



Attached are examples of typical exclusions found in your common commercial policy and assets all risks wording related to **epidemic / pandemics**:

1. General Exceptions

- Infectious Epidemics/Pandemics Exclusion

This policy excludes any loss, damage, cost or expense directly or indirectly arising out of, contributed to by, or resulting from any infectious epidemic/pandemic (if classified either way by the appropriate national or international body/agency) which leads to:

- the imposition of quarantine or restriction in movement of people or animals by any national or international body or agency, and/or;
- any travel advisory or warning being issued by a national or international body or agency, and in respect of a) or b) any fear or threat thereof (whether actual or perceived).

If the Company alleges that by reason of this exclusion, any loss is not covered by this policy the burden of proving the contrary rests upon the insured.

2. Clauses and Extensions

Damage (as within defined) is deemed to include loss following the interruption of or the interference with the business as a result of:

- contagious or infectious disease manifested by any person whilst at the insured's premises or an outbreak of a notifiable contagious or infectious within a 10 (ten) kilometre radius of the insured's premises; Provided that the competent municipal, regional, local or government authority responsible for the area has declared a notifiable medical condition or communicable disease to exist within the area and/or has imposed quarantine regulations and/or has acted to restrict access to the area in terms of any local, municipal, regional or national law, by-law or regulation pertaining to public health and safety. For the purposes of this extension:

a) 'indemnity period' shall mean the period commencing with the occurrence of (9) the date on which restrictions on the premises were applied and ending not later than three months thereafter;

b) 'Insured's premises' shall mean those locations listed in the schedule as The Insured's premises and shall not include the premises of suppliers, customers, contractors (or subcontractors) notwithstanding that this insurance may otherwise be extended to include such premises;

c) 'contagious or infectious notifiable disease' shall mean illness sustained to any person resulting from food or drink poisoning, or any human infectious or human contagious disease **excluding** AIDS (Acquired Immune Deficiency Syndrome) or AIDS related condition, SARS coronavirus : SARS-CoV, Influenza A virus, or any virus and/or conditions derived from the foregoing including but not limited to H1N1, H7N7, H5N1.



d) The cover granted by this extension does not include any costs arising from cleaning, repair, and recall, or checking the insured's premises.

3. General Exclusion:

- Avian Influenza

This policy does not cover any claim in respect of loss:

- a) directly or indirectly caused by, happening through, in consequence of or contributed to by Avian Influenza or any mutant variation thereof.
- b) arising from any fear or threat (whether actual or perceived) of such avian influenza.
- c) directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any outbreak of such avian influenza.

If the Insurers allege that by reason of this exclusion, any claim is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

4. Specific Extensions

- Miscellaneous Risks/Events (Not applicable to Machinery breakdown, if insured)
Loss due to interruption of or interference with the business in consequence of the outbreak or occurrence:

- a) within a 10 (ten) kilometre radius, or the radius stated in the schedule, of the insured premises.
- b) Contagious and/or infectious, a notifiable (disease in humans) or any discovery of an organism likely to result in the occurrence of such disease. A Notifiable Disease shall mean illness sustained by any person resulting from any human infectious or human contagious disease, an outbreak of which the competent local authority has stipulated shall be notified to them or has caused a competent authority to declare a notifiable medical condition to exist or impose quarantine regulations or restrict access to any place, but **excluding**:
 - a. Human Immune Virus (H.I.V), Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition;
 - b. SARS coronavirus: SARS-CoV;
 - c. Avian Influenza/Influenza A virus or any mutation thereof;
 - d. Or any virus and/or conditions derived from the foregoing including but not limited to H1N1, H7N7, H5N1.

Businesses and Companies possible Liability exposure

Liability exposure may arise in particular where companies face claims for allegedly failing to protect their staff from the coronavirus. Consideration needs to be given to whether such claims would fall within COIDA or under any employers' liability cover. The enquiry would be whether the exposure to the coronavirus is sufficiently work related. Normally, for example, you cannot claim workers' compensation for catching a cold or flu at work. The situation would be different with emergency personnel including healthcare workers and the police services responding to an emergency. The factual difficulty will always be in proving



causation and that there was a coronavirus exposure at work rather than elsewhere. If not COIDA claims, employers' liability cover may be implicated. There is a liability exposure to claims by customers who are affected. Apparently such litigation is pending against a number of cruise lines for negligently failing to take precautions to prevent a coronavirus outbreak on their ships where passengers on a previous sailing disembarked with symptoms, yet more passengers were allowed to embark thereafter.

All businesses should consider and implement protocols to minimise harm. Failure to take reasonable steps in that regard may result in liability. That may include liability exposure for directors and officers and in turn, exposure under their D&O liability insurance.

Consideration needs to be given to whether any existing exclusions provide or limit the coverage including limitations regarding contamination or whether a more specific

Event cancellation claims may be limited to listed risk events. There is unlikely to be a claim where there is cancellation merely because of a fear of the coronavirus in the community (subject to any generous extension). There must usually be a legal or physical impossibility to hosting an event. A legal ban on gatherings over 100 persons may trigger coverage.

There would of course be a duty on the insured to mitigate losses by making good faith attempts to reschedule the event to another date before permanently cancelling the event.

Policies may provide cover where an outbreak occurs at, for example, hotel premises and employees and guests are then required to be quarantined and where guests having confirmed bookings, then cancel. There are a variety of permutations in that regard. For instance, a guest or family member may become ill and be unable to travel.

And finally, clients should check with their broker in respect of all these risks. There may be cover on certain travel and hospitality insurance policies with regards to **cancellations and refunds**.