Initial assessment of insurance coverage and gaps for tackling COVID-19 impacts

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The coronavirus (COVID-19) pandemic has spread quickly around the world and infection rates are still rising in many countries. While the restrictions imposed by governments are limiting the health consequences, widespread disruption to travel, business operations and supply chains means that both individuals and businesses face significant costs and losses. Many will be expecting their insurance coverage to reimburse some of these costs and losses.

Individuals face health care expenses related to testing and treatments (if infected), lost wages if they are ill or if their places of employment are closed and costs if their travel plans are disrupted (and non-refundable). Businesses face lost revenue due to lower sales if customers are unwilling or unable to purchase their goods and services or if their supply chains are disrupted, as well as event cancellations/postponements. Businesses may also be confronted by various forms of liability to their employees, customers, suppliers or shareholders if they are found to have been negligent in their response to the pandemic.

Claims will be made under various types of household and commercial insurance, including commercial property and business interruption, travel, life, health and liability (including general/public liability, workers compensation and employment practices liability and directors and officers liability). This note by the OECD Secretariat reviews the potential coverage available for COVID-19 related losses across different lines of insurance business, based on assessments and statements by legal counsel, intermediaries and insurance associations. It provides a high-level assessment of the availability of coverage based on common industry practices as of the date of this note - the extent of actual coverage will depend on the specific policy language and may change as further developments can be expected. The note can serve as a reference and background information for policy makers in their interactions with the private sector.

The impact of COVID-19 on the insurance sector will not be limited to the claims incurred as a result of the insurance coverage provided. Like other sectors, insurance companies will also face the impacts of confinement measures and staff absences and will need to implement business continuity arrangements to ensure their ability to maintain core operations. They will also face reduced revenues as the demand for various types of insurance coverage (event cancellation, travel, etc.) declines. Insurance companies are also significant investors in equity and fixed income markets and will face losses as a result of equity market losses, bond impairments or ratings action and reinvestment risk as central banks around the world support the economy with interest rate cuts. This could result in solvency impairment in some cases, with particular challenges to be expected in the life sector and particularly for companies offering products with return guarantees.

Box 1. Key observations and policy considerations

- The losses and expenses related to the COVID-19 pandemic and the ensuing government responses has the potential to impact a number of lines of insurance business, particularly workers' compensation and various other liability lines.
- The most significant losses will be incurred by businesses and their employees as a result of business closures and supply chain disruptions – and many of these losses are likely to be uninsured. There will be a need for government involvement to address this protection gap.
- In the United States, some legislators (state and federal) have requested that exclusions be waived in the context of COVID-19 impacts, in particular for travel and business interruption coverage. While insurers should have some additional capacity to support their policyholders (and should be encouraged to leverage that capacity), a broad expansion of the scope of insurance coverage could have implications for insurance companies' ability to meet their regulatory and contractual obligations.
- The coverage related to epidemics and pandemics may need to be improved, to ensure that individuals and businesses get the coverage they need in the future.
    - While risk assessment and modelling of epidemic/pandemic impacts is developing, it is unclear whether pandemic losses are insurable by the private (re)insurance market.
    - Governments should consider public private partnerships to support the insurability of pandemic risk, particularly if the level of risk is likely to increase in the future. There is significant international experience in establishing (re)insurance schemes and pooling arrangements for other catastrophic risks that should be leveraged in designing any potential approach to providing coverage for pandemic risk.

The OECD's Insurance and Private Pensions Committee is prepared to carry out further analyses of these important policy issues to support the discussion and policy consideration of governments and regulators.

Commercial property damage and business interruption

Businesses faced with a loss of revenue (i.e. business interruption) as a result of supply chain disruptions and/or lower production or sales due to mandatory or voluntary business closures may expect to find coverage for some of their losses in commercial property damage and business interruption policies. Coverage for business interruption losses is a standard inclusion in most commercial property insurance policies and can also be acquired on a stand-alone basis. This coverage will, under certain circumstances (as described below), reimburse policyholders for lost profits and extra expenses incurred due to the disruption to their operations, based on a calculation of what profits would have been had the disruption not occurred.[1]

