Covid 19 and its impact on the insurance claims

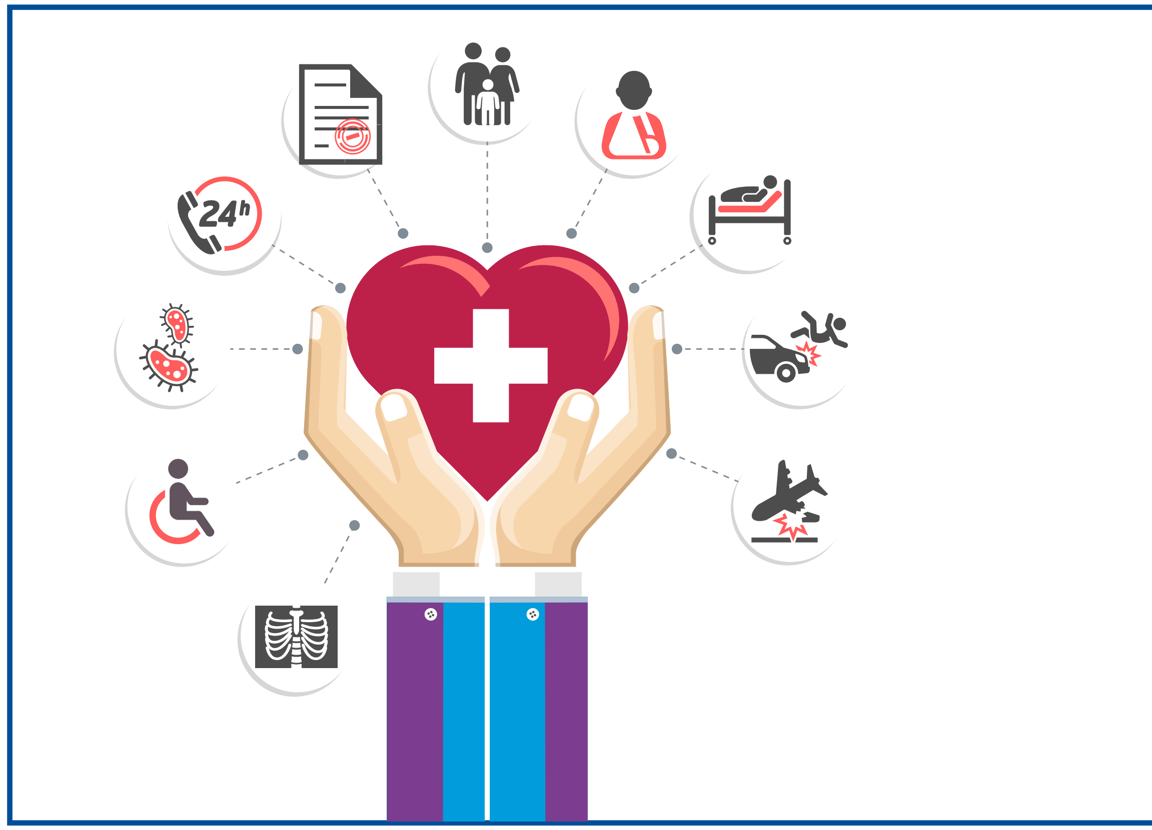
COVID-19 has caused disruptions across businesses, markets and geographies. As governments are trying out various strategies to fight the pandemic, businesses are suffering substantial losses due to business disruptions related to, inter alia, lockdowns, border closures, event cancellations and suspension of operations.

The economic impact may soon result in substantial implications across insurance policies related to health, workmen compensation, loss of profit, event cancellations, to name a few.

1. Current and potential impact of COVID-19 on health insurance sector

The health insurance sector in India is witnessing a sharp rise in enquiries for new health insurance policies. Market sources indicate that there is an estimated 40 per cent increase in the queries for new policies in certain regions of the country, post the outbreak[1].

Insurance Regulatory and Development Authority of India (IRDAI) issued a circular dated 4 March 2020[2] mentioning that cost of hospitalisation, medical treatment, including expenses incurred during quarantine are to be expeditiously processed, according to the policy. In line with this circular, the insurers may experience an increase in the number of claims from policy holders towards hospitalisation costs for COVID-19 cases.



1. Coronavirus impact: Insurers see marked jump in inquiries for health policies, The Economic Times, 05 March 2020
2. Guidelines on handling of claims reported under Corona Virus, Insurance Regulatory and Development Authority of India, 04 March 2020

2. Current and potential impact of COVID-19 on business interruption

Generally, the business interruption coverage includes ‘loss of profit’ and ‘increased cost of working’. Similarly, for ‘contingent business interruption’, coverage includes losses associated with other events, such as disruption to the business’s customers or suppliers.

