

# The COVID-19 Pandemic and Mergers & Acquisitions Insurance

## What you need to know

The unprecedented coronavirus (COVID-19) pandemic has impacted every major economy and industry and the local and global insurance market is no exception. The immediate challenges associated with the pandemic and the resultant economic downturn are likely to bring lasting effects to the insurance marketplace. Insurers are reviewing the coverage provided under their range of products and governments are introducing new laws which directly and indirectly impact risk and insurance. The situation is constantly evolving and Willis Towers Watson is collaborating globally to consider the insurance implications.

Given the proliferation of COVID-19 throughout the globe and the vast and sometimes unpredictable impacts we are seeing on many businesses and industries, M&A insurers are continuing to probe deeply on the level of analysis and diligence that has been undertaken to assess the likely impact of COVID-19 on a particular Target business which is the subject of an M&A transaction.

Insureds (for new M&A transactions) should expect detailed questioning regarding the likely direct and indirect impacts the Target business may face as a result of COVID-19 (or related government or non-government actions), for example:



potential impact of COVID-19 on the business itself as well as the industry in which it operates;



effect on customers, suppliers and employees;



mitigation steps already taken by the Target business in relation to COVID-19;



whether an expert review of the Target's insurances has been undertaken to assess which of those insurances will respond to the issues raised by COVID-19 (directly and indirectly);



supply chain issues, including both underlying raw materials and manufacturing;



ability to replace existing suppliers and likely cost/time impact;



impact on lead time sensitivities.

We are still, at this stage, seeing healthy M&A insurer appetite for transactions albeit we have started to receive signalling that their willingness to insure Target businesses will depend, even more so, on the quality of the underlying Target business and the diligence that has been undertaken by the Insured/ Buyer.

We expect that as the pandemic continues to develop (and government action intensifies), more M&A insurers will start to require a specific exclusion for any loss arising from, or which is increased by, COVID-19 (and we are already seeing this starting to occur for the larger global M&A insurers).

Coverage for 'New Breaches' (ie. breaches arising and identified wholly between signing and completion) is also becoming more challenging to secure.

### What is typically covered?

- Loss arising from a breach of a warranty or tax indemnity

### What is not covered?

- Known issues
- Seller fraud (note: Buyer is covered under a Buyer's W&I Policy)
- Uninsurable fines and penalties
- Performance obligations and covenants
- Forward looking statements or opinions
- Post-completion adjustments / leakage
- Anti-Bribery and Corruption/ Anti-Money Laundering (Asia (ex Oceania), South America, Eastern Europe)
- Deal / jurisdiction specific exclusions
- Product Liability; Professional Indemnity; Cyber; pollution/ contamination.

## A reminder about claims

With business changing rapidly in response to the COVID-19 crisis, it is worth remembering that this type of insurance is written on a “claims made and notified” basis.

This means an organisation must notify their insurer of any known claim or any circumstance that could give rise to a claim before the policy period expires. Once the policy has expired, no claims or circumstances can be notified under it.

Please contact your insurance broker for further guidance on how to notify a claim or a circumstance that could give rise to a claim.

### For further information

The Willis Towers Watson FINEX team can assist in interpreting coverage and help you manage this risk within your organisation. Please get in touch with your broker or consultant for further information.

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