COVID-19 relevant policies' coverage and exclusions

LINE OF BUSINESS	TYPES OF LOSSES COVERED/BENEFITS PROVIDED	POTENTIAL COVERAGE EXCLUSIONS
Life	Death benefits to beneficiaries	Cause of death exclusions are rare
Health	Expenses for testing and hospitalisation	For private systems, some as procedures are new but generally addressed
Travel	Reimbursement for trip cancellation Medical expenses abroad	Exclusions for known circumstances
Property damage	Business interruption	May require physical damage to insured property Maybe infectious disease exclusion
Workers compensation/ Employment practices	Compensation for injured employees	May only apply if employer negligence or above normal risk of exposure
Directors and officers liability	Compensation for injured shareholders	Minimal
General/public liability	Compensation to other affected stakeholders	Minimal

[1] One of the challenges in the case of incidents affecting a wide-area is to attribute the loss of profit due to the specific disruption at the policyholder rather than the broader disruption to economic activity in the area as a result of the incident (Vincent, 2020[18]). For example, the business disruption loss for a restaurant damaged by an earthquake would need to be calculated based on the likely revenue that the restaurant would have earned if it had not been damaged taking into account the likely reduction in customers that would occur in the aftermath of an earthquake.

Most of the business interruption coverage included in commercial property insurance policies is only triggered if there is physical damage to the property of the policyholder insured under the policy due to a covered peril[2] (or to a proximate location under some coverage extensions, as described below). There are differing views (and jurisprudence) on whether the "contamination" of a property by a bacteria or virus would be considered physical damage to the property, leading to coverage for any consequential business interruption. Some have suggested that there would be a number of challenges in defining a viral contamination as physical damage as there would be no physical alteration to the property and no physical repair work required to restore the property to its original state. There would also be a need to demonstrate actual contamination at the insured property (O'Malley, 2020[3]). Policies that provide coverage for business interruption due to physical damage <u>or loss of use</u> (based on the insured property becoming uninhabitable or unusable) may be more likely to provide coverage COVID-19 related business interruption losses (Miller, Caplan and Selfridge, 2020[4]).

In addition, many commercial policies apply exclusions that could apply to a viral contamination such as COVID-19. For example, many policies apply exclusions related to pollution or contamination. If the exclusion is broad, its relevance to COVID-19 related losses would be subject to different interpretations and potential disputes and/or litigation (Hans and Maxwell, 2020[5]), (Scism, 2020[6]). Some contaminant exclusions are more narrow, focused only on mould or bacteria – not viral contamination (Miller, Caplan and Selfridge, 2020[4]), (Garrett III, 2020[7]). Some policies include a specific exclusion for viral (or other) contaminations that pose a risk to health. For example, the standard Insurance Services Office (ISO) commercial property policy used in the United States applies an exclusion for "loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease" which was implemented in 2006 following the experience of SARS[3] (Goldstein Kokalas, 2020[8]). It has been suggested that this policy language is widely used in policies covering SMEs in the United States (Insurance Journal, 2020[9]) although a technology-enabled review of policy language used in the United States found that that 80% of commercial policies do not have a clear inclusion or exclusion for communicable diseases (RiskGenius, 2020[10]). There is a potential for exclusions to expand following this pandemic.

Some commercial property policies will include different types of extensions or endorsements (automatically included or acquired as an option) that provide coverage for business interruption without physical damage to the insured property. The most common extensions are for business interruption that result from the closure of the insured property due to an order by a civil authority of ingress/egress (sometimes referred to as denial of access) although there are also endorsements available for loss of attraction (Le Marquer, 2020[11]). In some cases, this coverage requires that the cause of the interruption is physical damage to another property

[2] Commercial property policies may be written on a named peril or all-risk basis. Named peril policies only provide coverage if the damage results from a listed peril. All-risk policies provide coverage for any peril that is not otherwise excluded. Pandemics or communicable diseases are not often (if ever) included as named perils.

[3] ISO has developed a business interruption endorsement for losses resulting from a virus although, at the time of writing, the endorsement had not been approved for use in any US state (potentially due to a lack of interest among insurers in offering this endorsement). In February 2020, ISO released a specific coronavirus endorsement although it does not appear to have been filed for approval in any state.

