



APRIL 2020 | CLIENT ADVISER

Important Information Regarding Covid-19 and Insurance

It is apparent that the outbreak of COVID-19 (e.g. the Coronavirus) has created severe health and disease related issues worldwide. Apart from this, the outbreak has also placed many companies and their employees in a considerable critical situation. Though each situation varies from company to company, it has raised a great deal of concerns and questions relating to insurance and whether companies are covered in cases of claims or substantial losses as a result of COVID-19.

The details regarding the coverage of loss and claims will naturally depend on the given insurance policy and coverage, as well as the applicable terms and conditions of the insurance(s). Nevertheless, for your convenience, we have gathered all relevant information and created an overview on a range of insurances and how they each cover claims and losses related COVID-19.

For specific inquiries relating to coverages and COVID-19, please contact your Marsh representative, who will be ready to answer any question you might have.

Additionally, please refer to Marsh "[Pandemic Risk](#)" website, for further advice and information.

- ▶  Travel and Expatriation Insurance
- ▶ Property and Business Interruption Insurance
- ▶ General and Products Liability
- ▶ Marine Cargo Insurance
- ▶ Workers' Compensation Insurance
- ▶ Health and Life Insurance
- ▶ Directors & Officers Liability Insurance and Employment Practices Liability (EPL)
- ▶ Construction and Erection All Risks Insurance
- ▶ Crime and Cyber Insurance
- ▶ Trade Credit
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Travel and Expatriation Insurance

Coverage for business travel and the assessment thereof will vary according to each insurance company.

Generally, you should not expect your Business Travel Insurance to cover expenses related to the coronavirus in the category orange or red countries. This is due to the current high risk of injury relating to the Coronavirus worldwide, which may be considered as an expected injury, and will as such not be covered by Travel Insurance – regardless of the country's categorization (e.g. Red or Orange Zone).

If you must conduct a business journey, which is also business critical and has been officially approved, please contact Marsh immediately to get a written confirmation of coverage for medical expenses, transportation expenses and extraordinary expenses that may occur as a result of quarantines or closed borders in the country you travel to. It is also important to confirm any possible assistance available in the country you travel to. Even if there is coverage on your business travel insurance, the assistance provider may not be able to help you or an employee in case of a claim for compensation of evacuation or assistance due to country restrictions caused by the Coronavirus. There is a risk that an employee, who has travelled for business purposes, is left alone with no support for the claim. This could furthermore expose you (as the employer) to a liability claim.

If you have to cancel a trip, you should contact your travel agent or the airline. If you have a coverage for cancellations for business trips and the trip was purchased BEFORE the outbreak of the coronavirus, some insurance companies will accommodate such claims, while others will not provide compensation due to the extenuated circumstances caused by the coronavirus - unless you are ill and cannot travel. Please contact Marsh in order to clarify your specific coverage. If you do NOT have a cancellation policy, expenses related to cancellations of trips will NOT be covered under the Business Travel Insurance.

If you are a Danish citizen abroad and cannot get in contact with the assistance provider, you have to contact the Danish Ministry of Foreign Affairs' global alarm centre – phone +45 33 92 11 12 or bbb@um.dk. If you are not a Danish citizen, please contact the Foreign Ministry in your home country.

Danish citizens, who are living abroad (expatriated), must stay in the country. The expatriation insurance will cover medical expenses relating to the coronavirus also if you are in a category red country. As a main rule, you cannot use the evacuation coverage on the expatriation insurance since the recommendation to leave the country and travel to Denmark is reserved for travelers and not expatriates. If you have travel on business during an expatriation, the same rules as mentioned above on business travel insurance apply.

Property and Business Interruption Insurance

Generally, Property and Business Interruption Insurance covers physical damage or loss of insured buildings and/or property, as well as business interruption relating to the physical damage.

A decline in business revenue caused by the COVID-19 pandemic will usually not be covered by the insurance policy as the business interruption is not caused by a physical damage to the insured property.

Coverage for business interruption without a physical damage (non-damage business interruption) is uncommon, high-priced and, therefore, rarely sought covered by Danish companies. Extended business interruption coverages, such as non-damage business interruption, have a very limited scope in clause wordings. Premiums will often be considerably higher compared to the premiums for typical coverage. A limited number of international insurance companies offers these special and bespoke solutions – capacity is limited, and coverage is typically targeted at very industry specific risks, e.g. exposure for closure of airports as a result of ash clouds.

