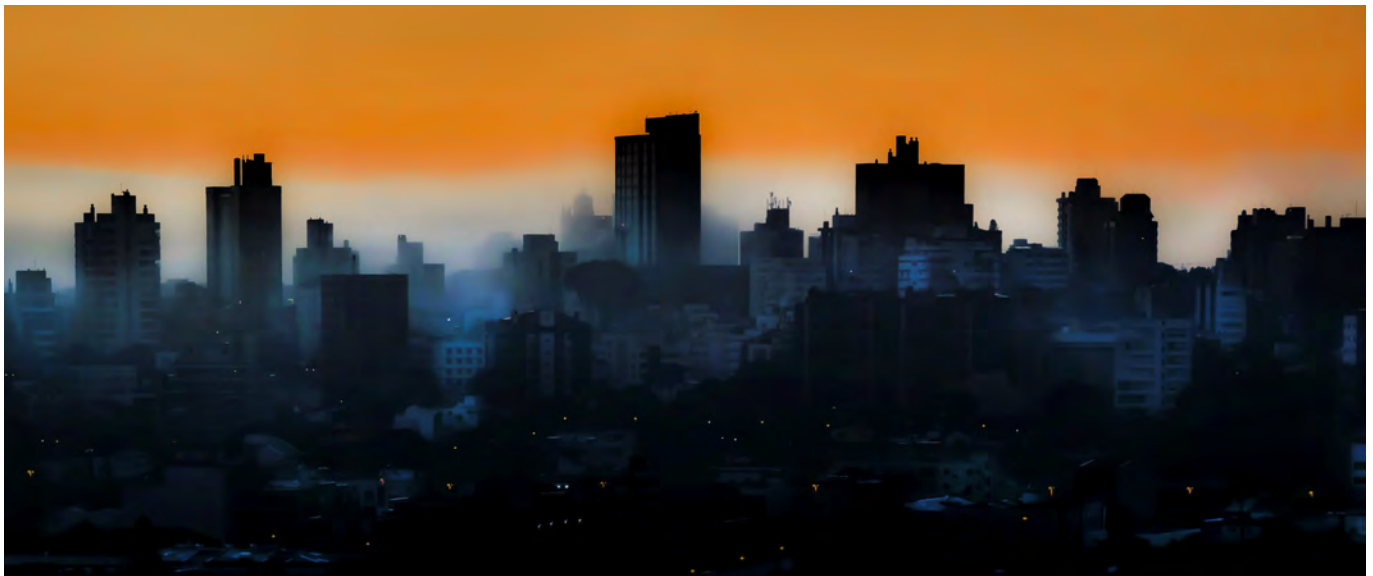
Even concerning the treatment of the sick, there are conflicting views supposedly based on the science about what should be done.

Specifically concerning the Brazilian insurance sector, at the beginning of the crisis, the National Brokers Union (FENACOR) proposed that the insurers cover losses related to the COVID-19, even when they were expressly excluded risks. Given the very nature of the losses in question and the humanitarian nature of the proposal, this was directed more to personal insurance.

In accordance with this proposal, the coverage would be a humanitarian act, an act of solidarity and empathy on the part of the insurance market towards those hit by the pandemic.

In this context, some issues arise

An act of solidarity or empathy must not be funded with technical reserves set aside to cover payments of losses. Otherwise, in theory, the funds set aside for payment of covered losses may, in awful scenarios, which are not expected at this moment, be necessary when effectively covered losses occur.



SANTOS BEVILAQUA ADVOGADOS

BRAZIL

Irrespective of being necessary or not, and regardless of the resilience of the Brazilian insurance market, acts of solidarity should be directly funded by the insurers' shareholders or by the insurers net equity, which contains, in general terms, the funds to be allocated to the shareholders and therefore, whose allocation may be more freely decided by them.

Treating these events as losses covered by insurance contracts suggests that the exclusion was not valid or that the insurers may decide to disregard exclusions that were legitimately agreed under the contract. Both premises are wrong and, in all likelihood, will generate distortions.

We know that such decisions are not easy and that at this moment, we cannot afford the luxury of carefully assessing them.

We also know that, in Japan, the insurers and reinsurers' creation of humanitarian funds to compensate for losses not covered by insurance played a fundamental role in response to disastrous natural events that hit that country.

In Latin America, the experience of humanitarian funds has been the worst possible. This happens, maybe, because of our lack of respect for contracts and other cultural elements that are major obstacles to our development, like the fallacious victimism, which also permeates court decisions, for example, related to consumer relations, insurance, and health care plans.

In this case, we would do better to follow the example of Japan.

There are many distortions arising from the mistaken treatment of the issue.

We have already seen articles by reputed Brazilian attorneys that "make it clear" and "reveal" that such payments of non-covered losses are nothing but the recognition of the lack of validity of the exclusion of pandemics.

We have already seen Global leaders that have publicly stated that the exclusion of pandemics, relating to the coverage of business interruption, is not fair because, for many years, the companies kept insurance without losses. It is not necessary to demonstrate that statements like this are not helpful in a serious discussion about correct responses to the pandemic is intended.

Note that the issue of coverage of loss of profit is, in general terms, customarily associated with loss of covered assets, which, in theory, would greatly reduce the chance of coverage of losses caused by the pandemic.

We are not saying that no losses have derived from the pandemic that are covered by insurance. We learned, for example, of insurance policies contracted and renewed since 2003 to compensate for losses caused by the cancellation of the Wimbledon tournament because of the pandemic, and these losses will be paid.

In the future, other stress situations may be subject to the mistaken treatments pointed out, and not always the impacts may be comfortably supported by the insurers.

Situations such as group life policies, where the insurance was taken out before the pandemic, but the insured adhere to them after the outbreak, especially considering the Brazilian practice of "open"

policies sold to non-determined groups, are possible catalyzers of undesirable coverage, even if the exclusion of pandemics (currently disregarded) or even specifically the exclusion of COVID-19 has been expressly established.

Class actions have already been filed to prevent the non-payment of contributions, resulting in loss of coverage of medical assistance plans. At this point, it is interesting to note how the absolute necessity of a health care plan is used, in a way distorted by the disinformation or bad faith, as grounds to destruct its immediate viability when funds are more needed.

In sum, the demonstration of deep human solidarity and the behavior of companies with economic conditions to help the victims of COVID-19 are perhaps the most beautiful aspects of this tragic situation we are experiencing. They are the basis for the prediction that, after the storm, we will find that we can be much better.

Indeed, it seems that empathy, as said many times, is the most distinctive trait of the human being, which allowed us to invent cities, industries, technology, and love. And no action for the exercise of empathy and solidarity may be frontally attacked at this moment, even an action that does not achieve the best results or that is taken erroneously.

However, with this proviso, solidarity cannot be confounded with a contractual obligation. On the contrary.

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SITUATIONS SUCH AS GROUP LIFE POLICIES, WHERE THE INSURANCE WAS TAKEN OUT BEFORE THE PANDEMIC, BUT THE INSURED ADHERE TO THEM AFTER THE OUTBREAK, ESPECIALLY CONSIDERING THE BRAZILIAN PRACTICE OF "OPEN" POLICIES SOLD TO NON-DETERMINED GROUPS, ARE POSSIBLE CATALYZERS OF UNDESIRABLE COVERAGE. EVEN IF THE EXCLUSION OF PANDEMIC (CURRENTLY DISREGARDED) OR EVEN SPECIFICALLY THE EXCLUSION OF COVID-19 HAS BEEN EXPRESSLY ESTABLISHED.

CHINA



CLAIMS IN BUSINESS INSURANCE FOCUS ON BUSINESS INTERRUPTION AND CLAIMS IN TRAVEL INSURANCE CLAIMS ARE MAINLY TRIGGERED BY CANCELLATION OF FLIGHTS AND TRIPS.

Where is it most likely that the claims will occur – what classes of business? BI / event cancellation / marine / cargo etc. Maybe concentrate on three and add some commentary around why these ones.

Claims will occur mostly in life insurance, business insurance, travel insurance and various type of liability insurance.

Claims in business insurance focus on business interruption and claims in travel insurance claims are mainly triggered by cancellation of flights and trips.

Business interruption is often purchased as “additional coverage” of underlying property insurance. Insurers don’t often offer BI risk policy independent from the main property insurance. Therefore, only when the subject property of the property insurance is damaged, can BI come into play. Because coronavirus, in most cases, does not fall into the scope and category of risks covered under standard property insurance, claims based on standard property insurance may not be accepted.

Areas of liability insurance which may see a spike in claims could be:

- Works’ compensation: this covers the liabilities that employers bear towards employees who are infected of the coronavirus in the course of their employment;
- Credit insurance: the risk that it insured against is the liability that a contractual party may have towards the other party due to the breach of the contract caused by the outbreak of coronavirus. The credit insurance is triggered when the breach of the contract occurs by failing to perform certain contractual obligations. Whether the breach can be constituted depends on various factors, including whether the Force Majeure clause kicks in and become applicable, which may, if conditions are met, constitute a legitimate defence for the breaching party.
- General liability insurance: the insureds are often owners of estates, such as hotels, shopping malls who have the duty to protect their customers on their premises from “accidents” and may become liable towards those who are injured by “accidents” taken place in these premises. Arguably, the definition and scope of “accident” may be extended to cover infections of virus.

