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Batini Traverso Grasso & Associati

COVID-19: OUTLOOK ON IMPACTS ON THE INSURANCE INDUSTRY

A pandemic is such an exceptional event that no one can ever feel prepared to cope with it adequately: COVID-19 has shaken our daily lives and put healthcare systems with their limited resources to the test. Surely, however, its greatest and most enduring effects are yet to unfold, with the economic crisis chief among those. This, then, is a similar and symmetric event that is adversely affecting both sides of the world's economy - supply and demand - and requiring extraordinary measures from Governments and Central Banks in order to mitigate the crisis.

The insurance industry, which by nature is accustomed to assessing and working with risks, is no exception. However, despite a global pandemic being voted the biggest risk to the industry in a poll of global insurance executives in 2013[1], most do not seem to have taken much action to prepare for it. Companies will need to rethink their business models, their products and terms and prepare for difficult times, yet they can do so with confidence and ambition.

This brief outlook is aimed at analysing COVID-19's impacts on the insurance sector as a whole, under the following headings:

I. Economic and business-related consequences;

II. Organizational issues for insurance companies;

III. The impact on M&A;

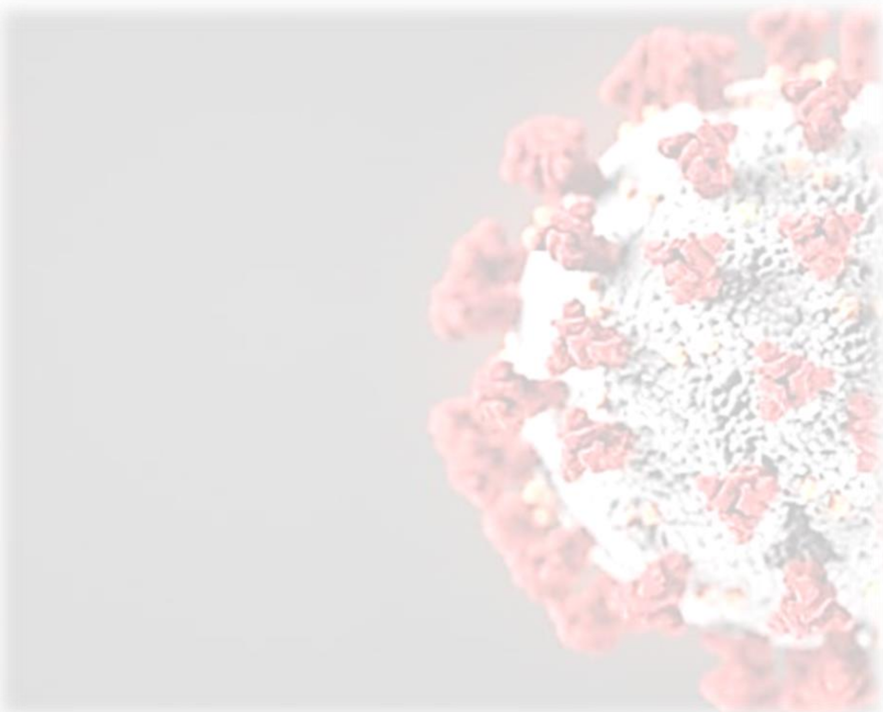
IV. The impact on Regulatory;

V. The potential impact on, and rise of claims in, different categories of insurance:

- **Life and Health;**
- **Travel;**
- **Business Interruption;**
- **Event Cancellation;**
- **Liability;**
- **D&O;**
- **Public Entities;**
- **Employer's Liability;**
- **Cyber Insurance;**
- **Marine Insurance;**
- **Trade Credit & Surety;**
- **Aggregation of Claims;**
- **Reinsurance;**

VI. Conclusion;

VII. Our Firm.



[1] https://www.theactuary.com/news/2013/11/global-pandemic-tops-poll-of-insurance-industry-risks/

I. Economic and business-related consequences

In its first quarter report "Global macro outlook," the Insurance Information Institute reported that *"COVID-19's impact on global growth and the insurance industry is likely deeper and wider than the current consensus and could last well into the third quarter and beyond". The report added that, as a result of the effects of the outbreak, "global GDP growth in 2020 could slow down by as much as 1 percent, from 3.3 percent to 2.3 percent, making a 2021 recovery unlikely"*.

In its report "Coronavirus: The world economy at risk," the Organization for Economic Cooperation and Development said that a longer-lasting and more intensive outbreak could reduce global growth to just 1.5 percent in 2020. Insurers across the board would probably be impacted by a sharp slowdown in economic activity, which would undermine growth and perhaps even cause insurable exposure to shrink.