The market does experience increased interest in coverage of non-damage business interruption within cyber insurance. Coverage would be for specific cyber events which would be covered by a company's cyber policy.

General and Products Liability

The general terms of a General and Products Liability Insurance will cover liability matters and generally do not have specific exclusions for infections with viruses. However, there may be variations between the insurance companies' list of exceptions and will as such require a specific assessment of the policy conditions.

Please note that the conditions noted below must be fulfilled for compensation to be made if you are held liable for any such case according to Danish law:

- Principle of fault (grounds for liability)
- Causal relation
- Foreseeability/proximate cause

The burden of proof is the responsibility of the injured/claimant. All of the mentioned conditions are considered a substantially difficult challenge to provide when making a claim ailments caused by the spread and/or infection of the coronavirus.

In order to be considered covered under the General Liability Insurance; it is a condition that the company in question has not acted intentionally or grossly negligent. It is vital that there has not been a gross infringement of basic security principles.

The insurance covers property damage and/or bodily injury as well as legal defense costs relating to the handling of the case and legal representation. Should you be met with unjustified claims, most liability insurances includes the condition that gives the insurance company not only the *right to* but also the *duty* to defend the insured. In other words, to assist with the handling of the case, payment of legal fees, etc. (above the excess/retention).

Indirect losses such as the loss of income, loss of operation (or the like), may be covered if it is a result of bodily injury or property damage which is covered by the insurance, i.e. in this given case, in the form of infection

Marine Cargo Insurance

As a result of the coronavirus, several Chinese ports and airports have closed, resulting in carriers having to resort to alternative routes. With the current development we see in Denmark, there is a potential risk that this scenario could also occur at Danish ports and airports.

A starting point (trigger of coverage) is that the cargo must have suffered physical damage in order to relate and fall under the Marine Cargo insurance. However, one exclusion could be additional costs relating to transport.

The lost profits / gains associated with the Coronavirus will not be covered under the Marine Cargo Insurance, unless it occurs as a result of a physical injury.

Additionally, there is no cover for delay. Please be aware of situations relating to the delay of cargo delivery beyond 30-days (e.g. air transport) or 60-days (sea transport), as coverage for any damage to cargo will no longer be valid 30 – 60 days from the goods have been unloaded from the aircraft or ship.

Additional Costs – Transportation by Sea

If the shipping company cannot carry out the agreed transportation of cargo, they may instead choose from the following options:

- a. Carry the goods to the destination named in the contract by an alternative route. In this case the carrier will usually be entitled to charge additional freight.
- b. Suspend the carriage of the goods and store them to be forwarded at a later time. In this case the carrier will usually be entitled to charge additional freight.
- c. Abandon the carriage of the goods and place them at Shippers disposal at any place or port.

If the insurance is taken out under Danish Marine Cargo Conditions / ICC (A) (e.g. all Risk Management clients and Facility Clients), the below conditions apply. Nevertheless, if the shipping company uses the options listed above without informing the insured, then the coverage will continue unchanged.

However, if the options above are activated, the following applies:

1. **Damage / Claims Coverage:** If the transportation is continued within 60 days, the coverage will remain unchanged. If the goods are stored for more than 60 days, the insurance company must be informed immediately, wherefrom additional / extended coverage may be agreed upon. Additional premiums may apply.
2. **Risk:** Costs relating to the storage of goods and further transportation of goods, will be charged by the shipping company or freight forwarder to the receiver of the goods. Such costs and expenses can be considerable amounts (for

example, we have a client with an extended claim of approx. DKK 250.000).

3. **Coverage for Costs:** If the insured was unaware or should have known prior to the beginning of the planned transportation that the journey would not be carried out according to plan, reasonable expenses relating to unloading, storage and onward transportation will be covered under the policy.

Generally, there will only be coverage for storage which is “part of the transport”. If the shipper / recipient redirect the goods to temporary storage e.g. at an external warehouse, the Marine Cargo Insurance will cease to cover. The insured must either ask the insurance company for an extension of the coverage or consider whether it is possible to cover the storage place / warehouse under the Property Damage and Business Interruption Insurance.