CHINA


Where might there be uninsured losses? So, economic loss that might create future opportunity for insurers to innovate with new covers

Potential economic growth of insurance companies perhaps more likely to lie in innovative ways of using internet and technology in selling and promoting insurance products, as well as the increase of the risk awareness of people.

Furthermore, the positive publicity the insurance companies in China have projected and greater social responsibility that they have undertaken during the outbreak, by for instance, extending coverage, loosen claims handling restrictions and procedures for the benefits of insureds/beneficiaries etc.

Affect on insurers themselves – staffing / audits / aggregation

Drop in premium incomes and increase of claims. Please refer to Q4.

Auditing: the affect on travelling ban could mean that auditors couldn't perform their auditing smoothly, in particular the independent counting of inventory, as they couldn't travel to affected areas. Auditors would not submit a report if they cannot perform independent counting of inventory properly, which represents a crucial component of companies' balance sheets, and therefore would cause delay in submission of reports before deadlines. Large insurance companies having far-reaching international footprints are no exemption of this impact.

Impacts on staffing may result from the imposed shutdown of a city where employees are unable to travel in and out of the city and in most cases, the imposed quarantine on employees who might be considered as having the propensity of being infected due to some diagnosed cases recently confirmed. In China, problem of staffing exists in a wider range of scenarios, including imposed quarantine for a period of 2 weeks on people who are from other cities which have more virus carriers or diagnosed cases.

Overall affect on the insurance industry in their country – likely to be severe / moderate / not too bad?

The overall affect on insurance industry in China is, in general, moderate but as the development of the situation, it still remains to be seen.

- **Drops in sales/premium incomes**

In China, the sales of accident insurance and transportation insurance are greatly affected due to reduced frequency of travelling, but the influence is relatively controllable. Accident insurance (4%) and freight insurance (0.9%) only account for a small proportion of the entire property insurance industry in China. There has been also a small drop in the premium income of life insurance, resulting from a restricted amount of human-to-human contact of which insurance agents usually require in the course of promoting and selling life insurance products. However, the impact is considered to be short-term and is partly compensated by the irresistible tide of online business where it has gradually become a "new normal" for pretty much all walks of life in China.

- **Increases in payouts of claims**

Claims payouts under life insurance have inevitably increased, although it is unlikely that it will cause unbearable pressure on insurers due to: a. relatively low mortality rate of the virus; b) Chinese government has announced a nationwide financial subsidy to most of infected patients for their medical costs during treatment. The claims under property insurance mainly focuses on business interruption, travel insurance and workers' compensation, in particular for travel insurance given the recent spike in claims of cancelling trips.

- **Temporary emergency measures taken by Chinese insurers**

Several insurers have taken actions. The Wholly-owned entity of Allianz, Allianz (China) Insurance Holding Co., released US\$570,000 emergency response fund to support front line workers.

Most insurers have also launched some temporary emergency measures for the convenience of customers, including implementing fast track claims process, removing restrictions on designated hospitals and drugs, waiving deductibles, and eliminating waiting periods. In addition, 56 Chinese insurers have extended the liability coverage of total 520 insurance products, ranging from accidents, critical illness, and medical treatment insurance.

THE IMPACT IS CONSIDERED TO BE SHORT-TERM AND IS PARTLY COMPENSATED BY THE IRRESISTIBLE TIDE OF ONLINE BUSINESS WHERE IT HAS GRADUALLY BECOME A "NEW NORMAL" FOR PRETTY MUCH ALL WALKS OF LIFE IN CHINA.

ENGLAND & WALES

In respect of civil courts in England & Wales, a range of regional practices began to emerge in the second half of March 2020. However, greater coordination and centralisation was introduced by the Courts Service and senior judiciary during April. Specific procedural changes include a stay on housing repossession proceedings, guidance on video or audio hearings and a doubling of the general permission to extend time limits by consent from 28 to 56 days.

In addition, video hearings are being conducted across a range of operating platforms and even in the UK Supreme Court.

In personal injuries litigation a temporary voluntary freeze on arguing claims are barred because of limitation/prescription expiring was agreed between insurers and claimant lawyers and rolls over on a three-week basis. There have been other agreements on carrying out remote medical examinations and treatments.

The judiciary conducted a short survey during May to sample lawyers' and parties' experiences of remote hearings. No results have been published at the time of writing but clear indications are: that the importance of pre-testing the durability of the technology is critical, that remote hearings are much more tiring for everyone involved than those in person, and that they may be better suited to discrete procedural points rather than to contested trials involving numerous lay and/or expert witnesses.

There has been a significant drop in numbers of hearings and cases listed across the country overall which has led to concerns about the longer term effects on the junior ranks of barristers (advocates).

What industry regulatory changes are you seeing?

The UK insurance regulator, the FCA, published its latest business plan in early April 2020. Its content reflects changed priorities due to the crisis and its focus is on protecting customers and promoting stable and efficient financial markets during the coronavirus pandemic. The business plan also notes the challenges facing the UK financial services regime given the ending of the UK/EU transition period on 31 December.

With most standard commercial insurance policies not offering cover for pandemic risks, the issue of business interruption (BI) coverage became controversial and polarised at an early stage. An important development here has been the FCA actively managing a test case on BI insurance in order to secure a declaratory judgment on sample policy wordings from the High Court. There is specific provision in the Civil Procedure Rules for Financial Markets Test Cases. The FCA's BI test case is governed by that and its outcome will be binding on insurers. A two week trial in the High Court has been scheduled for the second half of July. A relatively prompt first instance decision is expected, although the prospect of an appeal cannot be dismissed.

Regulations introducing widely-anticipated reductions in damages and legal costs in whiplash injury claims have now been delayed to April 2021 at the very earliest.

Aside from the insurance sector, an extremely wide range of regulatory changes and relaxations has been introduced across the UK economy under broad powers in the Coronavirus Act 2020.

Any early considerations on where claims will fall?

Accurate predictions of claims 'pinch points' is impossible. What does look likely, however, is that the economic damage wrought

by the national lockdown will lead to claims being pursued more vigorously and, very possibly, to greater levels of attempted fraud.

The downturn may also make questions of valuing restitutionary pecuniary damages more complicated because the counterfactual futures – ie what the business or claimant would have earned but for the incident – have become far less clear.

The controversy over business interruption insurance will continue to evolve with the potential for reputational harm to the sector and with some prospect of further litigation against brokers/advisers should the court decide that most policies do not respond to pandemic risks.

The UK's medical and care sector could be exposed to claims from patients and from employees alike, with particular interest in the nature and extent of tortious duties of care applying during the crisis. It may prove difficult to avoid elements of judicial/forensic hindsight in considering such issues.

Other considerations

The approach of the UK consumer insurance sector during the pandemic has generally been to endeavour to 'do the right thing' to accommodate as far as possible customers facing difficult conditions and financial constraints.

In the commercial sector, the outcome of the ongoing business interruption insurance debate is likely to condition heavily the reputation of the market as a whole.

IT IS POSSIBLE THAT LIABILITY FOR CANCELLATIONS AND REFUNDS ACROSS IN THE HOLIDAY SECTOR COULD BECOME AN AREA OF CONTENTION BETWEEN TRAVEL INSURERS AND TOUR OPERATORS & AIRLINES.

THERE HAVE BEEN SOME INDICATIONS THAT THE IDEA OF A 'PANDEMIC RE', A GOVERNMENT & INDUSTRY COLLABORATION FOR ADDRESSING FINANCIAL RISKS OF FUTURE PANDEMICS, MAY BE UNDER CONSIDERATION.

IDENTIFICATION OF CUSTOMER VULNERABILITY HAS BEEN HEIGHTENED BY THE CRISIS AND IT MAY BECOME A MORE PERMANENT FEATURE OF THE SALES AND CLAIMS PROCESSES.

SOCRATES

FINLAND

COVID-19 is causing major delays in pending judicial proceedings. The current situation allows for normal preparation of cases and it has been a delight to notice that courts have been willing to organize oral preparatory sessions via telecommunications applications. Hopefully, this becomes a rising trend in the future as well as this can shorten the average duration of court proceedings. However, coronavirus is inhibiting main hearings which demand the physical presence of the parties. As a result, majority of main hearings have been moved to the coming fall.

What industry regulatory changes are you seeing?

