



Covid-19 and Business Interruption Insurance Cover in India

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The outbreak of Pandemic Covid-19 has a widespread and profound impact on the world economy affecting various sectors such as airlines, travel, leisure, manufacturing industries, etc. and posing major challenges to global supply chain-management.

In the absence of any reliable vaccine to prevent the rapid spread of this virus, Governments are left with limited options like closing borders, and imposing quarantine and curfew to ensure people stay at home to mitigate the spread of the virus.

As Governments declare state emergency and restrict movement of people, industrial activities have come to a grinding halt creating a big dent in corporate balance sheets.



The industries in crisis, having taken Business Interruption insurance to protect their balance sheets, would expect the insurance company to come to their rescue, as the Government has declared this event as Force Majeure. However, the Insurers, generally, say Business Interruption cover follows the occurrence of a peril or AOG perils.

Force Majeure Clause is a contract provision that relieves the parties from performing their contractual obligations when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal or impossible. In such circumstances, Force Majeure Clause may be invoked by parties to the contract as per the procedure laid down in the contract. It is important to appreciate that Insurance policies, which are Contracts of Insurance, do not have a force majeure clause.



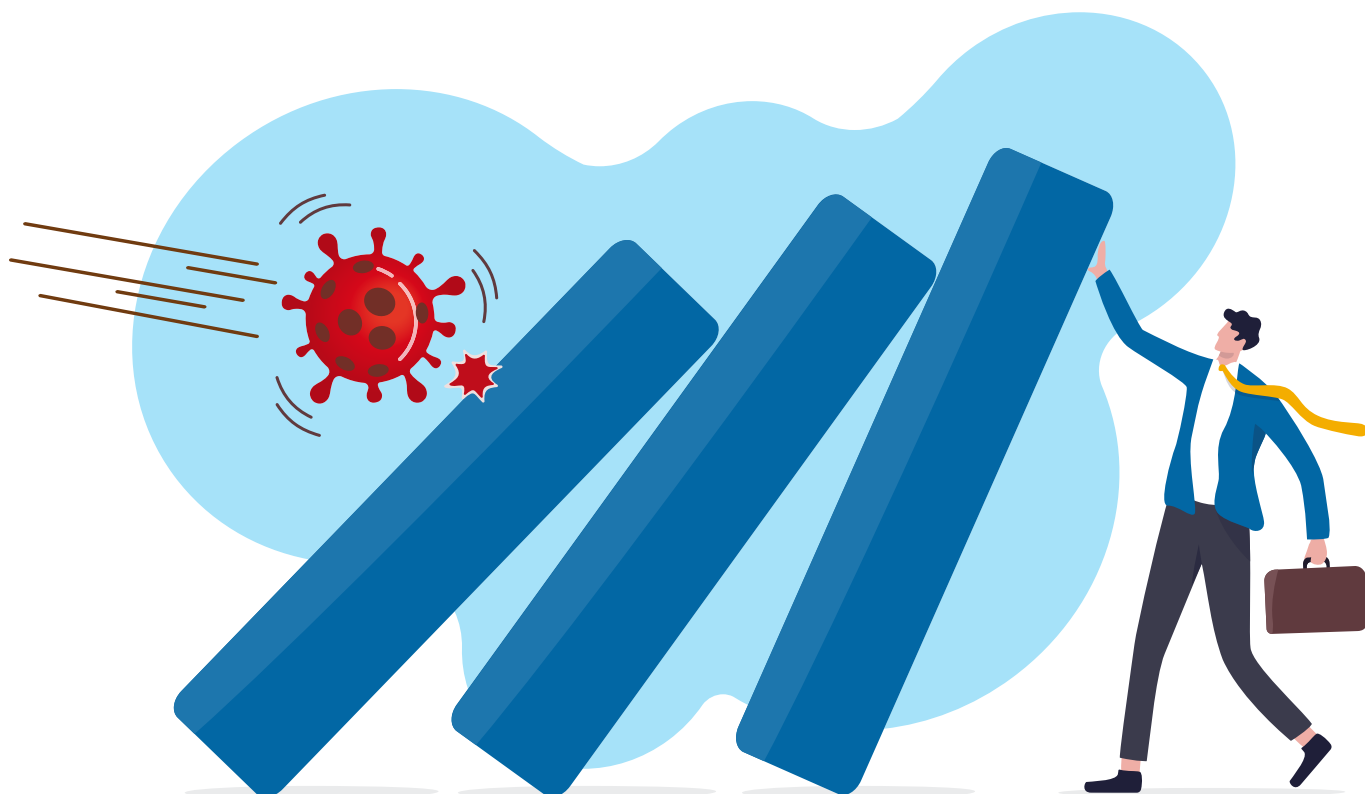
Under insurance parlance, epidemic and pandemic outbreak are not considered as AOG perils. However, the Industrial All Risk policy terms and conditions (operating on exclusion basis), does not mention anywhere that infectious / contagious diseases are excluded in the policy. The preamble of the policy does states that the policy would indemnify the insured if the property is accidentally physically lost, destroyed, or damaged other than by an excluded cause during the period of insurance.

