

SPI Newsletter

COVID-19 AND BUSINESS INTERRUPTION INSURANCE IN THAILAND

CHATCHAVEJ CHITVARAKORN (Partner)
TANITA VATTANODORN (Associate)

Following the outbreak of COVID-19, the Thai government announced measures to curb COVID-19's spread including social distancing, travel restrictions, and the declaration of an Emergency Situation in all areas of the Kingdom of Thailand. In addition, the Thai government issued orders pursuant to the Communicable Diseases Act B.E. 2558 (2015) to temporarily close places that were risk-prone to the transmission of COVID-19, and also imposed a nationwide night curfew (which has now been lifted). These restrictions and the outbreak of COVID-19 have had an adverse financial impact on many businesses in Thailand, especially businesses in the tourism industry. Businesses which have procured policies of Business Interruption Insurance (sometimes known as Consequential Loss Insurance or Loss of Profit Insurance) ("**BI Insurance**") may be considering whether their BI Insurance policies would respond to business interruption losses caused by COVID-19 and/or the Thai government's response to the outbreak of COVID-19. This article provides a brief overview of BI Insurance and some key issues for policyholders to be aware of.

Property insurance is often obtained to provide coverage for the physical damage of property. Generally, upon the occurrence of an insured event resulting in damage to the insured property, the insurer will compensate the policyholder or beneficiary for the direct loss suffered in accordance with the insured amount specified in the policy. In such case, the loss, damage, or destruction of the insured property used for the operation of business (such as an industrial building and machinery) may lead to the suspension of business and loss of income while the business owner still has ongoing obligations such as fixed operational expenses (rental, salaries, etc.) including loan interest. This is where a BI Insurance policy generally responds by indemnifying the policyholder for income losses suffered during the time necessary to repair the physical damage to insured property.

Regardless of whether the BI Insurance is made as a separate policy or as an add-on to the property insurance, the BI Insurance must always be accompanied by property insurance, and its coverage typically can only be triggered if the suspension or interruption of business is caused by the **direct physical damage** to the insured property. The damage must also be caused by or result from a covered

event of damage. Typical examples of BI Insurance claims are cases where factories that are affected by fire or flood and the production line has to be shut down until the restoration is completed. Unfortunately, adverse impacts from the COVID-19 pandemic that many businesses are dealing with at the moment, such as loss of income due to a smaller number of customers or temporary closure of business ordered by the government, do not cause any physical damage to the insured property or entitle the insured person to claim indemnification under the BI Insurance policy.

Nonetheless, some BI Insurance policies may extend to cover communicable diseases where the condition of physical damage of the insured property may be ambiguous. However, it is important to carefully review the exclusion clauses of the BI Insurance policy, as some BI Insurance policies may expressly exclude any losses caused by viruses (including certain named viruses such as Avian Influenza or SARS) and therefore losses caused by COVID-19 may be carved out of the coverage.

In order to determine whether the policyholder may be able to claim against their insurers for business interruption losses caused by COVID-19, the BI Insurance policy must be carefully reviewed, particularly the policy language on coverage, exclusions and warranty, and assessed based on the underlying facts of each case. Policyholders should also keep records of all COVID-19 related business losses and expenses.

If you require any assistance or advice with respect to your BI Insurance policy, please contact us at spi-info@siampremier.com

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www.siampremier.com

spi-info@siampremier.com



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