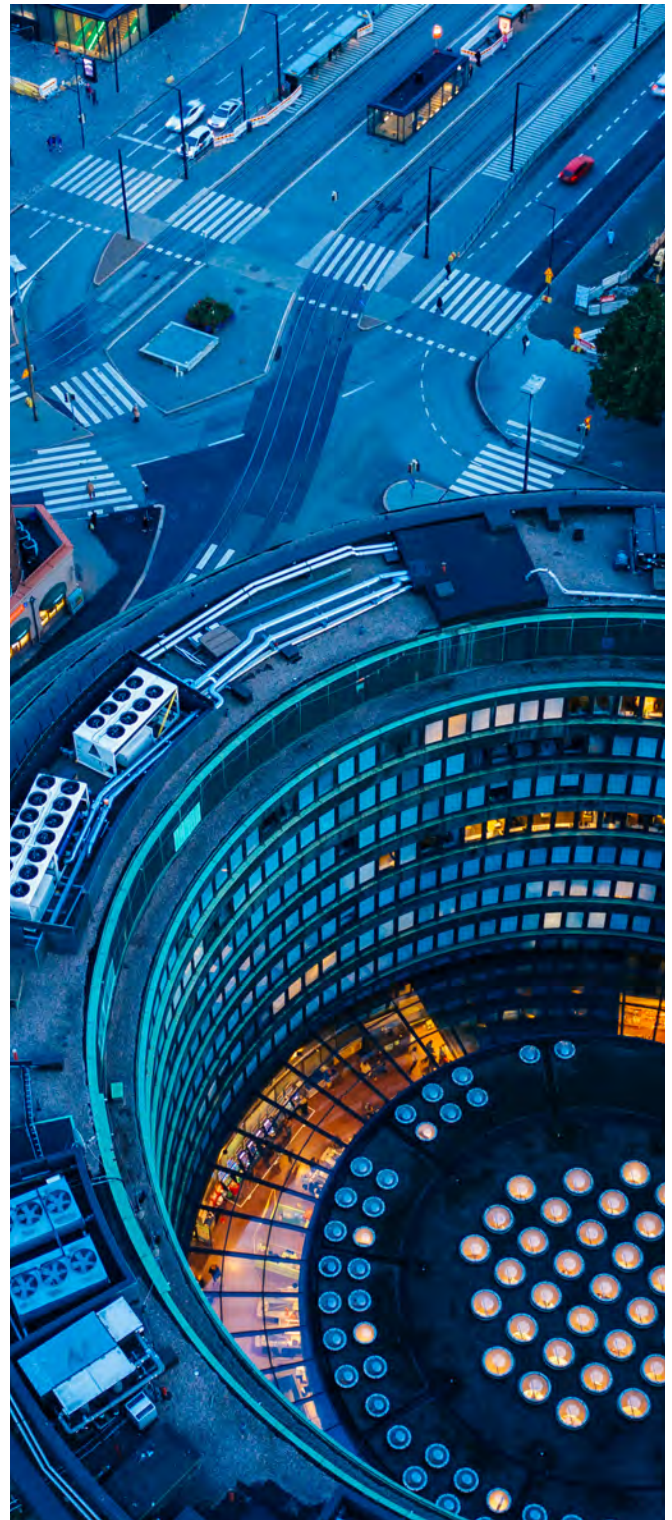
COVID-19 has had a huge impact especially on employment law. The legislator has in co-operation with labour market organisations imposed new legislation in order to secure people's livelihood and liquidity of companies in the difficult situation caused by the coronavirus. Most significant amendments have been: (i) the shortening of the notice period preceding employee temporary lay-offs, (ii) the shortening of the duration of co-operation negotiations regarding temporary lay-offs in companies with at least 20 employees, (iii) allowing employers to temporary lay-off an employee in a fixed-term employment relationship, and (iv) giving certain entrepreneurs the right to receive labour market support. The amendments were drafted and enacted in record time. Labour market organisations submitted their proposal to the Finnish government on 18 March, government gave its proposal to the parliament on 26 March, and new laws were in force on 1 April.

Any early considerations on where claims will fall?

General prediction was that we would witness a rise in business interruption insurance claims. However, the proactive approach of local insurance companies will likely lessen the number of claims.

Insurers are responding by releasing public statements regarding which losses are covered by insurance. As a rule of thumb, business interruption insurance is triggered by indemnifiable property damage. However, the insurance products especially in the food business cover a variety of grocery related epidemic losses and a hot question is, do they respond to covid-19. If there is a business interruption due to an epidemic, indemnification typically requires the diagnosis of an infectious or animal disease in the policyholder's activities and place of business and an official order issued on the basis thereof to suspend business operations. However, insurers tend to argue that a general order regarding the suspending of, for example, restaurant operations in the entire country is not an event covered by insurance. It remains to be seen how the situation will develop and if variations in the policy wordings will have effect.

MANY BUSINESSES IN THE SERVICE INDUSTRY HAVE HAD TO SUSPEND OR LIMIT THEIR OPERATIONS DUE TO COVID-19 AND ENTREPRENEURS ARE WONDERING WHETHER FINANCIAL LOSSES ARE COVERED FROM THEIR COMPANY'S BUSINESS INTERRUPTION INSURANCE.



FRANCE

The impact of the Covid-19 pandemic on the French legal system has been particularly felt in two areas: time limits and the organization of court hearings.

Extension of time limits

A government order N° 2020-306 issued on 25 March 2020 extended time limits in order to avoid time bars and expiry of time limits due to the state of health emergency that expire between 12 March 2020 and 24 June 2020. This extension of time limits concerns a number of specific acts and measures, such as appeals and time bars to bring legal action.

Rules applicable to judicial courts

The functioning of the civil, social and commercial courts was streamlined by a government order N° 2020-304 also issued on 25 March 2020. On a practical note, a number of simplifications were provided for, in particular with regard to the scheduling and cancellation of hearings. Many scheduled hearings have simply been adjourned to a later date.

In civil and commercial matters, the judge hearing the matter may also decide to rule without a hearing based on the written pleadings submitted by counsel, but counsel for the parties may object to this ruling within 15 days, except for urgent proceedings. In practice, this possibility to submit only written pleadings has been used quite frequently.

Regulatory changes in the insurance industry

The insurance sector has reacted to the health crisis linked to Covid-19 by taking several measures, among which the following major initiatives.

One major initiative is that the members of the Fédération Française de l'Assurance (FFA) have undertaken to contribute up to 400 million euros to the Solidarity Fund set up by the government to benefit very small businesses and the self-employed, sectors particularly affected by the consequences of Covid-19.

The FFA has also launched in coordination with the Ministry of Economy and Finance, a working group to come up with a concrete proposal for an insurance scheme against exceptional events such as major health risks of the Covid-19 type.

The Senate adopted a bill on 2 June 2020 which provides for the insertion in the Insurance Code of a Chapter V bis entitled "Insurance against exceptional health events". The text is composed of two pillars. First, it implements an obligatory insurance cover for business loss for such events. Secondly, the bill provides for the creation of a guarantee fund financed by an obligatory contribution paid by insurers. The Executive branch hopes to sign the bill into law by the end of the year.

Where will claims fall?

There will be numerous claims in France resulting from Covid-19 against direct insurers as well as between cedants and reinsurers, including business interruption claims, event cancellation claims, travel losses, delayed construction claims, medical malpractice claims, directors and officers liability claims, etc.

Presently, however, the claims getting most attention in France amongst insurers and reinsurers in view of actual and potential litigation

are business interruption claims resulting from the decree of 14 March 2020 which, inter alia, restricted access to many establishments open to the public such as restaurants, bars, cafés, camping sites, shops, etc. These restrictions were partially lifted by a Decree issued on 1 June 2020.

Many property policies cover business losses but on condition that the losses result from an insured material damage. This is a defence which insurers are principally relying on. However, even these policies may be challenged depending on the wording.

Some professional multi-risk insurance policies cover business interruption losses in the event of an "administrative closure", but without clearly specifying whether such losses must result from material damage. The interpretation of such cover will certainly give rise to much litigation against insurers and ultimately between cedants and reinsurers, and in fact already has.

A recent case receiving much attention in the media and in the insurance industry is the summary legal action against Axa France brought by a well-known restaurant owner before the Paris Commercial Court, seeking interim payment for loss of business owing to the administrative order of 14 March 2020 and the designation of an expert to determine the losses suffered.

Axa's main defence was that the systemic and global nature of a pandemic was not an insurable risk and AXA disputed the qualification of the closure occurring from the 14 March 2020 decree as "administrative".

The presiding judge issued an order on 22 May 2020 rejecting AXA's arguments and awarded the requested interim payment and designated an expert to determine the losses suffered by the plaintiff. It should be emphasized that this is a summary judgment which is not *res judicata*, although enforceable notwithstanding an appeal, which AXA has already reportedly done.

There will certainly be many more cases in 2020 putting into question policy coverage for business interruption, involving substantial amounts of claims: AXA has recently disclosed in public that its potential BI losses and event cancellation claims may be in the region of 1.2 billion euros.

ONE MAJOR INITIATIVE IS THAT THE MEMBERS OF THE FEDERATION FRANÇAISE DE L'ASSURANCE (FFA) HAVE UNDERTAKEN TO CONTRIBUTE UP TO 400 MILLION EUROS TO THE SOLIDARITY FUND SET UP BY THE GOVERNMENT TO BENEFIT VERY SMALL BUSINESSES AND THE SELF-EMPLOYED, SECTORS PARTICULARLY AFFECTED BY THE CONSEQUENCES OF COVID-19.