Insurers have started receiving enquiries on not only loss of profit, but also on losses arising due to cyber-crimes, force majeure insurance and potential disputes that may arise due to non-performance of contracts. Some businesses and insurers are debating on whether the losses due to this pandemic are covered under the business interruption policy or not.

1. Physical Damage

Most policies covering business interruption are peril policies, which account for factors, such as fire, flood or machine breakdown, and payable only if physical damage occurred to organisation’s assets or operation. Insurers are of the opinion that since COVID-19 does not implicate physical damage to the property, business interruption claim will not arise. This was also clarified by a public advisory issued by General Insurance Council on 21 April 2020, which mentioned that loss of profit or business interruption claims are only triggered under material damage section of the policy.

Since policies do not clearly define ‘physical damage’, there is likely to be a debate on what exactly is ‘physical loss or damage’ and whether contamination, bacteria, or temporarily inoperable machines be considered as physically damaged.

A federal court of New Jersey, United States of America concluded in a verdict[3] that release of ammonia in the policy holders facility to be “direct physical loss or damage”, despite no “structural alteration” to the facility itself. However, this may not be applicable for COVID-19, as in the given and other similar cases, it was imperative to showcase that thedamage, though unnoticeable to naked eye, made the property uninhabitable and unusable. It will be unlikely to prove that the corona virus was active at the insured property, thereby making it unusable.

Certain insurers also provide all risk-based policies that do not necessitate material damage for being claimable. For specialised businesses, such as hospitality, travel or healthcare, clauses related to communicable diseases are provided and therefore, assistance can be sought to determine whether COVID-19 will be covered under these communicable diseases. Although the admissibility of claims will depend on specific circumstances and policy wordings, it is time for businesses to start analysing the clauses of their policies.

2. Event cencellations

Event cancellations is another area that may cause greater losses to insurers, as some large events have policies that may cover them for even epidemics or pandemics. One of the largest events scheduled to take place in 2020 was the Tokyo Olympics, where analysts estimate approximately USD2bn of coverage[4].
The re-insurance sector will also bear the brunt, as insurers claim back substantial costs from the re-insurers.

3. Trade credits

Another significant area to watch for non-life insurers is trade credit insurance, covering businesses against losses due to unpaid debts by customers or suppliers. This is a USD11bn global market[5] and if increasing numbers of companies go out of business due to coronavirus impact, insurers could face rapidly spiralling claims. There are concerns that alongside some big corporates in acutely affected sectors, Small and Medium Enterprises in many markets could be hit hard due to supply chain disruption and a crunch in business levels. The cost may depend on just how bad the pandemic becomes, the extent to which containment measures affect different kinds of businesses, and how long it lasts.

3. Gregory Packaging, Inc. V. Travelers Property Casualty Company of America, opinion issued by judge William H Walls on 25 November 2014 on behalf of United States District Court, New Jersey and accessed by KPMG on 09 April 2020
4. Insurers could lose billions if coronavirus prompts Olympics cancelation, Reuters, 28 February 2020
5. Do insurers have COVID-19 covered?, Laura J Hay, KPMG International, April 2020

