

April 2020

# COVID-19: Property, Business Interruption and Engineering Insurance Implications under Lockdown



Given the extensive business impacts due to measures taken by governments and organizations to control the spread of COVID-19, which was declared a pandemic by the World Health Organization on 11 March 2020, many companies are looking at their property and other insurance policies for potential resilience and recovery options from ongoing losses. This pandemic is an unprecedented situation that will raise many issues for insureds and insurers alike. Organizations should work closely with their brokers, counsel, and other advisors to resolve such affairs.

In this volatile environment, certain provisions in your existing property and engineering policies have the potential to limit the coverage and - in some cases, preclude in totality.

Under traditional property policies, insured physical loss or damage is necessary to trigger a response under the policy. If COVID-19 manifests at an insured's premises with people becoming ill, insurers could contest that such effects are not physical loss or damage.

Recently the national re-insurer, General Insurance Corporation of India or GIC Re have come out with a guidance for the Indian insurers, on application of limiting provisions during the lockdown phase. Respective references of the same are also reproduced in each section below.

Most insurers are responding on the continuity of the coverage and other aspect in line with the guidance issued by GIC Re.

Please note that this advisory is an inclusive but not an exhaustive list of recommendations.

## Property Insurances (Fire / IAR / Mega / Package Policies)



The following clauses / provisions require attention in the current scenario:

- **Unoccupancy provision:**
  - Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy by or on behalf of the company.

***If the building insured or containing the insured property becomes unoccupied and so remains for more than 30 days.***

- **Change in risk provision:**
  - Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy by or on behalf of the company.

***If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property becomes unoccupied and so remains for more than 30 days.***

### **Warranties, conditions that are specifically present in some of the policies in addition to the above provisions:**

- Watch and ward provision - security related condition.
- Temporary removal of stocks or capital assets.
- Maintenance and normal upkeep related provision including those related to critical equipment to be maintained as per OEM's guidelines and regular overhauling.
- Scheduled maintenance or AMC related conditions.

### **The GIC Re and the insurers' view:**

- In respect of all Risks of retail / MSME up to Sum Insured of INR 5 crores may be shown leniency and allowed continuity of cover for unoccupied premises up to 3 May 2020 or till such time the lockdown is extended by the government, without taking written consent from insurer subject to all risk management systems and security systems being in place.
- In respect of all other risks, since online facilities are available, insured may intimate insurer regarding non-occupancy of the premises and specific approval maybe given by the insurer for continuity of cover up to 3 May 2020 or till such time the lockdown period is extended by the government, subject to risk management systems (for instance, fire extinguishers, sprinklers, 24/7 security, CCTV cameras, electric power supply being shut down in storage blocks etc.) being in place and operational. Wherever the risk is deemed as a silent risk, insurer to be intimated accordingly and silent risk coverage conditions to apply.

### **Marsh Advisory:**

- The policy wordings per se do not provide a definition of 'unoccupancy' and hence, it is natural that there could be an apprehension in your mind as to whether your premises can be considered as occupied or unoccupied and hence there could be a question whether to intimate the insurer on the current situation of the insured asset.
- In addition, there may be challenge in total compliance of some of the provisions mentioned above such as policy specific conditions related to security, maintenance,

OEM maintenance guidelines etc. under the current circumstance.

In both the above scenarios, as the communications released by the insurers are broader in their scope, we would strongly advise you, as a matter of abundant caution, to intimate your lead insurer and coinsurers on your current status of each of the insured premises and risk management systems present thereof. Your Marsh relationship manager would assist you in drafting necessary intimation to your insurer so that in the event of any doubt, your intimation may help insurer to review your current state and advise you on coverage continuity.

- Special attention to be given to a situation where you may have decided to manufacture a different product than you were manufacturing before the COVID-19 scenario. For example, there are organizations that have started manufacturing sanitizers, facemasks, ventilators, etc. In all such cases, it is important to inform the insurers of the above change in risk as in absence of such intimation, coverage under the policy could get prejudiced.
- **Update as on 28 April 2020** - The latest General Insurance Council advisory provides temporary relief by advising continuity of cover for Standard Fire and Special Perils Policies until 3 May 2020. However, it does not state whether the similar relaxation would be applicable for other property policies such as IAR, Mega or Package Policies etc. Bearing interest of our clients in mind, Marsh India has already highlighted the above gap to the relevant authorities and keep you abreast of any development in this regard.

## Business Interruption (Fire LOP / MBLOP / IAR / Mega / Package policies)



The GIC of India and the insurers' view: Business interruption (BI) cover is not operative during the period of non-occupancy.

### Marsh Advisory:

Once again, the above statement being open ended, does not specify what is inferred by 'not operative during the period of non-occupancy'. Some of the insurers have made it clear that if operations were to get affected due to lockdown, the insurer would not make good for **such portion of BI loss**.

However, if there is any loss due to insured peril (such as EQ, STFI, Fire etc.) during the lockdown period resulting into the BI loss, the same should be made good after adjusting for the duration when operations were affected due to lockdown.

In order to ensure an absolute clarity and contract certainty, we recommend seeking confirmation from the insurer as a part of the intimation to insurer for Property Insurances. From our side, we have already approached those insurers who have not provided clarification on the above and will continue to pursue till we have the same in writing from each of the insurers.