ARNECKE SIBETH DABELSTEIN

GERMANY

The outbreak of the COVID 19 pandemic has fundamentally changed the outlook of the insurance industry in Germany, as well as around the world. Whilst the full effects of this pandemic are still unforeseeable, it is already clear that various market sectors will be massively affected by the COVID-19 pandemic. Market participants now no longer compare the effects with those of a tsunami, but with the impact of a meteoroid.

How is COVID-19 affecting the court system?

In the initial phase of the pandemic, numerous court hearings were cancelled. In the meantime, hearings are taking place again after the courts have equipped the courtrooms accordingly. In addition, some courts are making increasing use of video conferencing.

What industry regulatory changes are you seeing?

No relevant regulatory changes have yet been identified. However, the insurance supervisory authority is urging companies to carefully examine whether they want to pay dividends despite the crisis.

Any early considerations on where claims will fall?

In our view, the following insurance sectors in particular are likely to be affected by an increased volume of claims:

- Event insurance
- Business shutdown insurance
- Credit default insurance
- D&O insurance

Business shutdown insurance

Usually this insurance offers cover if an insured business is shut down by an official order to prevent the spread of communicable diseases. Whilst business interruption insurance is widespread, market estimates show that even in relevant economic sectors only about 10% of companies have business shutdown insurance.

Although COVID-19 is undoubtedly a communicable disease, it is unclear whether insurance cover applies, as many contracts only offer protection for specifically named communicable diseases, which excludes COVID-19. Secondly, many affected businesses are not completely closed, as they are still allowed to offer delivery services, for example. Moreover, due to the state support, it is not possible at present to determine the exact amount of the damage of the companies either.

Insurance companies have refused cover in many cases, but policyholders are dependent on the payments, prompting political pressure on insurers to make voluntary payments. Even if these efforts are successful, many policyholders will try to enforce their claims in court.

D&O Insurance

In the course of last year, the German D&O market showed signs of a hardening market for the first time in many years. This was a consequence of an ever-increasing expansion of cover and rising claims expenditure. Insurers had therefore gradually begun to raise premiums, reduce capacities or withdraw from certain business areas in the course of 2019. Most market participants expected this trend to continue in 2020 and anticipated a cautious reduction in the coverage.

Whether this expectation is still justified, COVID 19 cannot be predicted at this time.

However, it is already to be expected that numerous claims in the area of D&O insurance will also arise in connection with COVID 19. A scenario that in Germany is of greatest relevance within the scope of D&O insurance anyway is the insolvency of the policyholder. For in nearly each insolvency case liability claims are raised against directors and officers due to a delayed filing for insolvency. The German government now has temporarily suspended the obligation to file for insolvency. However, this only applies if the pandemic is responsible for the insolvency maturity, which will lead to further disputes in the event of a claim. If one also takes into consideration the recent trend towards so-called "event-driven litigation", it is easy to imagine that in the coming months and years there will be claims under D&O insurances that are at least indirectly related to the pandemic.

Credit insurance

Germany as a trading country relies heavily on credit insurances and according to the German Insurance Association's information, the last years' trend showed that credit insurances were doing well, reflecting the decrease in business insolvencies in Germany. Now, however, these numbers are expected to increase significantly due to COVID-19. In order to enable credit insurers to uphold insurance cover of this kind, and thereby avoid major disruptions of trading chains, credit insurers and the German Federal Government on 16 April 2020 agreed on a 30 billion Euro protective shield.

Furthermore, COVID-19 also influences credit insurers with regard to the prerequisites of cover: A credit insurance covers the assured's risk in case of default of payment of its contract partners. The insured event usually occurs when the customer becomes insolvent (and particularly when insolvency proceedings are opened) or when he is in default of payment (so called "protracted default").

With the Corona crisis, the German Legislator, on 27 March 2020, passed the Act to Mitigate the Consequences of the COVID-19 Pandemic under Civil, Insolvency and Criminal Procedure Law, and this can affect the prerequisites for the insured event.

The new Act particularly postpones the duty to file for insolvency so that situations are likely to arise where the contract partner of the assured is de facto insolvent, but the insolvency proceedings can neither be started nor rejected for lack of assets, because the application for insolvency proceedings is not filed (nor can be filed by the creditors). To what extent these unforeseen situations affect the obligations under the credit.

Any other comments?

According to widespread opinion in the insurance industry, the crisis should also lead to an acceleration of digitalisation. Online brokers, among others, are likely to benefit, since a larger number of customers will be making online purchases in the future.

KHAITAN LEGAL ASSOCIATES

INDIA

With the rapid outbreak of the Covid-19 pandemic, the country has seen an unprecedented lock down which amongst other things, has gravely impacted the functioning of Courts and Tribunals across the country. Some of the key impacts are as follows:



- As a most natural consequence of the lock-down, physical hearings of ordinary matters (which were originally scheduled to take place during the lock down period) have been cancelled and adjourned to further dates. The Bombay High Court has directed that ad-interim and interim reliefs in such matters are to continue.
- Physical hearings have been restricted to only those matters where there is extreme urgency for grant of reliefs and select Benches have been constituted for this purpose. This is being implemented very seriously and several Courts across the country have been seen imposing costs on litigants who approached the Courts for physical urgency when there was no emergent issue to be adjudicated upon.
- In addition to the above, the Supreme Court as well as various other courts across the country are hearing urgent matters via video-conferencing. For instance, the Bombay High Court has conducted hearings on a video conferencing application called Zoom where hearings were held with almost 500 people (Advocates, Litigants and Court Staff) participating remotely. Even the High Courts at Delhi, Kerala, Manipur & Rajasthan have been successfully conducting urgent hearings through video conferencing.
- In fact, the Supreme Court of India has commenced hearing of extremely urgent matters *vide* video conferencing facility and has issued guidelines to streamline the functioning of the proceedings through such video conferencing. For the purposes of video conferencing, the Supreme Court has designated the 'Vidyo' app for conducting the hearing of such urgent proceedings. The Supreme Court *vide* a circular dated May 16, 2020 has issued a Standard Operating Procedure for e-Filing, Mentioning, Listing and Video Conferencing Hearing.
- As far as filing of new cases is concerned, e-filing is being rapidly developed and implemented across several Courts. An e-filing software has been developed to facilitate services for filing documents online in the Supreme Court, which is currently at an advanced stage of development. On the other hand, the Bombay High Court is accepting "very urgent applications" whether civil or criminal, for new cases filed using a "Special Protocol". The said protocol limits to only new and urgent matters that may be taken up, at the discretion of the Judge, for listing such matters through video conferencing, details whereof (date, time and link and pin) will only be provided if the Judge is convinced of the urgency and deems it fit to allow the new matter to be heard
- In addition to attempting to virtually bring Courts to the litigants for urgent cases, Courts have also passed several Orders in an attempt to protect rights of litigants. For instance, the Supreme Court of India has passed an Order directing that the period starting from March 15, 2020 (until further Orders) will stand excluded from the period of limitation for filing all suits, appeals, petitions, applications and other proceedings. In line with the Order dated March 15, 2020, the Supreme Court *vide* an Order dated May 06, 2020, ordered that all periods of limitation prescribed under the Arbitration & Conciliation Act, 1996 and under Section 138 of the Negotiable Instruments Act, 1881 shall be excluded with effect from March 15, 2020 until further orders. Therefore, in effect, the Supreme Court has directed a moratorium to be applied to limitation for filing proceedings including those in the NCLT as well.

KHAITAN LEGAL ASSOCIATES

INDIA

- Further, in the interest of justice, the Delhi High Court, has declared the cancellation of its annual summer vacation in the month of June 2020, for itself as well as its subordinate courts. The Telangana High Court *vide* a notification dated April 29, 2020 has taken a decision to cancel the summer vacation of all the courts of the State. The Supreme Court has decided to postpone its summer vacation by five weeks and declared that it would remain functional from May 18, 2020 to June 19, 2020. Several others courts like the National Company Law Tribunals, Jammu and Kashmir High Court, Madhya Pradesh High Court have also cancelled their summer vacations.
- Yet another instance of the judiciary functioning virtually is the National Company Law Tribunal ("NCLT"). During the initial phase of the lockdown, all the NCLT benches were closed for physical hearings and all applications for unavoidable urgent matters were sent to the Chennai Bench registry, where the Acting President of the Chennai Bench was passing necessary orders. However, now in view of the fact that lockdown is being lifted in several parts of the country, the NCLT is scheduling dates for pending matters. One such instance is of the Delhi bench of the NCLT. Notifications in respect of opening of the other Tribunals across the country are awaited.
- The Insolvency and Bankruptcy Board of India ("IBBI"), has, in order to address the issues arising in respect of the adherence of the timelines prescribed under the Insolvency and Bankruptcy Code, 2016, amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to provide that the period of lockdown shall be excluded for the purposes of calculation of such timelines.
- All the litigants under the Insolvency and Bankruptcy Code, 2016 and Companies Act, 2013, filing proceedings at any NCLT Bench across the country have, in the interest of avoidance of delay and speedy disposal of matters, been notified to file Joint Memo of Written Submissions, *inter alia*, to exchange brief facts, brief defences, file consensual draft points for determination by NCLT, file relevant material in support thereof.
- Further, the Ministry of Corporate Affairs has revised the threshold limit for default prescribed in Section 4 of the Insolvency and Bankruptcy Code, 2016, for filing proceedings thereunder from Rs. 1 lakh to Rs. 1 crore. Additionally, the Ministry has also passed an Ordinance dated June 05, 2020 by way of which Section 10A has been inserted in IBC whereby no new proceedings under IBC for corporate insolvency proceedings are to be filed for defaults having occurred on or after March 25, 2020. It is pertinent to note that, the suspension for filing of any Application under Sections 7, 9 and 10, is only in respect of disputes arising on or after March 25, 2020 for a period of 6 months or for such period not exceeding one year, as may be notified. It has also been clarified that no Application under the said provisions can ever be filed for the aforesaid defaults occurring during such period.
- Similarly, the Competition Commission of India too has made arrangements for e-filing, *inter alia*, stating that information in