Declining interest rates will affect the whole insurance industry, but especially the life insurance and annuity sectors, in view of their rate-sensitive products and investments.

Insurers will also need to adjust their budgets and implementation plans, cash flow expectations and investment portfolios, in the light of recent developments.

Moreover, we could still see the collapse of individual life and health insurance companies: ratings agency Fitch has already warned that life insurance companies could be particularly hard hit by a combination of falling stock markets and increasing mortality. Paying out on policies will be a huge outlay for insurers, and also for reinsurers, when added to their other exposure. That could put them in serious jeopardy.

Additionally, giant global businesses could fall, with airlines looking to be the earliest casualties and hospitality chains likely swiftly to follow. Bodies of such size are more likely to have comprehensive cover, so having to pay out on policies that include contagious disease cover will further add to the burden faced by the insurance industry.

Alongside the economic and financial aspects, the other main issues the insurance business might face are as follows:

- an expected overall rise in insurance claims commensurate with the spread of global infection and death rates, with different intensities, depending on the sector of insurance;
- a potential rise in fraud - in the absence of specific terms applying to this pandemic, it will be necessary to define the minimum evidence required for claims;
- financial balance - the economic and social situation means that institutions must guarantee their own funds i.e. to cover their requirements for capital. Measures must also be adopted to find a balance between capital, policyholder protection, and policies on dividend distribution, incentive payments and bonuses;
- product design - a redefinition of insurance products is foreseen in order to respond to future crises, such as including optional coverage for situations similar to COVID-19. This will mean much change in the regulations on insurance and private reinsurance distribution;
- a demand for more transparency and clarity in terms and conditions;
- a consequential need for revision of exclusion clauses and their impact on reputational issues.

II. Organizational issues for insurance companies

Plainly, insurers' most immediate concern is to protect the health and safety of employees and distribution partners within the agent/broker community, while seeking to maintain business continuity. Insurers have therefore had to:

a. review and update their crisis management plans so as to continue operations with minimal disruption to customers;

b. consider cross-functional emergency decision-making teams to coordinate the organizational response and establish new security protocols;

c. as appropriate, allow employees alternative ways of working, in order to protect staff and adapt to possible restrictions on office access, while ensuring business continuity;

d. establish new cybersecurity protocols, through chief information security officers (CISOs), in order to ensure safe exchange of confidential information among employees connecting from outside the office.

COVID-19 could also disrupt an insurer's client service, starting with its distributors. Agents, brokers, and financial advisors will likely face many of the same risk management and logistical challenges as those being addressed by their principals, especially since many may also have to work from home. So insurers who have invested in digital capabilities will probably be better placed, at least in the short term, to maintain proper linkage with their distribution partners, who, in turn, should be able to offer faster and more comprehensive services to their clients.

As regards c) above, please note that - just like any other business - insurance companies have been affected by recent urgent Government measures aimed at coping with COVID-19 contagion and ensuring health and safety at work.

In particular, in Italy the Government declared a state of emergency on 31st January 2020 and then adopted progressively more stringent measures as the infection spread across the country. More specifically:

- **On 3rd February the Ministry of Health** set out suggested guidance for employers in order to curb the spread of disease, such as frequent hand-washing, paying attention to surface hygiene and avoiding close and/or continued contact with those who may have symptoms;
- **On 21st February the same Ministry** suspended work for those who had had close contact with **(i)** confirmed cases of COVID 19 and **(ii)** those from specific areas of China and Italy. This was followed by a **series of Decrees of the President of the Council of Ministers, including those of 1st and 11th March**, which set out various obligations, detailed in a Memorandum of Understanding signed by the Government and Social Parties' representatives on 14 March. These various Decrees also strongly advised adoption of smart working regimes for all activities amenable to it.

Note also that, just like banks, insurance companies have been consistently exempted from having to suspend their business in order to limit COVID-19 contagion: this has required much organizational effort by the industry, as outlined above, and has led to special dispensation.

III. The impact on M&A

The M&A market is of course affected by the deterioration among capital markets and the wider economy. Before this crisis, there was already a slight downturn in the number of M&A deals globally, with aggregate deal value maintained only by several megadeals, and this trend is likely to accelerate, at least in the short term.