Goods that are to be delivered must be received at least 60 days after the unloading of a ship. If you are at risk of exceeding this limit, you should contact the insurance company and agree on a temporary extension of the coverage. Please note there may be an additional premium for this.

Additional Costs – Air Transportation

If the insurance is underwritten according to Danish Conditions / ICC (Air) (e.g. all Risk Management clients and Facility Clients), the conditions noted above apply. PLEASE BE AWARE that the deadlines for ICC (Air) are 30 days. The greatest risk to expect in connection with the transportation of goods by air is extraordinary storage of good due to delays.

Most airlines have conditions where they may “without notice cancel, terminate, change, reschedule or postpone any flight or any right to further carriage or continue a flight without or only with part of the cargo if it considers this advisable for the following reasons [...] due to any event beyond its control...”.

Most airlines also have conditions where you have to cancel, terminate, change or postpone the transport due to circumstances beyond their control.

Workers’ Compensation Insurance

In principle, infection with COVID-19 is not designated as a work injury. This is because there is a significant risk of being infected outside of the workplace and burden of proof can be very difficult to prove.

In order for illness or the infection with COVID-19 to be recognized as an occupational injury, the person in question must, without reasonable doubt, have been exposed under specific work-related conditions or be under specific work circumstances (i.e. healthcare professionals) that poses particular risks to the infection. Thus, in some cases, COVID-19 may be recognized as an occupational injury – due to either a work accident or occupational disease.

If an employee is infected with COVID-19, the employer should only report this to the insurance company if:

- A COVID-19 diagnosis has been made (a suspicion of infection is not sufficient)

- It is very likely that the employee has been infected in connection with performing duties at work
- Law and regulation allows certain benefits or if the employee in question is ill for more than five weeks.

There should not be reported claims solely based on the potential / risk of infection or quarantines decided by the company.

Important information regarding Work-from-Home

Generally, Workers' Compensation Insurance will also cover work-from-home. However, it may be difficult to assess whether a claim or injury occurring in an employee's private home may be considered a work injury.

It is therefore a requirement (for compensation of a claim) that the grounds and cause of the accident / injury relates to duties performed in relation to the employees work.

Arbejdstilsynet (the Danish Occupational and Professional Authorities) encourages all employers to discuss optimal solutions with employees on temporary work-from-home solutions and to discuss, whether there are any conditions or ailments they are currently experiencing, and how to minimize them.

Health and Life Insurance

It is the public sector that treats patients with the Coronavirus in Denmark as it is an illness which requires immediate treatment.

Health Insurance only covers illnesses that are not critical or immediate and will consequently not necessarily cover treatment for epidemic-related illnesses.

Currently, all non-critical treatments have been suspended and the public authorities have recommended that private hospitals (and private sector) take the same measures. As a result, this will create longer waiting periods for patients for health services that are otherwise covered under the policy.

The Danish health authorities have ordered all private hospitals to stop any surgical activity or other activity which would require anesthesia and/or life support equipment. This equipment has to be made available for the public sector. As it is a government order, private hospitals can only continue surgical activity if it does not require anesthesia or life support equipment and is according to the official Danish government handbook on the Coronavirus. It is very likely this will cause surgical treatments to be postponed indefinitely.

It is not expected that coverage will be changed or affected in the event of the insured's inability to perform occupational duties or loss thereof or in the event of death, as this is part of the general terms of the coverage. Nevertheless, we do expect that there may be insurance companies that could impose exceptions and specific conditions to coverages in the event of death or inability to perform occupational duties during the first year following the outbreak of the pandemic.

Directors & Officers Liability Insurance and Employment Practices Liability (EPL)

There are no significant coverage exemptions for D&O or EPL, however there may be increased exposures due to the outbreak of COVID-19.

For D&O Insurance, clients may be exposed to claims as a result of inadequate or insufficient measures in connection with the outbreak and the necessity for containment of the Coronavirus. Directors and officers in many businesses have to be proactive and react quickly to the restrictions on business operations and management of staff, e.g. by safeguarding employees by continuing the business operations by working from home. Examples of inadequate or insufficient measures could be:

- Poor communication to employees about the approach to business continuity management;
- Failure to have adequate company policies and systems in place to so that business as usual can be maintained;
- Lack of supplies or alternative agreements with suppliers, thereby slowing or – worst case – halting production;
- Lack of cyber resilience capabilities to ensure the security of data when there is a very high level of remote access.