Since this Covid19 has not caused any damage to the Insured property, the Insured has not suffered any loss on their assets, but losses due to Business Interruption are incurred only due to Lock Down enforced by the Government as a result of Covid-19.

The basic requirement to admit liability under Business Interruption (BI) is that the **business should have been interrupted by damage to the Insured assets and provided that such damages are indemnifiable under property damage policy.**

In this current Scenario, since there is no damage to the Assets of the insured, their BI losses are not admissible under Standard Business interruption policy.

There are few incidents, where insurers are covering the BI losses of the Insured even though there is no damage to the assets of the Insured, by way of an extension to the BI policy and it falls under **Contingent Business Interruption (CBI) cover.**



CBI is an interruption of business activity due to an event that occurs outside an organization. As BI is an extension of property damage, CBI is an extension of BI.

Typically, CBI insurance covers the BI loss of the Insured arising due to damage at a third party location- a supplier or customer (outside the organization), or Public Utility Service, or denial / prevention of access due to damage in the vicinity of the Insured premises.

Reinsurers are incorporating the following condition under CONTINGENT BUSINESS INTERRUPTION (CBI) EXPOSURES CLAUSE / PROVISIONS in their Re Insurance Treaty with Indian Insurance companies.

on extensions for suppliers and customers, public utilities and denial / prevention of access to:



- Provide coverage as a consequence of insured physical damage only
- Basically grant suppliers and customers extensions for named suppliers and customers only
- Assess the respective exposures
- Charge an additional price for them and
- Take into account CBI limits and in addition accumulation between several risks in deciding on capacity allocation
- Specific Provisions
- Contingent Extension of Loss of Profit Section comprising Customers and Suppliers, Prevention of Access and Public Utilities would be restricted to the following coverages
- Named Customers and Suppliers Extension with a maximum limit of 20% of Sum Insured under BI. Unnamed Customers and Suppliers Extension with a limit of 10% of Sum Insured under BI.
- Prevention of access with a maximum limit of 30 days (Over and above the policy time excess) and within a maximum radius of five kilometres from the Insured's premises and only inland.



Based on the above provisions, Indian insurance companies are offering **Prevention of access / denial of access Extensions / Endorsement.**

This extension protects the Insured against the resulting interruption loss if access to their premises is prevented because of damage in the 'vicinity' (within 5 km) of the Insured's premises, up to a max indemnity period of one month (in a few cases, up to 10% of BI Sum Insured)

Even in this case, **damage to the third party property by an insured peril is a prerequisite** to admit the loss. Therefore, CBI excludes non-damage incidents like Covid-19.

Interestingly, Indian General Insurance Council planned to develop a clause on Interruption by Civil Authority, Denial of Access (1 km) during its initial stage (2008/09), but did not pursue it subsequently due to market development.

Following the SARS outbreak of 2003 Reinsurers have introduced exclusion clauses for communicable diseases and epidemics / pandemics into most of the property Re Insurance treaties worldwide.

The specific exclusion stated in the Indian property treaties is as below;

Any direct or indirect loss by infectious or contagious disease

As per Indian Insurance regulation (RDA) insurance companies operating in India, are not allowed to use the free wording and all their insurance products including this kind of extension need to be approved by the regulator, before offering to the insured.

In the light of the above Reinsurance treaty restriction and exclusion, no Indian insurer has approved clause that would address the BI loss caused due to the Pandemic Covid-19



Even the standard Prevention of Access clause used in the International market (in US it is called as Civil Authority Clause) clearly states the requirement of Physical property damage to admit the BI losses.

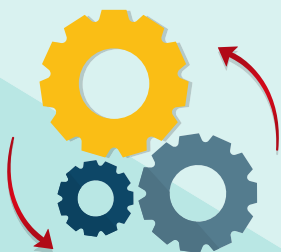


The common Civil Authority Clause used in the US market is as follows:

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:



- Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property



- The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property

We can note from the above clause, coverage is offered to the situations where access to an Insured's property is prevented or prohibited by an order of civil authority issued as a direct result of physical damage, caused by an insured peril, to other property in the proximity of the Insured's property.