For potential buyers, the question is whether available liquidity can be used for acquisitions or is needed to secure the existing business, and in ongoing transactions buyers become unhappy with their pre-crisis valuations and re-open price negotiations. Post-acquisition integration may be harder, with uncertain costs amid a very different economic environment - indeed, many transactions have been suspended.

Force majeure clauses could play a significant role: term sheets may contain legally binding obligations such as break fees (fees payable by a party who discontinues), and such may need to be considered from a force majeure perspective. **Material adverse change (MAC) clauses,** too, might be invoked: in some such, the occurrence of a MAC event is tied to whether a MAC circumstance has a greater impact on a target than on its industry peers, so clauses like that will probably be harder to enforce than those without a "peer" reference requirement.

Further issues might involve **earn out clauses,** which provide for additional payments to the seller based on the future performance of the target: now, many sellers will experience a reduction under such clauses, as businesses are likely to be reporting poorer financial performance than expected when the earn-out was agreed. Long-stop dates too should be carefully evaluated, especially when linked to regulatory approvals. This is because Government officials and civil servants have been compelled to work remotely, thus potentially slowing the pace of considering and granting necessary consents or approvals.

Conversely, companies in good shape might want to take advantage of the current situation, as perhaps having the advantage over sellers.

Please note here that the Decree Law issued on April 6, 2020 (the so-called "**Liquidity**"[2] provision) extends the Golden Power, under which the Government can block the acquisition of shares in strategic Italian companies, veto the adoption of corporate resolutions and impose specific requirements and conditions. These powers, until now confined to just a few business areas, are going to be extended to the food, financial, insurance and health sectors.

IV. The impact on Regulatory

Due to the COVID-19 emergency, the Italian Insurance Supervisory Authority (hereinafter, "IVASS") has adopted various measures to help insurance undertakings and distributors meet the deadlines set by primary and secondary legislation, especially as below:

- On 17th March 2020 it **postponed deadlines** for **insurance distribution networks reports**[3] (IVASS Regulation No. 40/2018), for **mandatory implementation of home**

[2] Please note that this Decree Law has not yet been published in the Italian Official Journal, but the measure was heralded by the Presidency of the Council of Ministries in its meeting on 6th April 2020.
[3] Until 29th March 2020

insurance[4](IVASS Regulation 41/2018) and for **reports on complaints**[5] (Regulation 24/2008);

- On 23rd March 2020 it **temporarily extended** the periods for **replies to complaints** (from 45 to 75 days) and for **requests for information** (from 20 days to 35 days);
- On 30th March 2020 it **granted further extensions**, as regards ***reporting Solvency II duties*** in accordance with EIOPA. It also **prorogated terms for trimestral communications on controlling stakes, on reinsurance cessions schemes and in respect of several other duties**. On the same date, IVASS also **recommended caution in distribution of dividends**, in view of the high level of volatility in financial markets.

On 3rd April, IVASS reminded the industry that **all deadlines not expressly suspended are still in force** and that insurance operators should organize themselves in order to ensure business continuity and consumer protection, in particular by making maximum use of electronic communication. While IVASS will consider special individual circumstances as regards these obligations, all should retain relevant details of any difficulties, in case of customer complaints. Also, companies should promptly inform customers about the organizational measures being adopted, and about possible disruption of their services, especially in view of the difficulties that customers themselves are facing due to the COVID-19 contagion and resulting restrictions.

On 1st April 2020, EIOPA issued a reminder that "*insurers […] play an important role in enabling consumers to manage their risks by providing protection against uncertainties. Access to and continuity of insurance services should be considered essential in the context of the outbreak*". Just as in a statement on 17th March, EIOPA stressed the importance of ensuring business continuity and of taking into consideration all the obstacles that consumers may face in meeting their contractual obligations, due to COVID-19 and the restrictive measures.

At the international level, on 27th March IAIS emphasized the essential role of insurance during a pandemic like this one, with the assurance that it will continue to assess the implications of COVID-19 and will coordinate with the Financial Stability Board and other standard-setting bodies. IAIS members (including IVASS) will act "*to mitigate the impact of COVID-19 on insurers, safeguard policyholders and contribute to the maintenance of financial stability*".

V. The potential impact on, and rise of claims in, different categories of insurance

Having outlined some general issues regarding the insurance industry as a whole, we now consider some specific types of insurance, and explore how they will probably be affected by the COVID-19 pandemic.

Life and Health Insurance

Clearly, these insurers will be among the most affected: COVID-19 is a highly infectious disease and is causing very significant pressure on healthcare systems around the world.

