

COVID-19

ALL YOU NEED TO KNOW ABOUT THE IMPACT ON YOUR KEY INSURANCES

A PRUDENTIAL INSURANCE BROKERS ADVISORY



PROPERTY DAMAGE & BUSINESS INTERRUPTION

PROBLEM STATEMENT	SOLUTION
In the prevailing times of lockdown, chances are that locations will remain unoccupied for more than 30 days. Will your location be considered silent ?	In the current scenario, where there are security guards at the premises, they will technically not be treated as unoccupied though they may be non-operational. So long as your locations have stocks and storage activity is going on, these premises will not be treated as silent locations. So, the current cover shall prevail unabated. However, for the sake of good order, insurers must be informed about the current lockdown and the fact that the locations are in as is condition apart from the fact that the manufacturing activity has been stopped due to ongoing situation and under state orders. The latest GI Council decided to allow a one-time relaxation related to unoccupancy clause until the lockdown continues. Insurers will be guided by the GI Council circular, which is given in the link https://www.gicouncil.in/continuity-of-policies/ There is no need to request for a specific waiver for the period of lockdown.
Certain policies have a condition that the locations should be guarded on a 24-hour basis. In the current lockdown, if the security guards are not present, will it lead to violation of warranty and will my claim be jeopardized?	It is a warranty that directs clients to implement due security features. In the current situation where there is complete lockdown, the Insurers will insist on the 24-hour security. Getting exceptions from the Insurers will be very difficult and will depend upon whether as a Company you could have arranged the security. If it is concluded that the security was not there due to cost saving reasons, the Insurers will not provide cover.
When you restart the premises, you will be required to spend on fumigation and decontamination activities. Will policies pay for such expenses ?	No. The policy pays for repair or reinstatement of physical loss or damage to the assets and stocks. In the absence of physical damage, cost of fumigation or decontamination will not be paid by the Insurers. Also, most of the policies have a specific exclusion for contamination.
As an impact on supply chain there may be cancellation of contracts of voyages by the transporters,	Please find out the details and wherever the Contract of affreightment has been cancelled and goods are lying / stored at a location, please buy specific property damage insurance policies.
There may be locations which may get higher than declared values of goods, check for sum insured levels at these locations	The location-wise sum insured for each location needs to be verified vis-à-vis the actual value of goods lying there to ensure adequacy of sum insured. For any increase in values, please request for increase in sum insured vide endorsements. This may have premium implications.
At warehouses, how to treat the goods billed but not shipped due to sudden lockdown and goods unloaded but not inwards in the systems ?	Please get the value of such goods ascertained and get them included in the property damage policies as goods billed but not shipped and goods received but not inwards.



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Should there be a change in cover to be bought (removal of RIV clause etc. or moving to SFSP without any LOP cover from IAR/Mega) as reinstatements will not start in near future?	Not at all. There is no reason for changing the policy form of RIV clauses in it. In case of any damages, getting extra time for reinstatement would not be a problem. Due to the unprecedented circumstances, we do not see any reason why any Insurance Company will refuse to give extra time for reinstatement.
As the sales for companies will get impacted due to ongoing lockdown, is there a need to decrease the BI sum insured ?	No. There is no provision for increase or decrease in sum insured under BI during the policy period. Even otherwise, sales may be down temporarily but BI sum insured has to be adequate even on the last day of the policy for a loss taking place at that time (and up to the indemnity period therefrom). On the other hand, if there is no claim and the actual Gross Profits for the policy period are less than the Sum Insured taken, depending on the policy, there is a provision of refund of sum insured under the policy.
Will there be a BI claim paid for the loss of sales due to lockdown ?	The business interruption policies in India trigger only if there is physical damage or destruction to the property. In the absence of any physical damage or destruction to the property in the premises or outside the premises, insurers locally and globally are rejecting claims on two grounds: <ol style="list-style-type: none"> Mention of material damage proviso in BI policy-Claim under Business Interruption is payable only if a claim under the Property Damage policy is admissible / payable. Presence of pandemic and contamination as an exclusion under the policies.
Is there a non-damage business interruption cover available ?	Non Damage Business Interruption cover was available in a limited manner under the Contingent Business Interruption extension of the policies. This was available for smaller limits in the range of USD 100,000 to USD 200,000. Certain broader products had been designed by Munich Re in the past for Non Damage Business Interruption insurance, but were not popular and were not sold at all. These products are also getting revisited in view of the current scenario due to COVID 19. Insurance Brokers and Insurance Companies are all looking at ways and means of providing solutions to the clients for their specific requirement of Business Interruption (without property damage). We have the best capabilities to provide solutions to this new requirement of insurance for business interruption (without property damage). In case, you have been thinking or deliberating about this cover, we would be more than happy to assist and provide your company a solution .
Under the CAR/EAR policy, is cessation of work due to COVID 19 covered due to lockdown	As per GIC guidelines cover may be extended subject to : policyholder is required to provide the status of work and confirm that all risk management systems being in place (Eg security systems, fire systems/ Power to be shut down in case of storage facilities/ burglary protection systems/flood protection measures/ fences and video control systems/ regular inspection service etc.) to obtain continuation of cover under the policy
Is ALOP/DSU will trigger due to COVID 19 ?	Cover does not apply.