(usually in proximity to the insured property) that would have been covered if the damage under the scope of the policy had the damage occurred at the insured property (Ahearne et al., 2020[12]), (O'Gara and Wagner, 2020[13]), (O'Malley, 2020[3]). As a result, a finding that COVID-19 has caused physical damage would also be required for coverage under these types of endorsements to be triggered.

However, some denial of access-type extensions are non-damage extensions and therefore do not require the occurrence of any physical damage to trigger coverage (de Azevedo, 2020[14]), (Spencer Johnson, 2020[15]). In the case of civil authority extensions, the order to restrict access might also need to meet specific requirements in order to trigger coverage (for example, the order must prohibit access to the work place (Guzzi, Morin and Reitblat, 2020[16])) although some policies might provide more flexible coverage (for example, limiting access on a voluntary basis in order to prevent the spread of a disease, even without a specific government order) (Proskauer Rose LLP, 2020[17]).[4] These types of coverage are usually subject to time deductibles and maximum indemnity periods (Vincent, 2020[18]) (O'Gara and Wagner, 2020[13]) which will limit the amount of reimbursement in cases where coverage is found.

In a few cases, commercial property policies or stand-alone business interruption policies might include a specific extension for infectious diseases or notifiable diseases (Turpin and Bradley-Sitch, 2020[19]), (Packer, 2020[20]), (Proskauer Rose LLP, 2020[17]). However, this coverage is reportedly not common and may only cover an affirmative list of identified diseases (which will almost certainly not include the recently identified strain of coronavirus that causes COVID-19) (de Azevedo, 2020[14]), (Dewan, 2020[21]) (Le Marquer, 2020[11])

Some policyholders may purchase contingent business interruption coverage which usually covers losses incurred by the policyholder as a result of a disruption at a supplier or customer (potentially named and often sub-limited) (Ravit, 2020[22]). Contingent business interruption is often linked to the coverage provided to the policyholder for perils and property damage (i.e. if the property damage incurred by a supplier or customer would have been covered had it been incurred by the policyholder, than the contingent business interruption coverage is triggered) and therefore is subject to the same issues of whether contamination is covered by physical damage (O'Malley, 2020[3]).

Businesses and organisations that organise conferences, sport competitions and other types of (large) events will often acquire a specific type of business interruption coverage for event cancellation (and usually postponement which usually leads to extra expense (Cohn and Zainab Hussain, 2020[23])). This coverage is usually provided on an all-risk basis (O'Gara and Wagner, 2020[13]) although some policies apply exclusions for communicable/infectious diseases (Turpin and Bradley-Sitch, 2020[19]) which may be linked to a recognition by a government or the World Health Organization of an epidemic or pandemic (Davis et al., 2020[24]). The coverage might only be offered as an endorsement (Fiore and Radigan, 2020[25]) and may only be triggered if the cancellation of the event is mandated by a government order (Afarian et al., 2020[26]). The purchase of communicable disease coverage reportedly

[4] This issues has arisen in the United Kingdom where the government (initially) encouraged entertainment sector businesses to close but did not order closure. The Chancellor of the Exchequer has reportedly indicated that insurers in the United Kingdom had agreed to treat the governmental advice as an order for the purposes of insurance coverage (Fiore and Radigan, 2020[25]).

increased in the aftermath of the SARS outbreak but has declined more recently (Fiore and Radigan, 2020[25]). A number of significant international sporting events have been cancelled or postponed, including the 2020 Tokyo Olympics. One financial analyst has estimated that total potential (insured) losses due to event cancellation or postponement could reach USD 7-8 billion, of which approximately USD 4 billion could be covered by reinsurance[5] (Spoerry, 2020[27]).

As a result of these limitations on the availability of coverage for business interruption losses related to COVID-19, and possibly with a view to managing policyholder and stakeholder expectations, a number of insurance associations have issued statements about the probable availability of coverage. In the United Kingdom, the Association of British Insurers released a statement indicating that most companies will not have coverage for business interruption resulting from business closures due to coronavirus as only some (larger) companies may have acquired a coverage extension for closure due to any infectious disease (ABI, 2020[28]). The Insurance Council of Australia has indicated that coverage for business interruption under commercial property policies is normally only triggered as a result of physical damage. It noted that some policies might provide coverage for business interruption resulting from the closure of a business ordered by an authority, including as a result of an infectious disease outbreak, although the insurance industry began introducing general exclusions for business interruption losses resulting from "quarantinable diseases" (i.e. diseases that are notifiable under the Australian Quarantine Act or Biosecurity Act) in 2005/2006 (ICA, 2020[29]). The Federation Francaise de l'Assurance was quoted in a ratings report as indicating that almost all commercial insurance policies exclude claims due to an epidemic (Insurance Journal, 2020[30]). The same report also provided a quote from the German Insurance Association (GDV) indicating that business interruption policies generally only cover damage caused by fire, theft, or natural hazards such as storms and that few companies had acquired any available additional protection against communicable diseases.