The largest and most direct impact will be due to increases in hospitalization and in the price of services, equipment and drugs. Specific impact will depend on each country's healthcare system and the relative proportions of government and private insurers.

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[4] Until 1st July 2020.
[5] Until 29th March 2020

Providers of supplemental health coverage, i.e. on top of government-funded healthcare, will experience less impact, while those providing primary coverage, especially with large exposure to the elderly, will experience more.

For life insurers, exposure will depend on how the overall death rate affects the demographic subsets, and on each insurer's exposure to those. So far, the infection and death rate has been highest amongst the elderly and those with pre-existing conditions, but there is no certainty that this pattern will continue. Also, life insurers tend to place significant reinsurance, reducing exposure by spreading it among very well capitalized global reinsurers.

Life and health insurance policies usually provide cover for the risk of ordinary diseases, but **some policies may exclude claims arising from epidemics or pandemics, or even certain named diseases**. Conditions may differ greatly under new health and life insurances, as many companies have introduced new products and have started specifically considering COVID-19.

Lastly, as a general point, increased difficulty in obtaining cover can be expected.

Travel Insurance

The travel industry has been one of the most immediately affected sectors, and so, at least in the short-term, travel insurance is likely to be very significantly impacted.

A standard travel insurance policy covers trip cancellation, travel and more major medical claims, emergency medical evacuation and accidental death. However, **many such policies contain an "epidemic or pandemic" exclusion,** which is triggered by a statement from an official government or similar organization (such as the WHO) that a virus has reached or is likely to reach "epidemic or pandemic" proportions. Since the WHO announcement that the coronavirus outbreak could be characterized as a pandemic, insurers under policies with a "pandemic" exclusion are likely to decline all claims relating to coronavirus. **Some policies may also exclude cover not only in areas subject to official travel bans but also where warnings against non-essential travel apply to certain areas**.

Of course, every policy is different, and conditions will vary from company to company. Also, **many policies now contain dates before which cover might apply, but after which it will not. That is because COVID-19 is now a "foreseen circumstance"**.

It seems though that many insurers view the COVID-19 emergency as a common cause, and activate their coverage according to what exactly has happened. So **those who contract the disease while travelling,** and have medical expense cover, can get back their outlay for treatment. Also, depending on the terms of the policy, the cost of transport to hospital and any accommodation costs due to an extended stay, or repatriation, may be covered. **Those who contract the illness before departing** may get reimbursement of travel costs if the cover includes cancellation.

Note, too, that by Article 28 of Decree-Law No. 9/2020 the **Italian Government has expressly applied Article 1463 of the Civil Code** (**according to which the party who is unable to perform cannot request the counter-performance and must return the one already received**) **to transport contracts** entered into by infected or quarantined citizens, thus creating a right to reimbursement from the carriers themselves, which may to some extent reduce claims on travel insurance.

Business Interruption

Another major issue is the cover provided by business interruption policies, as the lockdown measures have forced many (indeed, in Italy, almost all) businesses to suspend their activities, or at least to operate in a very different way.

Business interruption insurance generally covers loss of gross profit or loss of income if the business is interrupted or adversely affected due to reasons beyond the policyholder's control. Conventional business interruption cover is subject to a **"material damage proviso"**, which is that **for an interruption to be covered it must be caused by physical damage** that is insured under the policyholder's property damage policy, such as fire or flood. **Infection with COVID-19 will not, of itself, constitute "physical damage", which is the trigger requirement for coverage**. Also, **there are common exclusions which apply to losses arising out of "loss of use" of premises (e.g. due to virus contamination), as well as contamination exclusions which can relate to a virus, communicable diseases or biological pollutants**. However, depending as always on policy wording, interruptions caused by COVID-19 may in some cases be covered.

Coverage questions may also arise as regards decontamination and clean-up, prevention and mitigation costs.

Some business interruption policies also cover extra expenses as part of "loss of attraction" or "communicable diseases" extensions. These do not usually have the trigger requirement of "physical damage" or, depending on the policy language, "physical loss or damage" to insured premises. Instead, provided that the policy does not exclude it, **"loss of use" of the insured premises due to virus contamination may constitute "physical damage" or "physical loss or damage"**, thus triggering cover. Policy terms should, however, be checked carefully. Disease at the insured location, and contamination and pollution may be covered under property policies, but the terms may be restrictive and sub-limits may apply.