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<p>Given the situation, work from home (WFH) model is here to stay. This poses as a big challenge to data privacy and cyber security of all companies</p>	<p>WFH increases the possibility of data breaches and ransomware attacks manifold. The exposure goes up and has an impact on the risk profile of the organisation. IT Admins need to be extremely particular on IT security and awareness amongst employees. From an insurance coverage perspective, this should not be a concern. But every organisation should check with their insurers. This is the time for companies to buy a Cyber insurance cover if they do not have it or relook into the existing policy limits.</p>
<p>How has the lockdown increased cyber threat exposure?</p>	<p>People are highly distracted and want to keep themselves informed on the developments. Individuals end up clicking on any link that has the term COVID-19. This makes them fall prey to phishing attacks, social engineering, and cyber crimes. There has been a significant increase in business email compromise. Whenever there is a large amount of money being transferred from one account to another, hackers are on the lookout and are keeping track of the same.</p>
<p>Will the Privacy laws be relaxed in the given situation?</p>	<p>There is no update on any relaxation on GDPR, HIPAA laws, and other equivalent data privacy regulations. Adherence to these will be mandatory. Usage, storage, and distribution of data will be of critical importance.</p>
<p>What is the change in Cyber threat landscape?</p>	<p>The biggest change is that the hackers have shifted gears from data privacy acts to attack on Corporate assets which include network disruption, business interruption, theft of intellectual property, and denial of service (DOS) attacks.</p>
<p>Which business sector are more susceptible to cyber attacks?</p>	<p>Recently, there has been a significant shift from financial institutions to healthcare and public administration. Hospitals and healthcare are the new favourites for cyber threat actors. Given the type of data and the sheer volume with high saleability these companies hold, it makes them an ideal target. Telemedicine is a business practice that will continue to stay. This sector and the companies working for them (software providers, vendors, etc) should definitely be buying cyber insurance.</p>
<p>What coverages are provided for under Cyber Insurance?</p>	<p>Cyber Insurance covers third party liability expenses arising from Data and privacy breach which are mainly Legal costs and compensation expenses, first party expenses, due to business interruption, restoration costs, notifications costs, cyber extortion costs, forensics costs incurred to quantify, quality, and assesses a loss or a circumstance is also payable. Regulatory fines and penalties if insurable by law, can also be claimed for.</p>
<p>Does Business Interruption (BI) due to lockdown get covered under cyber insurance?</p>	<p>For BI cover to trigger under Cyber policy, it is essential for a Security failure, or as covered under some policies System failure, to trigger to find coverage under the policy</p>
<p>How organisations can better prepare themselves?</p>	<p>Employee training and awareness. Sufficient information at all levels of the organization about the risks of social engineering and common scams like phishing emails and typosquatting should be provided. There should be real time assessment to ensure safety standards are being maintained by all employees in order to track leakage/ loss of information promptly. It is very important to invest in incidence response management services, ensuring that they have the right Cyber insurance coverage with appropriate limits.</p>