THE COURTS ARE DOING THEIR VERY BEST EVEN IN SUCH GRAVE TIMES AND ADAPTING TO DIGITAL INFRASTRUCTURE SO AS TO DEAL WITH EMERGENT MATTERS. SHOULD THE LOCKDOWN CONTINUE, WE EXPECT THE COURTS TO BE MORE PROACTIVELY TRANSACTING JUDICIAL WORK REMOTELY.

relation to anti-competitive agreements and abuse of dominant position etc. may be filed electronically at the designated email addresses.

- While arbitrations have also witnessed a general slow-down, arbitral hearings are also being conducted over video conferencing, much more smoothly as the number of people and resources involved are much fewer than that in Court proceedings.

However, despite adopting such digital measures, the outbreak of the COVID-19 will result in a delay of justice and further suffering of the litigants. However, the Courts are doing their very best even in such grave times and adapting to digital infrastructure so as to deal with emergent matters. Should the lockdown continue, we expect the Courts to be more proactively transacting judicial work remotely.

What industry regulatory changes are you seeing?

- The Insurance Regulatory & Development Authority of India (IRDAI) has directed insurers that all the claims reported of COVID-19 will be thoroughly reviewed by the claims review committee before repudiating the claims.
- The Insurance Regulatory & Development Authority of India (IRDAI) has directed insurers that all the claims reported of COVID-19 will be thoroughly reviewed by the claims review committee before repudiating the claims.
- The IRDAI has provided grace periods for payment in premiums.
- IRDAI has prescribed various reporting requirements in respect to COVID-19. For e.g., report every fortnight is required to be submitted to the IRDAI giving the details of offices fully/partially closed with duration and steps taken in this regard. Data in respect of claims related to COVID-19 to be maintained separately to be submitted to IRDAI as and when called for.
- The Ministry of Corporate Affairs has relaxed the requirements of physical board meetings and meetings for specific matters may be held in audio visual form. This has further been enforced by IRDAI specifically for the insurance industry.
- IRDAI has provided an option of condonation of delay in renewal without considering it a break in policy.
- Regulatory requirements such as filing of returns, cyber security audit filings, have been given extensions.

- IRDAI has directed insurers to set up a Crisis Management Committee, comprising of key personnel to monitor the current situation on real time basis and to take timely decisions on issues pertaining to safety of staff, policyholders, intermediaries and agents; assessing new challenges that may emerge on a day-to-day basis and measures to mitigate them; and adopting necessary measures to minimize business disruption.
- Insurers have been asked to take special efforts to enable policyholders to pay premium using digital methods by educating them through SMS, emails etc.
- Though the normal response time for policyholder complaint redressal is 15 days, an additional 21 days has been allowed in respect of all complaints which are received on or after 15 March 2020 and up to 30 April 2020. However, this additional response time is not available in case the complaints pertain to COVID-19 complaints.
- In case of insurers who hold travel insurance policies which were/are valid between 22 March 2020 and 30 April 2020, an option to defer the date of travel without any additional charge to be provided.
- IRDAI has clarified that indemnity based health insurance products that cover the treatment costs of hospitalization offered by all general and health insurance companies will cover the costs of hospitalization treatment on account of COVID-19.
- IRDAI has issued guidelines on Standard Health Insurance Policy called "Arogya Sanjeevani". The IRDAI has issued clearance to 29 identified General and Health Insurance companies to market this Health Insurance Product. It was further clarified that the product 'Arogya Sanjeevani' will also covers the hospitalisation treatment costs of COVID-19.
- Insurers are urged to take a conscious call to refrain from dividend pay-outs from profits pertaining to the financial year ending 31st March 2020, till further instructions. This position shall be reassessed by the Authority based on financial results of insurers for the quarter ending 30th September, 2020.
- A one-time relaxation was given on the general condition in the Standard Fire and Special Peril policy where the insureds' premises are unoccupied for more than 30 days during the national lockdown period between 25 March 2020 and 03 May, 2020. The relevant clauses would apply post 03 May 2020.

Any early considerations on where claims will fall?

The more imminent impact is on life and health insurance policies.

We are seeing a number of business interruption claims being made. However, most conventional business interruption policies cover business interruption only if it is caused due to material damage covered by the policy which requires physical loss or destruction. Policies with revised endorsements including shut down etc may prove to have more luck in such claims.

Event cancellation / sports event policies are expecting to see a rise in claims.

Work from home / remote working is expected to increase the number of cyber claims too.



Inability to perform, restriction on movement of goods, blocking of borders, is also likely to give rise to claims under trade credit insurance.

Any other comments?

It may be too early to assess all potential claims but every passing day is opening up new avenues and this is a critical time to wait and watch.

MOST CONVENTIONAL BUSINESS INTERRUPTION POLICIES COVER BUSINESS INTERRUPTION ONLY IF IT IS CAUSED DUE TO MATERIAL DAMAGE COVERED BY THE POLICY WHICH REQUIRES PHYSICAL LOSS OR DESTRUCTION.

ITALY

The Italian Government enacted several decrees in order to manage the Covid urgency.

Firstly, a temporary suspension of court activities in connection with ongoing civil, criminal, tax, administrative court proceedings until 11th May, 2020 (term subject to changes), with certain limited exceptions concerning the fields of family and criminal law or proceedings for provisional relief. The same applies to mediation procedures.

In addition, up to 30th June, 2020, each court may adopt special measures to carry out proceedings and court activities.

Statute of limitations and forfeiture terms are tolled for the period of time in which the commencement of court proceedings is prevented because of the emergency legislation or because of specific measures adopted by each court as a result of the emergency legislation.

From 11th May, 2020, to June 30, 2020, e-trial measures can be implemented and used for any type of court activity, both civil and criminal. Each court will establish its own practices and procedures in this regard.

We also cannot exclude that the above reference terms might be furtherly postponed.

What industry regulatory changes are you seeing?

Due to the COVID-19 emergency, the Italian Insurance Supervisory Authority (hereinafter, "IVASS") has adopted various measures to help insurance undertakings and distributors meet the deadlines set by primary and secondary legislation, especially as below:

- On 17th March 2020 it **postponed deadlines for insurance distribution networks reports** (IVASS Regulation No. 40/2018), for **mandatory implementation of home insurance** (IVASS Regulation 41/2018) and for **reports on complaints** (Regulation 24/2008);
- On 23rd March 2020 it **temporarily extended** the periods for **replies to complaints** (from 45 to 75 days) and for **requests for information** (from 20 days to 35 days);
- On 30th March 2020 it **granted further extensions**, as regards **reporting Solvency II duties** in accordance with EIOPA. It also **prorogated terms for trimestral communications on controlling stakes, on reinsurance cessions schemes and in respect of several other duties**. On the same date, IVASS also **recommended caution in distribution of dividends**, in view of the high level of volatility in financial markets.

IVASS has also invited companies to ensure maximum commitment to assisting users of insurance services in the shortest time and in the best possible way.

The Legislative Decree no. 18/2020, in regard to the car insurance sector, provided for an extension of (i) coverage for liability car insurance policies for a further fifteen days, and (ii) deadline to make an offer or to deny a claim for further 60 days.

On 3rd April, IVASS reminded the industry that all deadlines not expressly suspended are still in force and that insurance operators should organize themselves to ensure business continuity and consumer protection, in particular by making maximum use of electronic communication. While IVASS will consider special individual circumstances in regard to these obligations, it is prudent to retain relevant details of any difficulties should there be any customer complaints. Also, companies should promptly inform customers about the organizational measures being adopted, and about possible

disruption of their services, especially in view of the difficulties that customers themselves are facing due to the COVID-19 contagion and resulting restrictions.

Any early considerations on where claims will fall?

The Covid-19 contagion will affect several lines of risk.