Some property policies include **"civil authority" coverage** which covers losses as a result of a government or civil authority restricting access to the policyholder's premises. Generally, civil authority coverage applies when there is a direct link between the civil authority's order and the policyholder's loss. So for places where the state or local government has ordered a shutdown or curtailment of businesses to curb the spread of COVID-19, policyholders might recover under civil authority coverage. As ever, the wording should be scrutinised, as some policies only cover losses due to restrictions expressly directed at the policyholder, who may be just one among many to whom a general lockdown applies.

Event Cancellation

Such may apply to cancellation of key events in sport, music, business and politics. Depending on the wording, Event Cancellation/Contingency policies will generally provide cover for financial loss due to perils beyond the control of the insured, when such result in the cancellation, postponement, curtailment or abandonment of an event.

Event cancellation and abandonment insurance may **cover loss of net profit**, and also the **organizers' irrecoverable expenses**. However, **these policies will need to be checked as to whether diseases or pandemics are excluded**, and as to whether cover depends on the existence of **any travel advice or government-based restriction.**

The usual coverage for revenue lost due to an event cancellation commonly contains **a broad exclusion of any claims arising out of "communicable disease" outbreaks, which is broader than the "epidemic or pandemic" exclusions**. A communicable disease exclusion will usually be wide enough to apply to any government advice or warning against non-essential travel to an area which results in the cancellation of an event.

Even if there is an extension so that communicable disease is covered, **coverage might still not apply to precautionary cancellations** (i.e. where the event could legally have taken place but was cancelled as a precaution in view of government warnings).

The key to triggering cover is to establish that the cancellation was beyond the control of the insured. Policies will not normally respond where the event could have taken place (i.e. there were no specific restrictions) but it was cancelled for other reasons.

Liability

Insurers providing **general liability** cover, not only for the pharmaceutical and healthcare sectors, but also for those with a large workforce in (in these circumstances) high risk operations - such as entertainment, manufacturing, transportation and retail - are likely to experience increases in claims. The extent of this will to some extent depend on how far a country's legal system inclines towards litigation and (especially) collective actions.

General liability policies **usually cover bodily injury and property damage** caused to third parties on the insured premises. Also, claims based on allegations that the insured caused a guest, customer or third-party harm by failing to exercise reasonable care (in warning of the risk of potential exposure to COVID-19, or in implementing or enforcing protective measures) could be covered. If the insured's lack of care is established, we would expect these policies to respond, unless of course there is a specific exclusion.

Where infection by COVID-19 can be traced to a particular place or activity, claims may be brought against the business or individuals alleged to be responsible. These could, for example, include employers, hospitals and medical staff, schools, universities, airlines, hotels and wider retail outlets, who are alleged to have culpably exposed employees, patients, students or customers to the risk of contamination.

In such situations **the existence of a duty of care will often be clear**.

D&O

Directors and Officers (D&O) policies provide cover for lawsuits brought against a company's directors or officers for their alleged acts or omissions. Senior management teams in all industries must focus on ensuring constant regulatory compliance, employee protection and continuation of the business services, all in the face of reduced staff numbers, supply chain difficulties and market volatility.

Lawsuits relating to COVID-19 might allege that the company did not take adequate steps to prevent its spread, or did not have contingency plans, or did not activate or execute those plans appropriately.

Another aspect is that, due to the global financial crisis and extreme stock market volatility, **shareholders' and regulators' scrutiny of company directors and officers will become more intense**. In particular, directors and officers of travel and tourism businesses - which have suffered severe stock price falls as customer numbers dwindle due to the virus - may face greatly increased scrutiny, and possibly claims, regarding their company's readiness for and handling of the outbreak.

Claims for financial losses incurred by the business, or shareholders, may be covered, as well as the costs of defending securities fraud allegations. Here, note that, first of all (and possibly before litigation has started, and before any insurance renewal), **policyholders would need to examine carefully what circumstances and information should properly be notified under the terms of the relevant policy**.

Note too that this type of insurance does not generally cover claims for bodily injury or harm, so there would need to be a careful analysis of the wording if a claim based on this was presented.

Public Entities

Public Entities' liability insurance might also be affected by COVID-19, by a **rise in claims alleging inadequate response to the emergency**. The Government has adopted a variety of measures that authorize requisition of medical goods, such as masks, and of medical-surgical facilities, as well as hotels, which could be used to house those who have been quarantined. Italian case law based on previous emergencies shows that Municipalities and other local authorities might face claims for alleged unlawful requisitions or tendering procedures.

The **European Commission**, acknowledging the challenge for Public Entities, published **on 1st April 2020** an information paper which gave examples of all the **measures that could be undertaken by the various EU public procurement networks, including details of simplified procedures and shortened deadlines**. However, each Public Entity must carefully consider all possible options, in order to avoid potential claims.