DIRECTORS AND OFFICERS LIABILITY INSURANCE

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What can be the nature of allegations against the D&O?	Typically, allegations would include, (a) failure to disclose or adequately disclose risks that the company faced - or failure of the company to update prior disclosures as circumstances evolved; (b) inadequate steps to mitigate risks; (c) failure to observe recommended or required protocols; (d) failure to develop adequate contingency plans; or (e) failure to look into alternate avenues for business continuity and survival. In general, directors and officers may find that they are targets of claims that arose due to their decisions or actions or inactions taken in response to the coronavirus and/or market conditions created by the pandemic. Such actions, decisions or inactions were allegedly negligent or constituted a breach of their fiduciary duties to the corporation, such as the duty of care, which obligates the directors and officers to exhibit prudent judgment.
What can be the nature of Employment-related claims?	Employee who travelled on business before the lockdown may have contracted the disease or even may have done so while working in the office premise. They may file legal suit against the Directors or managers for negligence and not taking appropriate measures in the office or making employees travel in the wake of the pandemic outbreak before the lockdown was announced. Given the business slowdown, many companies are considering pay cuts, or even layoffs. Currently this also happened to be the appraisal season in India, which may be put on hold or postponed. The disgruntled employees may want to sue the company or the Director or officers in the above eventualities. In such scenarios, Directors and Officers Insurance policy or Company Insurance for Employment Practice Litigation claims can come to aid to provide legal defence costs and compensations and settlement expenses
What sort of claims can come from Shareholders?	Unprecedented drop in stock prices have led to a sudden need to increase sales and improve company business figures. One can expect this to lead to a sudden flood of shareholder suits in the wake of COVID-19. Also any misrepresentation, false claims or forward looking statements should be abstained from. For e.g a class action lawsuit was filed on behalf of the purchasers of securities of a pharma company for claiming that they have developed a COVID-19 vaccine which drove up prices of their shares drastically.
What can lead to regulatory investigations/claims?	Risk of non-compliance / delayed compliance would continue, and so would the risk of a resultant D&O claim
Who is covered under D&O insurance policy?	All directors, officers and employees of the Company are covered as insured under the policy. Claims against the company are covered under extensions: Company insurance for Employment Practice Litigation and Company Insurance for Securities Claims. The above are covered for any "wrongful acts" committed.
What should Organisations do?	Companies should provide their investors and keep the markets sufficiently informed with insight regarding their assessment of, and plans for addressing, material risks to their business and operations resulting from the pandemic to the fullest extent practicable. However, caution ought to be exercised when making any forward-looking statements as the current pandemic will likely bring about a plethora of shareholder actions. It is imperative during such times that the board and management take a close look into all public announcements and media interfaces. From insurance perspective, companies should re-look into the policy exclusion. There should be no exclusion with respect to Pandemic or infectious disease
What if the D&O policy has bodily injury or property damage claim exclusion?	While D&O policies exclude cover for bodily injury and property damage, these exclusions are generally narrowly drafted. Any claims derived or arising from bodily injury or property damage are usually covered. However, the specific policy conditions should be checked



COMMERCIAL GENERAL LIABILITY INSURANCE



PROBLEM STATEMENT	SOLUTION
What may trigger CGL policy?	The standard CGL policy includes "disease" under definition of bodily injury. In the current pandemic situation, many companies face a risk of liability if any individual (example: third party vendor or a customer) alleges and proves that they contracted the disease on their premise due to inadequate safety measures adopted by the business owner.
What is covered under CGL policy?	CGL Policy aims to cover any and all damages that the insured becomes legally obligated to pay, because of "bodily injury" or "property damage" caused by an "occurrence" that takes place in the "coverage territory". The fundamental distinguishing factor for a CGL Policy from any other policy is that it covers a third party loss for which insured become liable for damages, not a loss incurred by the insured themselves.
Exclusion for "expected injury" under the policy	In a worldwide pandemic situation, where the virus is spreading rapidly and no vaccine has been developed, an argument could be made by the Insurer that spread of COVID 19 was an expected injury and therefore excluded. Such exclusions are completely fact based and the decision will be highly subjective.
Exclusion for "virus" and "bacteria, organic pathogen/fungi/mold/mildew/yeast/microbe exclusions" -related injury"	How these exclusions are worded and how broadly a court will interpret the scope of the exclusion will all impact whether liability arising out of a disease outbreak is covered or not. Furthermore, a policy may also include exclusions for any liability arising out of communicable diseases
Exclusion for communicable diseases	It is important to look into the exact definition of this exclusion. Depending on the wording, any coronavirus claims may be barred under the policy
Exclusion for Pollution	Most policies have a relatively broad definition of pollution, and depending on the circumstances and specific case law, there could be some gray area to state COVID-19 was a pollutant