Firstly, Life insurers will be among the most affected: COVID-19 is a highly infectious disease and is causing very significant pressure on healthcare systems around the world.

The largest and most direct impact will be due to increases in hospitalization and in the price of service, equipment and drugs. Specific impact will depend on each country's healthcare system and the relative proportions of government and private insurers.

Life and health insurance policies usually provide cover for the risk of ordinary diseases, but **some policies may exclude claims arising from epidemics or pandemics, or even certain named diseases**. Conditions may differ greatly under new health and life insurances, as many companies have introduced new products and have started specifically considering COVID-19.

The travel industry has been one of the most immediately affected sectors, and so, at least in the short-term, travel insurance is likely to be very significantly impacted.

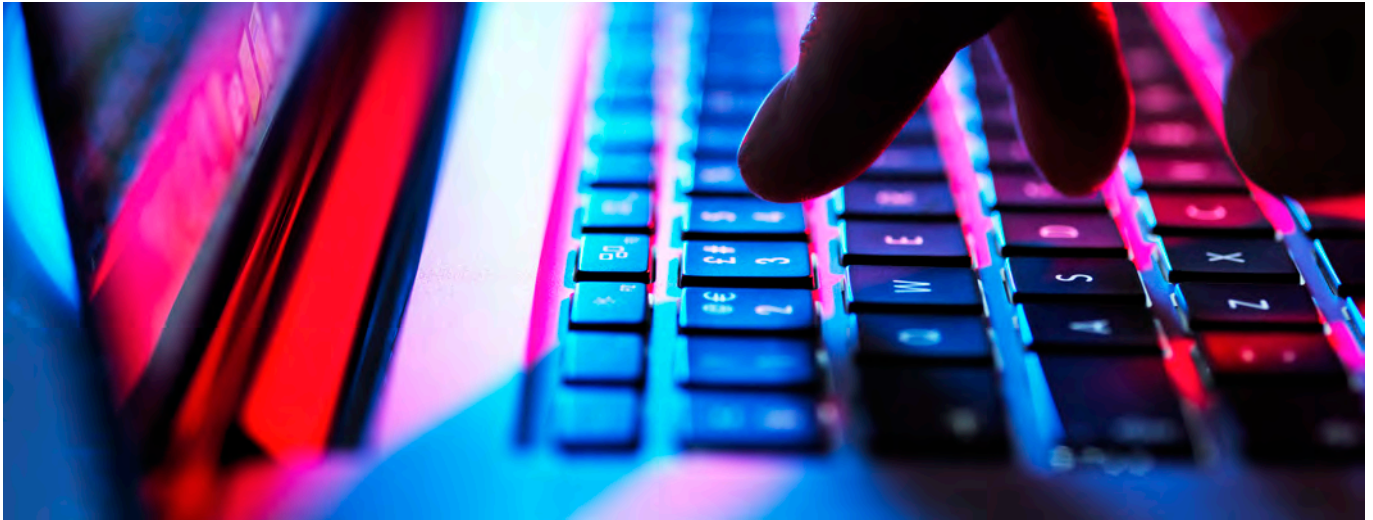
A standard travel insurance policy covers trip cancellation, travel and more major medical claims, emergency medical evacuation and accidental death. **However, many such policies contain an "epidemic or pandemic" exclusion**, which is triggered by a statement from an official government or similar organization (such as the WHO) that a virus has reached or is likely to reach "epidemic or pandemic" proportions.

Another major issue is the cover provided by business interruption policies, as the lockdown measures have forced many (indeed, in Italy, almost all) businesses to suspend their activities, or at least to operate in a very different way.

Business interruption insurance generally covers loss of gross profit or loss of income if the business is interrupted or adversely affected due to reasons beyond the policyholder's control. **Force majeure clauses** could play a significant role.

Conventional business interruption cover is subject to a "material damage proviso", which is that **for an interruption to be covered it must be caused by physical damage** that is insured under the policyholder's property damage policy, such as fire or flood. **Infection with COVID-19 will not, of itself, constitute "physical damage", which is the trigger requirement for coverage**. Also, **there are common exclusions which apply to losses arising out of "loss of use" of premises (e.g. due to virus contamination), as well as contamination exclusions which can relate to a virus, communicable diseases or biological pollutants**. However, depending as always on policy wording, interruptions caused by COVID-19 may in some cases be covered.

Some property policies include **"civil authority" coverage** which covers losses as a result of a government or civil authority restricting access to the policyholder's premises. Generally, civil authority



ANOTHER INCREASING RISK IS RELATED TO THE MASSIVE RECOURSE TO REMOTE WORKING.

WITH THE ADOPTION OF RESTRICTIVE MEASURES, SUCH AS SOCIAL DISTANCING AND STAY-AT-HOME ORDERS, PEOPLE ARE REQUIRED TO WORK REMOTELY AND MAY BE UNDER STRESSFUL CIRCUMSTANCES. WITH MAKESHIFT ARRANGEMENTS – HENCE INCREASED CYBER RISK. INCREASED REMOTE WORKING OFFERS MORE OPPORTUNITIES FOR CYBER-ATTACKERS. AND ANY ORGANIZATION THAT IS JUST STARTING OUT WITH USING REMOTE DESKTOP PROTOCOLS MAY BE MORE SUSCEPTIBLE TO A CYBER ATTACK. WE ARE CURRENTLY WORKING TO ADAPT THE POLICY WORDING OF CYBER POLICIES TO MEET THESE PARTICULAR NEEDS.

coverage applies when there is a direct link between the civil authority's order and the policyholder's loss. So for places where the state or local government has ordered a shutdown or curtailment of businesses to curb the spread of COVID-19, policyholders might recover under civil authority coverage. As ever, the wording should be scrutinized, as some policies only cover losses due to restrictions expressly directed at the policyholder, who may be just one among many to whom a general lockdown applies.

In relation to cancellation of key events in sport, music, business and politics, Event Cancellation/Contingency policies will generally provide cover for financial loss due to perils beyond the control of the insured, when such result in the cancellation, postponement, curtailment or abandonment of an event.

The key to triggering cover is to establish that the cancellation was beyond the control of the insured. Policies will not normally respond where the event could have taken place (i.e. there were no specific restrictions) but it was cancelled for other reasons.

In relation to **D&O policies**, lawsuits relating to COVID-19 might allege that the company did not take adequate steps to prevent its spread, or did not have contingency plans, or did not activate or execute those plans appropriately. Claims for financial losses

incurred by the business, or shareholders, may be covered, as well as the costs of defending securities fraud allegations. Here, note that, first of all (and possibly before litigation has started, and before any insurance renewal), policyholders would need to examine carefully what circumstances and information should properly be notified under the terms of the relevant policy.

As for **Employer's Liability (EL) insurance**, the largest impact will be on insurers providing workers' compensation coverage to first responders (hospitals, police, fire, EMT) and workers in high-risk sectors, such as entertainment, manufacturing, transportation and retail. The Government and INAIL (the National Institute for Occupational Accident Insurance), have designated workplace COVID-19 contagion as **work injury**.

Depending on the precise policy wording - and in the absence of case law on the matter - in cases where INAIL may exercise its right of recourse it is highly probable that COVID-19 will be regarded as injury at work, thus triggering EL insurance, unless there is a specific epidemic or pandemic exclusion. The extent of EL insurers' liability will depend on the insured's compliance with the health and safety measures stipulated by Italian Civil Law, as well as by the various emergency decrees enacted by Government.

MOLITOR AVOCATS A LA COUR

LUXEMBOURG



Two Grand-Ducal Regulations are worth mentioning, as they have an impact on the Luxembourg judicial system.

The first is the Grand-Ducal Regulation of 18 March 2020, as amended, introducing a series of measures in the context of the fight against Covid-19, which contains a specific provision relating to the service of judicial documents. As an exception to the usual procedure, the service of a bailiff's document is now exclusively to be made (if it appears from the verifications made and mentioned in the document by the bailiff that the addressee resides at the indicated address) by the bailiff depositing a copy of the document in a sealed envelope at the address in question. Service shall be deemed to have been effected on the day of such deposit. On the same day or at the latest on the first working day following service, the bailiff shall send a copy of the document to the address indicated in the document by simple post.

More importantly, the Grand-Ducal Regulation of 25 March 2020, as amended, suspends time limits in judicial matters and adapts certain other procedural rules on a temporary basis. Under Article 1, the time limits for proceedings before the constitutional, judicial, administrative and military courts are suspended. The time limits governing the course of proceedings, such as the time limits for the preparation of a case, and the time limits for preclusion, foreclosure or forfeiture, which govern the lodging of ordinary and extraordinary appeals against orders, judgements or rulings, are also suspended.

In addition, the time limits (whether statutory or conventional) governing the institution of proceedings at first instance before judicial, administrative and military courts, including periods of limitation, prescription, foreclosure or forfeiture, are extended as follows:

- time limits expiring during a state of crisis shall be extended by two months from the date of the end of the state of crisis;
- periods expiring in the month following the end of the state of crisis shall be extended by one month from their expiry date.