Furthermore, Marsh have already been informed of potential D&O claims made due to the lack of informing investors on the significance of the virus on company's financial standing, including business continuity management, financial expectations for 2020, and long-term strategy planning.

Please pay exceptional attention to EPL claims in relation personal data / GDPR regulations. It is e.g. not allowed to announce the identity of a colleague, who has been diagnosed with the Coronavirus, without the specific colleague's permission. There is also a risk of EPL claims in relation to wrongful termination – partly due to allegations of discrimination based on gender, age, religion or similar, and partly due to particularly restrictive regulations for employment termination in some countries, such as Germany, and where the compensation level for wrongful termination may be significant.

Construction and Erection All Risks Insurance

We have noted that under the current circumstances there are several companies, including construction suppliers that are been closing down business and production. This has, among other things, been due to lack of labor and/or delayed delivery of materials. We expect that several constructions sites will in the near future, be affected directly by employees getting ill or quarantined, or indirectly by being unable to deliver products.

Generally, Construction and Erection All Risks Insurance covers only expenses and losses resulting out of physical damages. As such, the consequences of COVID-19 cannot necessarily cover compensation/cover for loss due to delay etc. The grounds for such losses should be handled under the AB/ABR agreement of contracts.

Physical damage and losses on constructions will be covered by the insurance. However, if there is no property damage there will be no coverage. This also applies to DSU (delay-in-startup) cover for loss of profits and additional costs relating to the delay of a project deadline/delivery.

Nevertheless, there may be exceptions to this if for example, if there is a coverage for "Denial of Access". As such, depending on the wording of the clause, the policy may cover delay if the customer is prevented from accessing the construction site due to so-called "specific and/or extraneous events" – which may also be listed in the policy.

Important information in relation to the closing of construction sites:

A standard Construction and Erection All Risks Insurance requires the closing of any given construction site (i.e. closings of more than 7 days), must be reported to the insurance company. The insurance company will therefrom assess the conditions that apply and how the insurance coverage should be maintained.

The insurance may have stricter requirements regarding coverage of theft. This may be requirements such as rounding or similar acts that require staff is present at the construction site. If a construction site is closed due to the outbreak of COVID-19, it is vital that you inform the insurance company. This is to ensure that the insurance is maintained according to the needs and developments, including any potential adjustments that may be required for theft protection, extension of the construction period and other possible increases in construction costs.

Crime and Cyber Insurance

There are no specific coverage exceptions relating to epidemics/pandemics for Crime or Cyber Insurance.

Marsh has assessed that our clients may have an increased exposure to malware. People with criminal intent are likely to try to exploit the current situation by for example, sending links and files by mail to clients. Clients should therefore pay extra attention to such circumstances in order to avoid substantial losses.

Trade Credit

Trade Credit covers in the event of bankruptcy or non-payment. To date, coverage is "Business as Usual" – though with the uncertainty that credit insurance companies are already starting to withdraw coverages and are in some cases, unable to offer capacity.

General advice - Measure the Impact

Marsh advises companies to collect and document all potential costs associated with the virus and its business impacts, such as cancelled orders, supply chain breakage, and lost profits. Even if these may not ultimately be covered under current insurance program, they can inform future risk mitigation and management strategies.

Payment Agreement with Insurers

A number of insurers have indicated on their websites (see link below) that they are prepared to offer their clients amended terms of payment of insurance premiums in 2020.

This will typically mean an opportunity to switch to monthly payment of the insurance premium.

We have noted that this is not a general scheme, as it will be considered on case by case based upon the individual client's situation.

If you see a need to amend terms of payment of insurance premiums, or otherwise have questions in respect of the following:

- Extension of payment
- Adjustment of the insurance due to change in the company's activities
- Change in turnover
- Change in number of employees

Then please contact your usual Marsh advisor. Alm.

Brand: <https://www.almbrand.dk/erhverv/landingpage/coronavirus/corona-hjaelp/>

Codan: <https://www.codan.dk/erhverv/kundeservice/akut/coronavirus-og-erhvervsforsikringer>

Topdanmark: <https://www.topdanmark.dk/erhverv/coronavirus-saerligt-for-virksomheder/>

Tryg: <https://tryg.dk/erhverv>

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