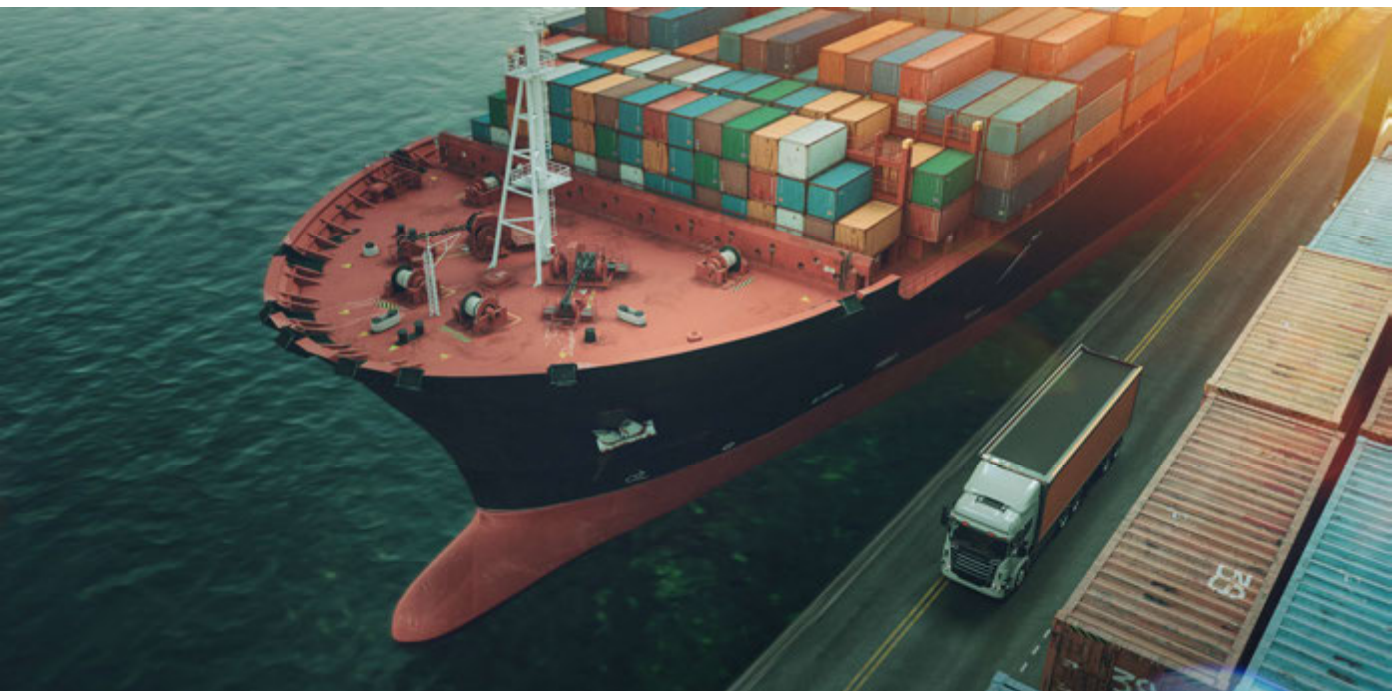




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What does the policy cover?	The policy covers against insolvency and protracted default. For exports, in addition to insolvency and protracted default, the cover extends to political risk also.
What is protracted default?	As soon as a claim is lodged under the policy as per timelines mentioned, there is a claim waiting period of around 180 days. If the payment from the buyer is not recovered within the claim waiting period, it is classified as protracted default and claim is paid even if the buyer is not insolvency. This is obviously subject to the transaction being undisputed.
Is Pandemic an exclusion under credit insurance policy?	Pandemic is not an exclusion under the policy. Hence, if a buyer becomes insolvency because of business being impacted due to Pandemic, the same would be covered under the policy
There are bound to be payment delays in the current crisis. There is a cost of capital associated with this. Would the credit policy cover the interest, penalties charged for delay in payment from the buyer?	The policy covers the invoice value which includes the taxes. Charges like interest and penalties debited to the buyer for late payments cannot be covered under the policy.
The indemnity in the policy is 85%. Can we cover the remaining 15% by taking a bank guarantee or security deposit from the buyer so that we are secured 100%?	The indemnity of 85% is on the net outstanding amount in default. So, if there is any security like a BG or security deposit from the buyer for 15%, then the same would need to be invoked before approaching the insurer for a claim. The insurer would indemnify 85% of such amount. As a result 100% coverage is not possible under the policy. This 85% indemnity is fixed by the regulator and no insurance company can give a higher indemnity (only exception is ECGC for exports)
What happens if there is recovery from the buyer post payment of claim to the insured by the insurer?	All recoveries from the buyer post payment of claim are shared between the insured and the insurer in proportion of covered to uncovered portion of debt
If we take a credit insurance policy today, would our current outstanding be covered?	The policy covers invoices raised from the date when the policy is inception. Hence, outstanding receivables as on date of policy inception cannot be covered under the policy.
Would the insured be required to initiate legal against the buyer? If yes, who would pay the legal cost?	Once a claim is lodged, the insurer/reinsurer would initiate dialogue with the buyer. At this stage, whether to go legal or not would entirely depend on the response from the buyer. The insurer would advise the insured on the strategy to move forward. Legal is generally the last resort. The idea is to amicably try and recover the outstanding. Saying this, some insurers want the insured to exhaust all possible means of recovery (including legal) before they pay the claim. Legal cost is part of the policy. Since the indemnity is 85%, the insurer would bear 85% of the legal cost and remaining 15% would be borne by the insured. The legal firm to be used is mutually decided between the insurer and the insured based on costs, credentials, and experience in handling such cases