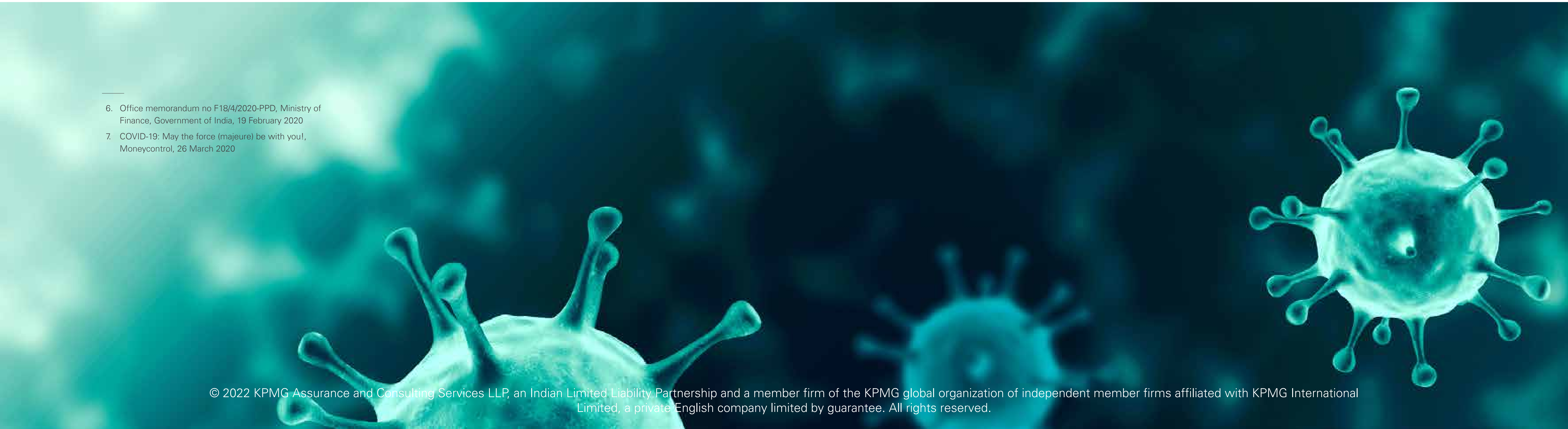
3. Force Majeure Insurance

Policy holders may have force majeure insurance, which provides coverage for financial losses arising out of the inability of parties to bring a contract to completion. Types of losses covered by such insurance policies include continued debt servicing, loss of income, ongoing fixed costs incurred during the event, spoilage and other related contingencies during the event. Contracts between parties also have force majeure clauses which may have an impact in such events. Contracts often use varying standards to corelate the force majeure events to contractual performance. In India, even if the contracts do not specify the force majeure clause, parties to contract may seek respite under section 56 of the India Contract Act, 1872, which mentions `frustration of contract' to be a situation where fulfilling a contract becomes impossible or unlawful after the execution of the contract. Rarely do contracts specify epidemics or pandemics to be force majeure events.

The clarification provided by the Ministry of Finance[6] stated that the disruption caused by COVID-19, may be considered as a case of natural calamity and on a case- to- case basis, the force majeure clause may be invoked by the parties to contract. The clarification further mentions that invoking this clause does not excuse parties to contract from performance, but only suspends it for a specified duration, though suspension beyond ninety (90) days may provide an option to either parties to terminate the contracts without any financial repercussions.

Historically, courts across the globe on case- to- case basis have deemed epidemics to qualify as force majeure events (Ebola outbreak in Africa and SARS in China)[7].

The determination if COVID-19 qualifies as a force majeure event may cause legal tussles and increase the disputes between parties to contract as well as between policy holders and insurers.



6. Office memorandum no F18/4/2020-PPD, Ministry of Finance, Government of India, 19 February 2020
7. COVID-19: May the force (majeure) be with you!, Moneycontrol, 26 March 2020

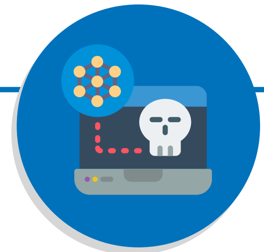
4. Potential outcomes

It is likely that disputes and false claims will see a sharp rise due to the impact of COVID 19. To take an example of dispute let's assume that at the onset of COVID 19 (assuming Pandemics were not covered under the business interruption policy), a hotel catches fire and incurred substantial losses since a part of the hotel was shut for repairs. The hotel files a claim for business interruption. How will the policy holder or the insurer compute what part of the lost revenue was due to fire and what part due to COVID 19?

Other areas where insurance companies may need to be alert are:

Arsons – As business interruption mandates physical damage, it is likely that post COVID-19, many organisations, who are already out of business or have seen profits evaporate may try and seek relief by creating physical damage to their property.
Home arsons may also increase as people unable to pay their mortgages may torch their homes.

Theft – With an aim to make quick and easy money through insurance, organisations might start reporting thefts of machinery, vehicles, amongst others, during the lockdown.



Medical and injury scams – Collusion between the insured and the medical clinics may increase inflated or phantom claims. All records will have to be thoroughly reviewed to assess what is the actual expense and what is not.

Vehicle Insurance Scams – With fewer cars, fewer people and thereby, fewer witnesses on the road, increase in staged road accidents may occur. Fraudsters running scams like whiplash for cash may become active again.

Impersonated Insurance Agents – These scams have already started uncovering, where a person impersonates an insurance agent and sells bogus insurance policies covering all risks, including COVID-19.

The insurers need to be compassionate yet be hawkeyed while dealing with the claims during and post COVID-19. Identifying the hard and soft frauds and assessing the real loss value will keep insurers and loss assessors busy.

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