Employer's Liability

As for **Employer's Liability (EL) insurance**, it is generally thought that COVID-19 infection is unlikely to have been caused by business activity outside the high-risk sectors. However, subject to any specific exclusion as regards communicable diseases, epidemic or pandemic, cover could respond if the insured business had failed to take reasonable measures to adequately protect, respectively, members of the public, customers or employees, against exposure to coronavirus.

So the **largest impact will be on insurers providing workers' compensation coverage to first responders (hospitals, police, fire, EMT) and workers in high-risk sectors, such as entertainment, manufacturing, transportation and retail**, though this will be mitigated according to relative shares of public-private sector participation. The extent of government intervention, such as quarantine, shutting down at-risk activities or the use of public safety employees as first responders would also serve to reduce the scale of increase in claims.

In Italy, employees are covered by compulsory work insurance, provided by INAIL (the National Institute for Occupational Accident Insurance), **but employers are subject to a right of recourse from the Institute** if they have breached workplace safety standards and serious injury (or permanent disability) has occurred. Employer's liability insurance covers the amount claimed by INAIL as well as any separate compensation claim by the employee.

The Government and INAIL have designated workplace COVID-19 contagion as work injury. In particular, **the Government has provided at Article 42 of Decree-Law No. 18/2020 of 17th March that** "*in ascertained cases of coronavirus infection (SARS- CoV-2) at work, the certifying doctor shall draw up the usual accident certificate and send it electronically to INAIL, which ensures, in accordance with the provisions in force, the relative protection of the injured person*". Following submissions by healthcare workers' representatives, on 17th

March 2020 INAIL clarified that COVID-19 contagion has to be regarded, for insurance purposes, as work injury, covering both its consequences and the resulting quarantine period. Contracting the contagion at work can be inferred, circumstantially, and also taking into account the wider epidemiological context, and all of the same considerations apply to transit from home to work and back (in in.

Depending on the precise policy wording - and in the absence of case law on the matter - in cases where INAIL may exercise its right of recourse it is highly probable that COVID-19 will be regarded as injury at work, thus triggering EL insurance, unless there is a specific epidemic or pandemic exclusion. The extent of EL insurers' liability will depend on the insured's compliance with the health and safety measures stipulated by Italian Civil Law, as well as by the various emergency decrees enacted by Government, as outlined above.

Cyber Insurance

Insurers of both affirmative and silent cyber risks should pay close attention to Covid impact. With the adoption of restrictive measures, such as social distancing and stay-at-home orders, people are required to work remotely and maybe under stressful circumstances and with perhaps makeshift arrangements - hence increased cyber risk. Increased remote working offers more opportunities for cyber-attackers, and any organization that is just starting out with using remote desktop protocols may be more susceptible to a cyber-attack. For instance, individuals may log in remotely from home networks that use less secure hardware. Cyber criminals have already taken advantage of people seeking information on the pandemic. COVID-19 has meant increased incidence of phishing and "social engineering", with information about the virus used to bait the hook. Remote working also increases the risk of relaxed privacy policies and procedures, potentially exposing information to unauthorized users.

So all users will have to take additional precautionary measures, in order to **work from home or work remotely in a safe way**. Although the notion of an office at home is well established, since most applications are available in the cloud, companies must remember that the level of protection in employees' homes is usually much lower than in the office, and must provide employees with the necessary **training and resources** so they can perform their tasks outside the office environment.

Most cyber insurances provide a wide range of cover, including network security liability, privacy liability, security response and forensic costs, data recovery and restoration, reputational harm, ransom event costs, network business interruption, system failure, contingent business interruption and privacy regulatory defence.

It is possible that insurers' exposure to claims following IT failures or interruption of network access could increase. However, **policies usually exclude cover for failure of power or telecommunications infrastructure under the insured's control**, **as well as during voluntary shutdowns**. Moreover, cyber insurance policies might **limit coverage according to key definitions of computer systems or networks, as well as for system failure, which is often defined by reference to human or programming error**. Anyway, there is wide variation in coverages under cyber policies due, in part, to the absence of standardized forms and the widespread use of manuscript policies and endorsements.

Furthermore, in advance of a renewal it is better to determine whether any desired language amendments would be appropriate to help meet evolving remote business activities. The coverage should affirmatively include any device used by the insured organization (including interns/volunteers/temp workers) in the course of organization's operations, no matter who the device belongs to.