Can the business be restarted with a defaulted buyer in a scenario where either the recovery has happened post payment of claim or recovery happened post lodging and before indemnity?	In such a scenario, the insured would be required to trade with the buyer on their own risk for a period of 6 months, post which the insurer can review and look at inclusion under the policy. The inclusion would also depend on the reason due to which the buyer defaulted earlier.



PROBLEM STATEMENT	SOLUTION
<p>What needs to be done in case of IMPORTS BY SEA Incoterms-Ex-works, FOB, CFR, C&F, CIF Indian Port (Tail-End) ?</p>	<ul style="list-style-type: none"> ▪ Ask insurer to increase the duration clause of 60 days under ICC A (Clause 8) by an additional 60 days ▪ Check adequacy of limit per location limit ▪ Obtain Fire & Burglary policy wherever contract of carriage has been discontinued or stoppage is voluntary
<p>What needs to be done in case of IMPORTS BY AIR Incoterms : Ex-Works, CFR ?</p>	<ul style="list-style-type: none"> ▪ Ask insurer to increase the duration clause of 30 days under ICC (Air Cargo-Clause 6) by an additional 60 days ▪ Check adequacy of limit per location limit ▪ Obtain Fire & Burglary policy wherever contract of carriage has been discontinued or stoppage is voluntary
<p>What changes need to be brought in the insurance solutions for EXPORTS BY SEA Incoterms - CIF, CFR & FOB ?</p>	<ul style="list-style-type: none"> ▪ Check incoterms - if it is CIF export & invoice has been billed and LEO has been issued marine cover is valid ▪ If it is FOB/CFR - ask insurer to extend the current 14 days cover by another 16 days, i.e, 30 days in total
<p>What changes need to be brought in the insurance solutions for INLAND MOVEMENT: BY TRUCK on delivered to destination basis ?</p>	<ul style="list-style-type: none"> ▪ Ask insurer to extend the duration clause under ITCA (Clause 6) which provides cover for 7 days after the vehicle reaches the destination city, by additional 60 days ▪ Obtain Fire & Burglary policy wherever contract of carriage has been discontinued or stoppage is voluntary
<p>What changes need to be brought in the insurance solutions for INLAND MOVEMENT: BY RAKE on delivered to destination basis ?</p>	<ul style="list-style-type: none"> ▪ Ask insurer to extend the duration clause under ITCA (Clause 6) which provides cover for 7 days after the Rake reaches the destination city, by additional 60 days ▪ Obtain Fire & Burglary policy wherever contract of carriage has been discontinued or stoppage is voluntary