Some insurance companies have reportedly denied claims related to the confinement measures taken by government authorities in China and Italy (Scism, 2020[6]). There are also lawsuits in the US states of California and Louisiana seeking declaratory judgements that indicate that their commercial property policy will cover business interruption losses incurred by the restaurants due to coronavirus as a consequence of physical damage from contamination (the policies do not appear to have a virus exclusion) (Sams, 2020[31]), (Insurance Journal, 2020[32]).

[5] Property catastrophe reinsurance treaties are generally silent on whether pandemics are covered and intermediaries have suggested that it would be difficult for reinsurers to deny a claim that a cedant has incurred under a property insurance policy.

Box.2. Policy and regulatory interventions related to business interruption coverage

Policy makers and regulators in the United States have taken (or are considering) measures to respond to the potential gap in business interruption coverage for losses related to COVID-19:

- In the US state of New York, the Department of Financial Services has asked all property and casualty insurers offering business interruption coverage to provide a clear explanation to their policyholders (and the regulator) on the business interruption coverage applicable to COVID-19 losses. Insurers must provide a list of covered perils, indicate whether civil authority, contingent business interruption or supply chain coverage is included, describe the type of damage or loss required for coverage and specifically whether a loss of access to the insured property in connection with COVID-19 is sufficient for coverage to be triggered (Alberts and Baysinger, 2020[33]). The California Department of Insurance has also asked insurers for data on their potential coverage for business interruption losses (Insurance Journal, 2020[34]).
- In the US state of New Jersey, a legislative proposal has been put forward to require that all commercial property policies providing coverage for business interruption or loss of use of property also provide coverage for business interruption resulting from COVID-19. The requirement would apply to losses incurred since the declaration of a state of emergency in New Jersey on 9 March (subject to policy limits) and for policyholders with less than 100 employees. Insurers that incur claims as a result of this legislation can seek reimbursement from the Commissioner of Banking and Insurance who will then recover those costs from all insurers writing business in New Jersey (Goldstein Kokalas, 2020[8]). The proposed legislation is reportedly on hold indefinitely so it is uncertain whether it will go forward (Cavallo and Greisman, 2020[35]). However, similar legislation has since been introduced in two other US states (Ohio and Massachusetts) (Barrese, 2020[36]).
- At the federal level, a group of members of the United States House of Representatives has written to insurance associations requesting that they consider retroactively covering financial losses from COVID-19 under business interruption coverage provided in commercial policies and suggesting that any confinement orders issued should be considered as civil authority orders that trigger coverage. The insurance associations have jointly rejected this request (Insurance Journal, 2020[37]) and some suggested at a recent NAIC meetings that business interruption losses will require a federal solution. Separately, the chair of the House Financial Services Committee has issued a memorandum proposing the establishment of a Pandemic Risk Insurance Act to provide reinsurance for pandemic losses (similar proposals have been made by the US National Retail Federation and National Restaurant Association) (Simpson, 2020[38]), (Insurance Journal, 2020[39]).
- In France, the government has encouraged the insurance industry to contribute to the (generally uninsured) business interruption losses related to COVID-19. The Fédération française de l'assurance announced that the industry would contribute EUR 200 million to a solidarity fund established by the government for this purpose (Insurance Journal, 2020[40]).

Life insurance

The continued spread of the coronavirus and COVID-19 will lead to significant deaths around the world. According to one estimate, even with mitigation and suppression measures, the pandemic could lead to 20 million deaths around the world (Walker, Whittaker and Watson, 2020[41]). The beneficiaries on life insurance policies attached to the individuals that succumb to the effects of the disease will submit claims on those policies.