## Project Insurance (EAR / CAR / ALOP policies)



The following clauses / provisions require attention in the current scenario:

- “The company will not indemnify the insured in respect of loss, damage or liability directly or indirectly caused by or arising out of or aggravated by - cessation of work whether total or partial.”
  - The GIC of India and the insurers' view:
- Cover may be extended subject to:
  - All risk management systems being in place (For example, security systems, fire systems /power to be shut down in case of storage facilities /burglary protection systems/ flood protections measures /fences and video control systems /regular inspection service etc.)
  - Up to date progress work report to be provided.
- Cover does not apply for ALOP / DSU.
- Any cover does not prolong original policy period.

## Marsh Advisory:

- As the communications released by the insurers are broader in their scope, we would strongly advise you, as a matter of abundant caution, to intimate your lead insurer and coinsurers on your current status of the project works and risk management systems present thereof.

Your Marsh relationship manager would assist you in drafting necessary intimation to your insurer so that in the event of any doubt, it may help the insurer to review your current state and advise you on coverage continuity.

It should be noted that the exclusion also applies to losses caused/arising out of partial cessation. Hence even if project activities are going on albeit at a slow pace due to disruption in labour, critical consignments, coverage during this period can be questioned.

A special attention should be given in case of a project insurance policy is reinsurance driven, as it would require a concurrence of the reinsurers supporting the said risk.

- **In case of ALOP/DSU** - Some of the insurers have clarified that the lockdown period when project activities are not ongoing will not be treated as an 'insured delay'. We have reached out to the insurers who have not shared the above clarification and will continue pursuing them for the said clarification.

However, it is advisable to keep a separate record of delay in project works owing to the COVID-19 lockdown. Progress monitoring should be done at a regular basis and records should be maintained so that insurers can identify the delays caused by insurable events vs those caused by lockdown.

- **Testing period** - Policy period and testing period extension should be reviewed and extensions to be done as needed factoring slowing of project progress due to Covid-19 impact.
- **Marine** - Where marine program is aligned with the project insurance program, we suggest you keep a track of critical equipment movements, their current locations if in transit, any delay expected in arrival and need of extension of duration clause if any. Also policy conditions such as risk accumulation (usually being two times the sending limit), Pre-Despatch Survey Conditions etc, to be considered in detail in the Marsh Marine Advisory.

These are unprecedented times; we hope that the insurer takes a more practical and balanced view in supporting the policyholders on ensuring continuity of coverage in seamless way during the government-imposed lockdown. At the same time, we recommend all policyholders to comply with their respective insurers' guidance.

As hygiene check, we also suggest to review your current state of site risk management against the following list of good risk mitigation practices:

- **Security:** Round-the-clock security services at the premises. Other security systems such as CCTVs and burglar alarms etc. to be kept operational.
- **Fire Protection:** The fire protection infrastructure (whatever applicable from the following: FEAs, hydrants, alarm systems, sprinklers etc.) to be maintained in place during lockdown and ensure that the staff if any remaining at the insured location is trained to operate or activate available firefighting infrastructure / systems.
- **Precautions:** To take all reasonable precautions under your control to safeguard the property during lockdown such as shutting off energy switches in storage areas, segregation of flammable materials, ensuring emergency staff, etc.

In conclusion, we request you to contact your Marsh Relationship Manger in case there is a lack of clarity whether any of the above provisions would affect your insurance program or not. We will be happy to take you through the process of ensuring that you have an absolute clear response from your lead insurers.



**About Marsh:** A global leader in insurance broking and innovative risk management solutions, Marsh's 35,000 colleagues advise individual and commercial clients of all sizes in over 130 countries. Marsh is a wholly owned subsidiary of Marsh & McLennan Companies (NYSE: MMC), the leading global professional services firm in the areas of risk, strategy and people. With annual revenue over US\$15 billion and nearly 75,000 colleagues worldwide, MMC helps clients navigate an increasingly dynamic and complex environment through four market-leading firms. In addition to Marsh, MMC is the parent company of Guy Carpenter, Mercer, and Oliver Wyman. Follow Marsh on Twitter @MarshGlobal; LinkedIn; Facebook; and YouTube, or subscribe to *BRINK*.

**Disclaimer:** Marsh India Insurance Brokers Pvt Ltd is a joint venture between Marsh International Holdings Inc. and its Indian partners. Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer and Oliver Wyman. This document is not intended to be taken as advice regarding any individual situation and should not be relied upon as such. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy. Marsh shall have no obligation to update this publication and shall have no liability to you or any other party arising out of this publication or any matter contained herein. Although Marsh may provide advice and recommendations, all decisions regarding the amount, type or terms of coverage are the ultimate responsibility of the insurance purchaser, who must decide on the specific coverage that is appropriate to its particular circumstances and financial position. Insurance is the subject matter of the solicitation. For more details on risk factors, terms and conditions please read sales brochure carefully before concluding the sale.

Prohibition of Rebates - Section 41 of the Insurance Act, 1938; as amended from time to time: No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer. Any person making default in complying with the provisions of this section shall be punishable with a fine which may extend to ten lakh rupees.

Marsh India Insurance Brokers Pvt. Ltd's corporate and the registered office is at 1201-02, Tower 2, One Indiabulls Centre, Jupiter Mills Compound, Senapati Bapat Marg, Elphinstone Road (W), Mumbai 400013. Marsh India Insurance Brokers Pvt. Ltd is registered as composite broker with Insurance and Regulatory Development Authority of India (IRDAI). Its license no. is 120 and is valid from 03/03/2018 to 02/03/2021. CIN: U66010MH2002PTC138276.

Copyright 2020 Marsh India Insurance Brokers Pvt Ltd. All rights reserved. Compliance IND 20200430B