It is crucial, therefore, to carefully review the entire policy including endorsements when considering any Covid-19 claim.

Cyber security will need to **remain a priority**. It is reported that cyber criminals are seeking to capitalize on disruption and employee fears caused by the coronavirus outbreak. There has been an increase in coronavirus-related phishing emails, some of which purport to be from healthcare facilities or sellers of protective equipment, such as face masks, and if businesses fall behind in their awareness and precautions the risk of employees being snared by such things will increase.

Marine insurance

COVID-19 is causing severe difficulties in world trade, with shipowners (especially in the liner trades) increasingly facing port congestion, often requiring containerized cargoes to be offloaded short of the named discharge port and stored pending forwarding later. Though this is not uncommon in the container trades, greater delays than normal are anticipated, making it difficult to assess what constitutes reasonable dispatch. Cancellation of voyages and delays in operations such as loading and discharge due to staff shortages and infected ports and also vessels will probably mean increased demurrage claims, cargo claims, loss of hire claims, charterers' liability claims, and crew and also non-employee personal injury claims.

Cargo cover usually excludes loss and/or damage due to delay, and some policies even exclude cover for losses even though the delay was caused by an insured peril. Accumulation of goods in transit may also exceed the permitted insured limit. Moreover, charter-party demurrage could be incurred, which might not be recoverable under cargo insurance. Perishable goods may have cover for spoilage if caused by an insured peril but might well not be covered for loss of market/deterioration as a result of late/delayed delivery.

Not all policies cover the additional freight and other costs due to deviation, which might be necessary in cases of unsafe or blocked ports, and cover for interruption in transit beyond the control of the insured might be subject to exceptions.

Cover is provided for general average expenses, if such is declared by the carrier, but insurers will expect the cargo interests to minimize losses. **Any exclusions relating to force majeure, epidemic or pandemic, communicable disease and civil authority action will have to be examined in great detail**, and the actual events which constitute force majeure should be stated in the contract.

Hull insurance, protection and indemnity cover, charterers' liability and loss of hire insurance might experience an increase in claims due to the effects of the outbreak. Repair cost claims may increase due to costlier spare parts, supply chain disruption and staff shortages, hence higher loss ratios for hull insurers, and any **increase in marine incidents due to crew shortages and absence of key logistics personnel would also result in higher hull policy claims**.

The Italian Government has adopted **urgent measures** for the marine sector, too. Article 92 of Decree-Law No. 18/2020 provides for the **suspension of anchorage, port operation, temporary work and concession of port areas fees**. Anchorage fees are in fact disapplied, and the others are deferred, but it is left to the individual port authority to schedule payment of the suspended fees, and without application of interest. This measure also envisages a 30-day deferment of customs duties due between 17 March and 30 April 2020.

The Minister of Infrastructure and Transport also **suspended cruise activities and barred Italian ports to foreign-flagged cruise ships.** For Italian-flagged cruise ships, the management companies, shipowners and captains may disembark the passengers only when all the stipulated health measures have been taken, and this might give rise to insurance claims, either under business interruption or general liability policies.

Trade Credit & Surety

Trade Credit insurance will cover losses in case of customers' failure to pay for purchased goods but insurers are likely to adapt coverage for countries/regions that are experiencing the most severe impact of the virus for new policies or renewals. Claims from global insolvencies are anticipated to reach 2008 proportions.

Surety markets are likely to be similarly impacted. The COVID-19 pandemic raises a series of unknowns for contractors, owners, subcontractors, suppliers, and sureties. Surety practitioners are facing novel legal issues raised by the pandemic as they analyze parties' rights and obligations under surety bonds and underlying construction contracts.

Re/insurance markets weathered the last global economic crisis, but much will depend this time on the potential to reschedule/recover claims positions.

Aggregation of claims

For companies experiencing the knock-on effects of a coronavirus outbreak at various different locations, in Italy or across different countries, the possible aggregation of claims into one or several claims will become important. This will depend on the particular facts relating to that business and the specific aggregation language in the policy, and will affect whether any deductible or cover limit (within the insurance, and maybe also the reinsurance) apply once to an 'aggregation' of many claims or multiple times to separate claims.

Reinsurance

Financial market disruption stemming from the spread of the coronavirus is also impacting the reinsurance sector. Prolonged stress on equity and credit markets combined with declines in interest rates are likely to weaken earnings and erode capital headroom of reinsurers.