Life insurance policies do not usually apply exclusions based on the cause of death (with the exception of suicide) and therefore most claims on life insurance policies should be paid. The only exception is where policies apply an exclusion for travel to a country or region in contradiction of government travel advice. For example, in Australia, the Financial Services Council issued a statement confirming that there are no coverage exclusions for coronavirus, as long as government travel advice is followed (FSC, 2020[42]).

One estimate suggests that reinsurance companies are exposed to approximately 40% of written pandemic morbidity and mortality risk (Sheehan, 2020[43]) although one global reinsurer has suggested that its exposure to COVID-19 life (and health) insurance claims, even under a more severe (1-in-200 year) scenario, is similar in scope to a medium-sized natural catastrophe (Winters, 2020[44]).

Concerns about the virus has reportedly had some impact on the availability of new life insurance coverage (at least in the United States). Some US life insurers are reportedly imposing waiting periods of 30 days for new applicants that have travelled to highly affected countries (Carrier Management, 2020[45]).

Health insurance

Those infected (or potentially infected) by coronavirus may require testing, medical care, and, depending on the level of severity, hospitalisation. In countries where health care costs are covered by the state or through a state-mandated social security coverage, these costs will be covered. In countries that rely significantly on private insurance markets to provide coverage for health care expenses, there may be gaps in insurance coverage for coronavirus and COVID-19 related expenses.

In the United States, the health system relies heavily on private insurance and the rate of people who are uninsured is significant ((n.a.), n.d.[46]). An increase in unemployment will also have an impact on the level of uninsured health expenses as many individuals' health insurance is tied to their employment.

The ability to diagnose coronavirus in time is very important in the struggle to slow down the spread of the pandemic. Therefore, in March 2020, the US Congress passed the Families First Coronavirus Response Act. The new act requires insurers to waive all cost-sharing, including deductibles, for medical services provided to people with any type of private health coverage related with COVID-19 testing and associated visits. In addition, any preventive services, which include any future vaccine, must be covered by the principle of no cost-sharing. This Act complements the Affordable Care Act (ACA) that sets minimum coverage standards to most private health plans, but allows cost-sharing mechanisms and high deductibles. The new Act also enables states to provide free coverage for coronavirus testing for uninsured residents. However, the Act does not impose any federal requirement to waive cost-sharing for COVID-19 related medical treatments, and thus individuals may be subjected to significant out-of-pocket costs.

Some private health insurers had already made voluntary changes to their coverage in order to address services related to COVID-19. This includes increased provision of telehealth and efforts to limit deductibles or other cost sharing for COVID-19 related health costs.

Travel insurance (medical expenses)

Travel medical insurance provides short-term medical coverage for health expenses incurred by individuals during travel outside their home (resident) country (or outside the European Union for citizens of European countries). This type of insurance is often provided by private health insurers, either as part of the general health insurance policy or as an add-on to a travel insurance policy. Most travel insurance policies cover other related necessities, such as emergency medical evacuation, although the conditions may vary between policies.

In light of the current COVID-19 situation, some insurers have changed the terms of their travel insurance policies, including stopping to sell new travel insurance policies until further notice.

For existing policies, medical treatment that is incurred due to infection with coronavirus during travel would still be covered in most cases, as long as the trip has met the policy terms and conditions, and was not to an area that the health authorities have advised against travelling to at the time of travel. If there were already travel warnings against travelling to certain destinations and the travel was against such an advice, coverage would not be provided.

Coverage for pre-existing medical conditions that might worsen due to infection with coronavirus, such as high blood pressure, may vary between different insurers and between specific cases. The location may also affect the pandemic exclusion.

Emergency evacuation for travellers who became ill with coronavirus while travelling is one of the services that are included in most travel insurance policies. However, due to the COVID-19 situation, in many cases when the evacuation was covered by an existing travel medical insurance policy, insurers were unable to provide the means for such evacuation, as many service providers - such as local evacuation services and airlines - had arrested their operations due to borders closures and other administrative regulations.

Travel insurance (trip cancellation)

Individuals and businesses that had planned and paid for leisure or business travel may have cancelled that travel either voluntarily out of concern about the spread of coronavirus or due to travel advisories or restrictions imposed by governments or suspension of flights by airlines. Some individuals that travelled to destinations that became subject to quarantine requirements may also have faced additional expenses related to their quarantine in a foreign country (e.g. hotel accommodation) or extra costs or if required to evacuate from a country.