However, exceptions are provided for time limits for appearance in all proceedings and for certain aspects of criminal proceedings, for hospitalisation without consent of persons with mental disorders, and immigration, international protection, and temporary protection matters.

Several circulars have also been issued by the Luxembourg Bar Association to combat the spread of the COVID-19 virus. These circulars list new procedures to be applied before each of the various Luxembourg courts and tribunals. Without describing all of them here, the general rule is that lawyers should limit their visits to the courts and should use their "barreau.lu" email address in communications with their peers, the courts, and tribunals. In general, judgments continue to be delivered and there is a large postponement of pleadings, fixed cases and appearances of the parties and investigations.

THE INSURANCE SECTOR IS EXPRESSLY REFERRED TO IN THE AFOREMENTIONED GRAND-DUCAL REGULATION OF 18 MARCH 2020: WHILE THE MOVEMENT OF NATURAL PERSONS ON THE PUBLIC HIGHWAY IS IN PRINCIPLE PROHIBITED, THIS PROHIBITION IS NO LONGER APPLICABLE IN THE EVENT OF TRAVEL, IN AN EMERGENCY, TO INSURANCE UNDERTAKINGS. AS A LOGICAL CONSEQUENCE OF THIS EXCEPTION, INSURANCE COMPANIES ARE NOT COVERED BY THE GENERAL BAN ON ALL COMMERCIAL AND CRAFT ACTIVITIES OPEN TO THE PUBLIC.

What industry regulatory changes are you seeing?

The Luxembourg insurance regulator, the Commissariat aux Assurances (CAA), announced as early as 17 March that, given the exceptional circumstances imposed by COVID-19, the deadlines set in the framework of the out-of-court settlement procedure by the CAA Regulation No. 19/03 of 26 February 2019 relating to the out-of-court settlement of disputes will no longer be met until a return to a normal situation.

The CAA has also published an information note informing the insurance and reinsurance companies under its supervision that it has decided to follow the recommendations issued by EIOPA in the context of COVID-19 (EIOPA-BoS-20/236) and to extend the deadlines for submitting Solvency 2 reporting and publication.

Further, the CAA has published adapted reporting schedules with extended deadlines for life and non-life insurance companies, reinsurance companies and pension funds covering the whole of 2020.

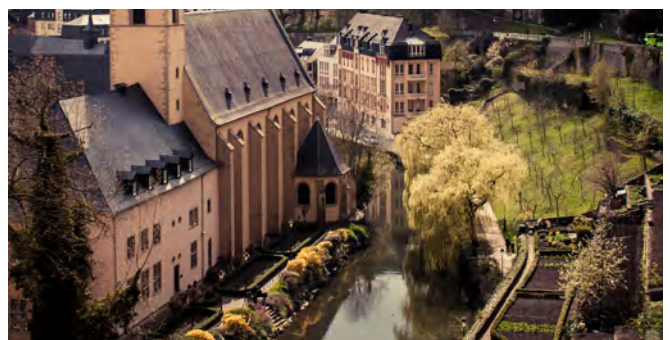
The examination for insurance broker/brokerage firm manager candidates, which was initially scheduled for 23 April 2020, is postponed to a date to be determined.

At European level, EIOPA has issued a statement (EIOPA 20-137) on actions to mitigate the impact of Coronavirus/COVID-19 on the EU insurance sector. This statement contains two key messages for the sector: (i) one relating to business continuity; and (ii) the other relating to the solvency and capital adequacy of insurance undertakings. It should be noted that EIOPA wants companies to follow prudent dividend and other distribution policies, including variable remuneration and published a separate statement on these aspects on 2 April 2020.

Any early considerations on where claims will fall?

In this context, we underline the importance of EIOPA's call to action for insurers and intermediaries to mitigate the impact of Coronavirus/COVID-19 on consumers (EIOPA-BoS-20-261 published on 1 April 2020). The measures contained therein (and in particular the provision by insurance undertakings of clear and timely information to consumers on contractual rights and, more specifically, the scope of their coverage, the exemptions that apply and the impact of COVID-19 on their insurance policy) will undoubtedly be beneficial for policyholders, to whom generic advice cannot be given and who therefore remain invited to check the content of their general conditions to ensure that they are effectively covered against the risks associated with COVID-19. In Luxembourg, where important measures have been taken to limit public travel and economic activities, there are many insurance policies that may be useful to policyholders directly or indirectly affected by COVID-19, both in the context of their private life (travel cancellation insurance, extended stay insurance, supplementary health contracts, pension schemes, home insurance) and their professional life (directors' liability insurance, business interruption insurance, event cancellation insurance and civil liability contracts, etc.).

This article was written before the end of the state of crisis (which officially ended on 24 June 2020 in Luxembourg) and therefore does not contain any reference to the most recent laws and regulations that have been adopted in the context of COVID-19. Molitor Avocats à la Cour remains at your disposal for any questions you may have regarding any of these measures.



THE REASON FOR THESE DEROGATIONS IS THAT THE ESSENTIAL ACTIVITIES CONNECTED WITH THE OPERATION OF THE INSURANCE AND REINSURANCE SECTOR ARE CONSIDERED TO BE ACTIVITIES WHICH ARE ESSENTIAL FOR THE MAINTENANCE OF THE VITAL INTERESTS OF THE POPULATION AND THE COUNTRY.

OCAMPO 1890

MEXICO

Mexican Federal Administration has not been clear on how Covid-19 is affecting the country. Data seems to be rather untrustworthy and unofficial data suggests that the real number of deaths is 20 times higher than official statistics.

Social distancing in Mexico came to an end on 1 June. From a health perspective this decision is questionable, but from the perspective of the economy the decision responds to a fundamental need of the Mexican people, who rely on their income for survival.

Courts, however, are still closed. Some states resumed activities on June 15 and others (including Federal Courts) will resume activities on June 30. However, the contagious curve has not ceded at all and instead is still rising.

The regulator will be closed until June 30.

What industry regulatory changes are you seeing?

The regulator is easing everything possible so the insurers can receive premium payments out of time (in Mexico is mandatory to pay the premium within 30 days after the risk is undertaken by the insurer).

In relation to health insurance, the regulator has suggested the insurance carriers should clarify whether they will cover Covid-19 claims or not. Most health insurers will cover these claims, as there is not an express exclusion in the contract.

Notwithstanding the situation, insurers and reinsurers should comply with their obligations.

This situation is allowing the insurance system to test the dynamic solvency model, in order to grant insurer's solvency to pay as many claims as they arise in a crisis like the current one. It is to be seen if the model is effective or must be amended.

Any early considerations on where claims will fall?

The most affected coverage will be the employment insurance coverage linked to credit products. The unemployment rate is rising day-by-day and it is expected that this will reach historical levels by mid-2020.

Health insurance will have a greater incidence too. Some insurers have fixed their position that they will not cover any claim related to Covid-19, and some others have said that they will pay for the claims. It is legal to exclude claims coming from a pandemic and some insurers might have the clause insertion in their insurance contracts.

Business interruption (BI) is now also under huge scrutiny. In Mexico BI is sold along with Property Insurance (Fire and Hydro-meteorological Risks) and BI can be triggered only if the insured suffers from direct damages. However there are some wordings that are rather vague and can cover BI as a consequence of Covid-19.

Life insurance, of course, will be affected too.

IN MEXICO BUSINESS INTERRUPTION COVERAGE IS SOLD LINKED TO PROPERTY DAMAGE: HOWEVER THERE IS NO PROHIBITION TO SELL OR BUY BI INSURANCE INDEPENDENTLY. THIS MEANS THAT PROPERTY INSURERS MAY SEE SOME BI CLAIMS TRIGGERED BY THE PANDEMIC AND NOT BY DIRECT DAMAGES.



NORWAY

Norway implemented strict precautionary measures on 12 March. The courts cancelled practically all new civil cases from 13 March until 14 April.

Cases were however still processed where a postponement was considered to have significantly negative consequences for the public order or the rule of law, or if the matter of the cases regarded issues of life and health. This included cases that had to be prioritized in accordance with Norway's commitment to the European Convention on Human Rights.

The Norwegian parliament passed a temporary law giving the government authorization to implement regulations to remedy the consequences of outbreak of Covid-19 (The Corona Act). It was used to implement regulations that made it possible to process most court cases with hearings and testimonies via video or telephone. In addition The Corona Act implemented more flexible solutions for the courts to pass their judgements.

From 14 April the courts have opened for a somewhat normal case handling. Video hearings are uncommon in Norway but they have now become part of the temporary new normal for all law practitioners appearing before the courts.

As of 29 May the courts are still practicing temporary measures, and lawyers are likely to have to adapt to these measures until the courts' summer break from 1 July if not longer.

What industry regulatory changes are you seeing?

The Norwegian government has stated that every business with the possibility to let their employees work from home, are to implement such practices. It was therefore necessary to clarify that the mandatory occupational injury insurance also covers injuries occurring while working from home. However, this clarification does not fully deal with the fact that it is difficult to draw a clear line between working time and spare time while working from home.