Now let us explore the opportunity available in the international markets to protect the BI losses following Covid-19.

The following clauses are used by different markets to address the current requirement:

UK market uses	Denial of access, loss of access (no Damage)
USA Market uses	Civil Authority Clause
Other market uses	Ingress/Egress
German market uses	Unmöglichkeit des Zugang

Denial of Access (Non Damage)

In consequence of access to or use of the Insured's Premises being hindered or prevented due to the Premises or property in the vicinity of the Premises or any rights of way being to a radius of 2 miles from the centre of the Premises.

- a) Thought to contain or actually containing a harmful device provided that the police are immediately informed
- b) Closed down or sealed off in accordance with instructions issued by the police or by any statutory body except where the cause of such closure or sealing off is the Insured's non compliance with a prior order of the police or any statutory body
- c) Unlawfully occupied involving the threat of violence whether actual or implied
- d) Affected by an actual or suspected gas leakage at or in the vicinity



Closure or Evacuation; Food or Drink Poisoning; Murder, Suicide

Any loss as insured by this Section Two resulting from interruption to or interference with the Business arising from:

- (i) Closure or evacuation of the whole or part of the premises by order of any Government or Public or Local Authority consequent from:
 - A felonious act by a person or persons other than Insured;
 - Vermin or pests or defects in the drains or the sanitary arrangements at the business premises;
 - The outbreak of a notifiable or contagious disease in humans occurring at the business premises;
- (ii) By poisoning directly caused by the consumption of food or drink provided at the business premises;
- (iii) Murder or suicide, or threat thereof, occurring in or at the business premises;

Shall be deemed to be loss resulting from damage to property of the insured at the Insured premises.



The new Endorsement which is being introduced in all PD/BI policies effective 1st April, 2020 has been finalised by GIC and is as follows:

Communicable Disease Exclusion Clause

Notwithstanding any other provision, clause or term of this policy to the contrary, this policy does not cover any claim, loss, liability, damage, cost or expense of any kind relating to, whether directly or indirectly and/or in whole or in part, a Communicable Disease and/or any fear or threat thereof (whether actual or perceived).

As used in this clause,

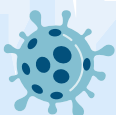
Communicable Disease means any: infectious disease; contagious disease; communicable disease; and/or, any infectious, contagious or communicable substance (including (but not limited to) a virus, bacterium, parasite or organism or any mutation of any such things, whether living or not), regardless of the method of transmission (including (but not limited to) whether direct or indirect airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas) that causes, can cause or threatens: damage to human health; damage to human welfare; and/or, damage, deterioration, loss of value, marketability or loss of use to tangible or intangible property. For the avoidance of doubt Communicable Disease includes (but is not limited to) corona virus disease 2019 (COVID-19) and any mutation or variation thereof.

Relating to means: relating to; in connection with; arising under; arising out of; as a result of; as a consequence of; attributable to; contributed to by; and any other term commonly used and/or understood to reflect or describe a nexus and/or connection from one thing to another whether direct or indirect.

For avoidance of doubt:

- (1) No other prior, concurrent or subsequent provision, clause, term or exception of this policy (including (but not limited to) any prior, concurrent or subsequent endorsement and/or any provision, clause, term or exception that operates, or is intended to operate, to extend the coverage of, or protections provided by, this policy;
- (2) Any change in the law clause or similar provision;
- (3) Any follow the fortunes clause or similar provision; and/or,
- (4) No change in the law or any regulation (to the extent permitted by applicable law), shall operate to provide any insurance, coverage or protection under this policy that would otherwise be excluded through the exclusion set forth in this clause.

If the Insurer alleges that by reason of this clause, any amount is not covered by this policy, the burden of proving the contrary shall rest in the Insured.



Conclusion

The magnitude of BI losses suffered by corporates across the world is massive. Had the insurers offered cover against this BI loss, the whole capital of Insurers and Reinsurers would have been wiped out and it would not be an exaggeration to say the entire global insurance market would have faced collapse.

Every catastrophic event affecting the global economy and causing business slowdown has paved the way for innovative solutions to address the new circumstances. Stand-alone terrorism cover, Terrorism Pools, and the Nuclear Insurance Pool to cover operators against nuclear liability to third parties are some notable examples.

Similarly, Covid-19 outbreak is expected to bring in innovative insurance solutions across the world for business interruption losses arising out of pandemic outbreak, without any property damage trigger.

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