Insurance coverage for trip cancellation will usually only reimburse expenses after all attempts for refunds have been exhausted and only when there are no official advisories against travel to that destination and/or no known circumstances at the time of booking. Some insurance associations and/or regulators have provided statements or advice on the availability of insurance coverage for trip cancellations related to the COVID-19 pandemic. The Insurance Council of Australia has indicated that travel insurance policies generally have exclusions for outbreaks of infectious diseases, pandemics, epidemics and/or known events although policy wordings differ and some claims may be covered, particularly for bookings made before 20-31 January 2020 when coronavirus would have become a known event (and notified as such by travel insurers) (ICA, 2020[29]). In the United Kingdom, members of the Association of British Insurers have pledged to provide information on how to recover costs due to travel cancellations, provide a clear information on coverage terms at point of sale and to fairly consider all valid insurance claims for costs that cannot be otherwise reimbursed (ABI, 2020[47]). The UK Financial Conduct Authority has also provided advice to travellers on their trip cancellation insurance coverage, indicating that most travel booked before 1 March 2020 would be eligible for reimbursement by travel insurance (for any expenses not reimbursed by travel operators) as some policies did not apply an exclusion applicable to coronavirus-related (non-voluntary) cancellations (FCA, 2020[48]). Discussions with intermediaries suggest that the overall insurance industry exposure to trip cancellation claims is not significant relative to other lines of business although the Association of British Insurers recently estimated that the losses (over GBP 275 million) are likely to be the largest the industry has ever faced (Ralph, 2020[49]).

Liability

Businesses could face a number of different types of claims for compensation if they are perceived to have been negligent in their response to the COVID-19 pandemic:

- Employees that are infected by the disease may claim compensation for lost wages and medical expenses if they believe they were infected during employment which could invoke coverage under workers/employee compensation insurance (Braun and Bettencourt, 2020[50]), (Dalati, 2020[51]). They could also make claims for distress, bodily injury, discrimination or financial losses due to isolation as a result of how companies manage the impacts of COVID on employees that could potentially be covered by employment practices liability insurance (Thoerig, 2020[52]). In general, workers compensation insurance is only triggered for communicable diseases where an injured employee can claim that they had a greater chance of exposure to the disease as a result of their employment (e.g. first responders, health care workers). In at least two US states, workers compensation insurers have committed to providing coverage to these workers for injury from COVID 2019 (Sams, 2020[53]). The Insurance Information Institute has indicated that workers compensation insurance may be the most significant source of insured losses related to COVID-19 (Kevelighan and Leonard, 2020[54]).
- For businesses whose premises are accessible to the public or to their customers, claims could be made against them if members of the public claim to have been infected

with coronavirus at that business (and will also need to demonstrate that the business was negligent in allowing for the spread of the virus at its premises). Some liability claims have already been made against cruise ships that faced outbreaks of COVID-19 (Guzzi, Morin and Reitblat, 2020[16]). Commercial general liability or public liability insurance would generally cover any liability claims related to bodily injury to third parties. There are differing perspectives on whether most general/public liability would cover bodily injury claims for a communicable disease as some have suggested that these policies do not normally contain any exclusions applicable to a pandemic or infectious disease (Dalati, 2020[51]) while other have suggested that exclusions related to contaminants or pollution may be relevant depending on the policy language (Garrett III, 2020[7]). Some policies do apply a specific exclusion to pathogens or communicable diseases (Guzzi, Morin and Reitblat, 2020[16]).

- Publicly-traded companies may face shareholder claims if company management is accused of not taking appropriate steps to manage the impact of the pandemic. A first securities class action was launched in mid-March against Norwegian Cruise Line Holdings related to its management of the coronavirus crisis (Lincoln, 2020[55]). Costs related to defending such claims (and providing any compensation to shareholders) could be covered by a directors and officers (D&O) liability insurance policies. D&O insurance policies often apply an exclusion for claims related to a bodily injury or property damage although these are often narrowly formulated and may not apply to a liability claim related to pandemic response (Coutts, 2020[56]).

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