The Norwegian government passed a new regulation on 1 March, stating that severe medical complications as a consequence of Covid-19 is to be considered as an occupational disease. The regulation primarily includes employees in the health sector, but are also intended to include employees in other businesses that are especially exposed to infection and people that are infected with Covid-19.

Norway has implemented numerous temporary systems for economical aid to Norwegian businesses. This especially includes covering unavoidable costs for businesses with sufficient loss of income as a result of Covid-19. For some industries additional systems for economical compensation has been implemented, especially targeting travel and cultural industries. These systems will reduce loss for businesses, possibly resulting in reduced insurance claims.

Save the mentioned regulation regarding occupational disease, there are no regulatory changes for the insurance industry. However the Norwegian Ministry of Finance sent a letter to the Financial Supervisory Authority of Norway in March, stating that the Ministry is expecting Norwegian financial businesses to refrain from distributing profits from 2019 to the owners until the financial risks following Covid-19 has been reduced.

Any early considerations on where claims will fall?

The most obvious increase in claims will be travel insurance claims. Norwegians have a high rate of travels abroad during spring and summer, especially to continental Europe. As a consequence of Covid-19 the Norwegian Ministry of Foreign Affairs has issued travel advice, to caution against non-essential travel abroad with effect until 20 August.

A steep increase in claims related to interruption of business and cancellation of events is expected. However, in general these insurance policies does not cover interruption or cancellation occurring as a result of government precautionary measures. It would be unsurprising if disputes regarding the understanding and practice of these standard insurance terms should rise.

Insurance claims from the self-employed with insurance covering interruptions due to sickness, may increase. As an initial evaluation, it is expected that most of these potential claims will be rejected as a government implemented quarantine cannot be viewed as sickness.

Historically, Norwegian insurers have experienced an increase in loss of license claims when an industry has a setback. In Norway this can be exemplified by setbacks in the oil industry. Similarly an increase of claims may be the case in regards to businesses hit by financial consequences following Covid-19. Potential claims will be assessed in accordance with each company's terms and practice.

Where claims will fall, and how they will be handled, remains to be seen. As of now Norway still has strict travel restrictions and a number of other precautionary measures. Businesses in the industries of travel, dining, culture and other leisure services, are taking the largest losses as these businesses are around the globe at the moment.

HISTORICALLY, NORWEGIAN INSURERS HAVE EXPERIENCED AN INCREASE IN LOSS OF LICENSE CLAIMS WHEN AN INDUSTRY HAS A SETBACK. IN NORWAY THIS CAN BE EXEMPLIFIED BY SETBACKS IN THE OIL INDUSTRY. SIMILARLY INCREASE OF CLAIMS MAY BE THE CASE IN REGARDS TO BUSINESSES HIT BY FINANCIAL CONSEQUENCES FOLLOWING COVID-19. POTENTIAL CLAIMS WILL BE ASSESSED IN ACCORDANCE WITH EACH COMPANY'S TERMS AND PRACTICE.

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SPAIN

The State of Alarm was activated in Spain on 14 March, continuing in force until at least 21 June.



How is COVID-19 affecting the court system?

The State of Alarm was activated in Spain on 14 March, continuing in force until at least 21 June.

Since 14 March, judicial activity has been paralyzed throughout the whole Spanish territory, agreeing to maintain only the celebration of minimum services similar to strike days, such as actions with cases with convicts, matters of gender violence or prison supervision actions in order to avoid irreparable harm to citizens.

What industry regulatory changes are you seeing?

The industry in Spain has come to a standstill since the declaration of the state of alarm. Only essential activities such as health, pharmaceutical, police, transport and distribution or the food sector are permitted to operate still, in addition to minimal banking services, lawyers, notaries, and those companies dedicated to the provision of cleaning and maintenance services, among others.

It is too soon right now to predict industry regulatory changes, although large changes are not currently expected as a result of this pandemic.

Any early considerations on where claims will fall?

In general, claims for non-compliance, patrimonial claims for abnormal function of the Public Administration and rebound in labour claims for dismissals as well as drop in share prices. In the insurance field we will see an increase in insurance claims for the following business lines: credit, illness, D&O, travel cancellation, fraud and cyber.

ONLY ESSENTIAL ACTIVITIES SUCH AS HEALTH, PHARMACEUTICAL, POLICE, TRANSPORT AND DISTRIBUTION OR THE FOOD SECTOR ARE PERMITTED TO OPERATE STILL, IN ADDITION TO MINIMAL BANKING SERVICES, LAWYERS, NOTARIES, AND THOSE COMPANIES DEDICATED TO THE PROVISION OF CLEANING AND MAINTENANCE SERVICES, AMONG OTHERS.

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SWITZERLAND

The Swiss government adopted several ordinances which impacted judicial proceedings, in response to the pandemic.

How is COVID-19 affecting the court system?

Under the Code of Civil Procedure, deadlines to file submissions are in principle suspended for two weeks over the Easter period. However, under one of these ordinances, the suspension period ran from 21 March to 19 April 2020.

Hearings may be held by videoconference subject to the parties' consent or where there are good reasons to do so, including in cases of emergency. The courts may waive holding a hearing altogether and conduct the proceeding in writing where the use of teleconferencing or videoconferencing is not possible or cannot be required and there is an urgency, unless there are good reasons for not doing so.

Additional specific measures have been adopted by the courts in some cantons extending certain deadlines even further and suspending the notification of decisions for several weeks. Safety measures have been put in place for hearings which the parties must attend in person.

What industry regulatory changes are you seeing?

The Swiss Financial Market Supervisory Authority FINMA extended the deadlines for the mandatory regulatory reporting of insurance companies, encompassing annual and supervisory reports, SST reports and Financial Condition Reports, until 31 May 2020 (the original due date being 30 April 2020). In addition, FINMA was willing to accept a reduced report on the Swiss Solvency Test.

On 6 May 2020, FINMA intensified supervision of certain insurers on a case-by-case basis for the coming months as part of a risk-oriented approach. FINMA's primary focus lies on capitalization, solvency, and in particular tied asset coverage.

On 25 May 2020, FINMA initiated a survey on pandemic exclusion in insurance policies. The survey covers all products where insurance benefits are or could be provided in direct connection with the COVID 19 pandemic or its effects – or where benefits are excluded due to pandemic and/or governmental orders. According to own information, FINMA feels compelled to obtain an overview of the exclusions applied in the market, also in view of the fact that a systematically incorrect application of an exclusion could constitute an abuse conduct.

Any early considerations on where claims will fall?

The losses and expenses related to the COVID-19 pandemic and the ensuing government responses have the potential to impact multiple different lines, whether that be for life or non-life cover.

In the area of non-life cover a first wave of claims fell in the areas of business interruption and travel insurance.

Switzerland too imposed travel bans which resulted in numerous claims for cancelled holidays and business trips. Many Swiss travel insurers did not have pandemic exclusions in their policies.

Further, there were significant losses incurred by businesses as a result of business closures and supply chain disruptions. Many Swiss insurers have provided cover for business interruption alongside their property damage cover. There are a number of difficulties with the concept of business interruption flowing from property damage in relation to COVID-19. It will be necessary to consider carefully

both the wording of the policy, and the nature of the damage and circumstances of the interruption in these cases (COVID-19 on the business premises vs. orders of governmental authorities to stop the spread of COVID-19). In addition to business interruption cover triggered by a property damage, some policies contain extensions providing cover for non-property damage based business interruption. These are more likely to lead to business interruption claims which may be indemnifiable by the insurer.

There are, in our view, other potentially major areas to watch for in non-life, in particular trade credit insurance, covering businesses against debts that cannot be paid by their customers or suppliers.

In the area of life it is hard to tell what the impact will be since it is not known yet what the eventual mortality or morbidity rates from the coronavirus will be. We do also expect, however, that life insurers may feel significant impacts due to what is happening in the financial markets.

Other considerations

Many Swiss insurers were of the view that their business interruption policies contained strong exclusions in respect of Covid-19 claims. However, a legal opinion conducted for the Swiss Insurance Ombudsman came to a different conclusion and received a high amount of publicity. It has also been reported that some insurers on the Swiss market started paying claims based on a compromise settlement in order to avoid reputational damage.

ADDITIONAL MEASURES HAVE BEEN ADOPTED BY THE COURTS IN SOME CANTONS EXTENDING CERTAIN DEADLINES EVEN FURTHER AND SUSPENDING THE NOTIFICATION OF DECISIONS FOR SEVERAL WEEKS. SAFETY MEASURES HAVE BEEN PUT IN PLACE FOR HEARINGS WHICH THE PARTIES MUST ATTEND IN PERSON.

IN THE AREA OF LIFE IT IS HARD TO TELL WHAT THE IMPACT WILL BE SINCE IT IS NOT KNOWN YET WHAT THE EVENTUAL MORTALITY OR MORBIDITY RATES FROM THE CORONAVIRUS WILL BE.

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