Event cancellations (such as the Tokyo Olympics) due to the coronavirus may be partially covered by insurance, and reinsurers could face substantial losses. The largest upcoming event is, which was due to start in July, but has been postponed to 2021.

Following the COVID-19 crisis, reinsurers will also seek to improve their balance sheet and profitability through higher rates, which insurers are likely to pass on to their clients.

VI. Conclusion

COVID-19 is a global challenge. Many people say that nothing will ever be the same again, and perhaps this is the only certainty. It is extremely difficult to foresee how different things will be, and it is the same with insurance. The industry will be forced to respond to short-term concerns, but also to react and ensure that, in the longer term, it is better prepared to survive such events, which are unlikely to decrease in volume and severity.

Customers will seek policies that protect them from risks associated with global pandemics. Regulators may also consider introducing new rules on capital reserves, which will further accelerate the need for a rethink, there. Insurance companies will need to take a long, hard look at how they define and measure risk. Each type of insurance business, and indeed each insurance company, will have its own interpretation, but changes will be needed industry-wide.

VII. Our Firm

BTG Legal is a specialized insurance law firm, providing a full range of services to assist and advise Italian and multinational insurers and corporations in different classes of business, mainly insurance and reinsurance, shipping and other transportation and dispute resolution.

Our professionals will continue to monitor the Covid impact and will work closely with our clients to strategize responses to any potential claim situations. Depending on developments, which may include announcement of specific coverage interpretations by various providers, we will continue to keep our clients abreast of potential changes to their exposure. Any such changes will affect the way insurance is viewed and applied in the business world, and policy terms and conditions may need to adapt.

Meanwhile, should you have any questions about this topic or how it may impact your claims programme, please contact our professionals. Our team is up to date on the latest developments and are ready to assist you immediately. Also, please continue to check and reference our website and other announcements made by key organizations.

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This bulletin (and any information accessed through links in this document) is intended to provide general guidance only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.

For further advice please contact your usual **BTG** team member.

Alberto Batini
E: a.batini@btglegal.it
M. +44 (0)750 1961608
M. +39 348 7902191

Silvia Traverso
E: s.traverso@btglegal.it
M. +39 335 5369282

Giorgio Grasso
E: g.grasso@btglegal.it
M. +39 328 4226114

Specialist Insurance Law Firm

Worldwide Assistance

Clients increasingly operate in a global marketplace, so their lawyers need commensurate reach. While for large law firms this has often meant rapid international expansion, many of the smaller and independent firms have become part of a worldwide referral network.

Thus, **BTG** is among the founding members of the **Global Insurance Law Connect network (GILC)**. This is a grouping among major independent insurance specialists worldwide, including the UK, the US, France and progressively other European, South American and Far East insurance firms.

Recognising the wide range of issues that insurers face nowadays, the **GILC** has established specialist teams that work throughout the network to share knowledge with Clients. Hence the **GILC** has developed fourteen Special Interest Groups, including Cyber, Financial Lines (PI & D&O), Product Liability, Medical Malpractice and Healthcare, Construction and Environment, General Liability and Marine.

GLOBAL INSURANCE LAW CONNECT

ISO 9001 Certification

BTG - Batini Traverso Grasso & Associati is one of few Italian law firms to have achieved the management system standard UNI EN ISO 9001:2015 (ISO 9001:2015).

This was issued by DNV.GL for the provision of legal assistance and advice services - both in and out of court - in insurance, contracting, commercial, maritime and air navigation, national and int'l transportation, civil, professional, medical and product liability, public bodies, revenue and environmental liability and cyber risks both nationally and internationally.

QUALITY SYSTEM CERTIFICATION DNV·GL ISO 9001

Inspired by Client demand, we have built a formal network of insurance law firms that delivers the right advisers in the right places and in the right way.

London T. +44 (0)203 7419661 F. +44 (0)203 7419662 Email: london@btglegal.it	**Rome** T. +39 06 87609347 F. +39 06 32500658 Email: roma@btglegal.it
Milan T. +39 02 30322560 F. +39 02 30322562 Email: milano@btglegal.it	**Livorno** T. +39 0586 883232 F. +39 0586 893134 Email: livorno@btglegal.it
Ravenna T. +39 0544 32266 F. +39 0544 1936403 Email: ravenna@btglegal.it	**Genoa** T. +39 010 8310455 F. + 39 010 8375896 Email: genova@btglegal.it
Naples T. +39 081 3411392 F. +39 081 0098711 Email: napoli@btglegal.it	***www.btglegal.it*** ***www.globalinsurancelaw.com***