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## COVID-19 and Insurance Coverage: Recent Developments and Issues to Consider

The COVID-19 crisis has posed questions for the insurance industry on a vast scale. From individuals who have actually contracted the virus, to those rendered unemployed by the economic crisis, to businesses that have been forced to close as a result of shutdown measures, almost no one has escaped loss of one form or another, and as the situation steadily returns to normal, increasing numbers of people are questioning whether those losses are covered under insurance policies. Thailand's Office of Insurance Commission (OIC) has been keen to preempt those questions for individuals and has issued a number of measures in response to the crisis, and this article explores those measures (excluding those related to digital alternatives to face-to-face contact by insurers, which was addressed in a [separate article available on our website](#)). In addition, the article addresses whether issues faced by business operators may be covered by existing policies as they relate to business interruption.

### OIC Measures for Personal Lines of Insurance

To relieve the adverse impact suffered by insured parties as a result of the COVID-19 outbreak, on March 17, 2020, the OIC issued Registrar Order No. 23/2563, which prescribes certain additional conditions for health insurance, personal accident insurance, unemployment insurance (in the case of termination or business suspension), and life insurance. The OIC ordered that insurance policies issued before or on the date of the order will be deemed to contain a clause stating that the insurer shall not be excused from their liability during the COVID-19 crises where such liability arises from the government measures to limit the COVID-19 pandemic. Although this order is exceptional, retroactively inserting a deemed clause into existing policies is within the OIC's power as regulator, and policies should now be read as including that retroactive clause. However, this provision does not apply to preexisting conditions, and insured parties that had already contracted COVID-19 at the time of entering into the insurance contract, or during the waiting period before the contract takes effect, will not fall within its scope.

### Business Interruption Insurance Policies

Among the most significant actions taken by the Thai government in the wake of the outbreak of COVID-19 was the issuance of an emergency decree and related emergency measures. These measures included the temporary closure of various businesses, such as department stores, sports stadiums, theaters, fitness clubs, and others. These closures, and the ensuing loss of customers, have inevitably resulted in business losses, and as business operators begin to resume their operations, many are considering whether, and to what extent, the resulting loss of their income and profit would be covered under their existing business inter-

ruption insurance (BI) policy. In the absence of any specific OIC regulations on the subject, whether BI policies will do so will depend upon the details in each BI coverage.

Under Thai law, there are no standalone BI policies, and BI provisions are typically found as constituent parts of property or fire insurance policies. This means that, generally, the insured will receive compensation for losses arising from business interruption only when the business interruption is caused by physical damage resulting from the insured peril. Furthermore, the damage must have occurred at the insured property, and it must have had an impact on the insured's business at the insured premises. An example of this would be a property insurance policy taken out on a factory, with the policy covering both business interruption and the risk of fire. Should damage from a fire at the insured factory interrupt the owner's business, the owner's losses caused by this event should be covered by the BI provision unless otherwise excepted.

Accordingly, for BI coverage to be triggered, the insured must be able to prove three things:

1. The government's order to temporarily close down the business caused "physical" damage (the insured peril) to the insured property at the insured premises;
2. The physical damage to the insured property caused a business interruption; and
3. The physical damage does not fall within the scope of exclusions of the BI policy.

According to the OIC's standard form and policy wording for BI provisions, one of the standard exclusions is for losses arising from an intentional act of the insured or from a stoppage of work. As the OIC has never defined "intentional act of the insured" or "stoppage of work," it remains unclear whether a Thai court would exempt the shutdown of business due to the government's order from the scope of such exclusions.

While no Thai court has yet addressed the issue in the current context, the court would likely find that a stoppage of work due to COVID-19 would not trigger coverage under BI provisions of most insurance policies, as the work stoppage does not cause physical loss to the insured property. In addition, after the Severe Acute Respiratory Syndrome (SARS) outbreak in the early 2000s, it was not uncommon for insurers to specifically carve out diseases, or bacterial and viral outbreaks, from BI coverage, and exclusions such as those would potentially be applicable to the current situation. Even if the courts do ultimately find that COVID-19 is a valid trigger for BI coverage, such clauses may exclude many policyholders from claiming.

### Conclusion

Although personal policyholders are well provided for under the new OIC regulation, businesses are in a less clear position. Whether a loss caused by business interruption arising from the outbreak would be covered under a policy will need to be determined on a case-by-case basis, and careful consideration of each specific coverage condition—by both insured parties and insurers—is strongly recommended before claims are made or processed. 🐼