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<p>What needs to be done in as per the national directives of Ministry of Home Affairs, Govt Of India, Order No. 40-3/2020-DM-I (A) dated April 15, 2020 and a subsequent order dated May 01, 2020</p>	<p>The order dated April 15, 2020 says</p> <ul style="list-style-type: none"> ▪ All industrial and commercial establishments, workplaces, offices, etc. shall put in place arrangements for implementation of Standard Operating Procedures (SOP) before starting their functioning ▪ As per clause no.5 of Annexure -II of the said SOP for social distancing for offices, workplace, factories, and establishments, <i>medical insurance</i> for the workers to be made mandatory. ▪ In this order, there is no minimum sum insured, coverages, policy type, etc. ▪ Furthermore, if any employee is already covered in any kind of policy offered through employer, i.e., ESI or Corporate program, there is no need for additional policy <p>Surprisingly, the mandatory medical insurance for workers was introduced in the MHA order dated April 15, 2020 but does not find mention in the edition dated May 01, 2020</p> <p>Subsequently, State Governments have issued their own directives in this regard.</p> <p>You are advised to take a legal opinion for the respective operations in the states you have operations in to decide if it is mandatory to take medical insurance or not.</p>
<p>Are insurance companies providing medical insurance for COVID-19 as per MHA guidelines ?</p>	<ul style="list-style-type: none"> ▪ There are various cost effective insurance covers being provided by different insurance companies for employees only, with or without pre-existing disease cover, graded sum insured options to choose from etc.
<p>What is going to be the claim submission and processes in health insurance policies during this lockdown period ?</p>	<p>With lockdown and restriction on courier services, now claimants can submit their claims online (scan & upload) and even payments will be released by insurers subject to claim approval. However, the claimant needs to submit their physical claim within timeline given by Insurer/TPA.</p> <p>All the policies come with a definite claim submission timeline but during such unprecedented times, insurers can be seen giving relaxation to the beneficiaries. The relaxed timeline and process will differ from insurer to insurer and hence we would advise clients to clarify the guidelines from their insurer</p>
<p>In case of layoffs in an organization, what is going to be the status of health insurance for employees being laid off ?</p>	<p>Layoffs have been reported across industries and without adequate health coverage for employees and dependents, the impact of pandemic could be much deeper. Under Regulation 4(6) of IRDA (Protection of policyholders' interests) Regulations, 2002, an individual can port their policy from one insurance company to another or from one plan to another. This will also ensure minimum sum insured coverage as per last held policy and credit relating to waiting period for pre-existing conditions that one has gained with the old insurer.</p>
<p>Is it mandatory to take Employee/Workmen Compensation insurance as well ?</p>	<ul style="list-style-type: none"> ▪ Employers are legally required to exercise duty of care towards safety & security of their employees e.g. workplaces are safe, hygienic and take care of employees' health and well-being. In situations like the current pandemic, it may be beyond the control of employer to keep the workplace immune from the reach of the pandemic. ▪ However, if a personnel still contract the virus arising out of and in the course of their employment, the employee may move a claim against their employer under THE EMPLOYEE'S COMPENSATION ACT, 1923, which may result in the employer claiming any losses under the workmen compensation policy. ▪ While the act envisages that injuries, disablement, illness or disease must arise out of or in the course and scope of employment, it will be difficult to determine the exact moment when the diseases contracted, thereby creating a tougher burden of proof. ▪ It is advisable to have adequate protection under THE EMPLOYEE'S COMPENSATION ACT,1923

These are general answers to various set of queries being received by our offices, in case you desire more specific inputs please reach out to contact the Prudent account manager for support in this time of crises.



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