

Information on insurance related implications following the Ukraine crisis

The situation currently unfolding in Ukraine gives rise to concerns related to the safety of people, company assets and other business interests located in Ukraine. WTW provides this memorandum to provide a very basic overview of the insurance related implications of the situation.

The information should be considered as guiding and non-exhaustive only. Actual insurance coverage will be provided based on the terms and agreements in each specific case.

We will be providing regular and relevant updates to this brief. This version dates 8 April 2022.

Your usual point of contact in WTW will be standing by for your potential additional questions.

The memorandum includes information on eight key areas of insurance:

- Travel and Expatriate insurance
- Workers Compensation
- Property Damage and Business Interruption
- General and Products Liability Insurance
- FINEX (Directors & Officers Insurance (D&O), Employment Practices Liability (EPL), Crime og Professional Indemnity (PI))
- Marine Cargo
- Construction All Risk
- Cyber insurance

Travel and Expatriate insurance

In relation to the present Russian invasion of Ukraine it is important to note that war and war-like actions typically will influence the insurance cover. Travel and expat insurances will typically not cover claims in relation to war and war-like actions – unless otherwise specifically agreed upon.

Evacuation

The coverage for assistance and evacuation would typically be triggered for travellers and expats located in Ukraine at the point of time when the Ministry of Foreign Affairs of Denmark encouraged people to leave and avoid travels to Ukraine.

The insurance will, however, typically require the insured to act timely and in accordance with the Ministry of Foreign Affairs' travel guidance.

Insurers have expressed that travellers and expats have had the opportunity to let themselves be evacuated in the days up to the invasion of Ukraine on 24 February 2022. It is WTW's recommendation that travellers and expats keep themselves updated at all times, with the Ministry of Foreign Affairs' travel guidance:

[The Ministry of Foreign Affairs' travel guidance for Ukraine \(in Danish\)](#)

In case you did not act in accordance with the Ministry of Foreign Affairs' guidance and let yourself be evacuated at this point, insurers will most likely not be able to arrange an evacuation and also be reluctant to cover the cost in this relation. On the other hand, if you have followed the Ministry of Foreign Affairs' guidance and acted accordingly and timely, the insurance will most likely already have helped you at this point, and will then cover the costs in accordance with your policy conditions.

If you have decided to travel to Ukraine after the Ministry of Foreign Affairs encouraged people to leave and not to travel to Ukraine, an evacuation would normally not be covered by the insurance.

In any case, cover for evacuation obviously require your insurance to contain evacuation cover, sometimes referred to as crises cover.

Other claims

The insurance will often still cover other claims (not directly or indirectly related to war and warlike actions) while you are in Ukraine and after the invasion, e.g. health and accident. Some insurers have a time limit on other claims, starting from when war has broken out, while other insurers do not apply such a time limit.

Your insurance could also contain a total exclusion of warzones, typically applicable for people entering a present warzone. Reference is made to your actual policy conditions – or via your insurance broker.

The insured should in any case expect that local health treatment options etc. will be limited, due to the situation.

Workers Compensation

Workers Compensation Insurance covers bodily injury sustained by an employee as a consequence of the work or the working conditions, cf. Workers Compensation Act. An injury may be physical or mental.

Persons who are engaged by an employer to carry out work in Denmark is entitled under the Act. An employee temporary stationed or on business travel in Russia or Ukraine could also be covered by the insurance.

Workers Compensation Act contains an exclusion for bodily injury as a consequence of military operations but only if Denmark is at war.

The Labour Market Insurance decides whether a bodily injury is comprised by the Workers Compensation Act (and thus, by the insurance).

Property Damage and Business Interruption

In general, all policies covering property damage and business interruption will exclude damages and losses related to war, civil war, invasion, acts of foreign enemies, hostilities or war-like operations (whether war be declared or not). The full wording of the exclusion may differ a little among insurers, but all will effectively exclude damages due to the war between Russia and Ukraine.

This exclusion for war or war-like operations is mandatory in the insurer's underwriting guidelines and reinsurance contracts, due to the potential exposure and aggregated losses to be indemnified following war or war-like operations.

Special conditions and endorsements such as contingent business interruption, denial of access (ingress/egress) and off premises utilities will typically be subject to the same terms and conditions as the insured's properties, and as such the same exclusion regarding war or war-like operations will apply.

Terror endorsements and separate stand-alone terror insurance policies also exclude war and war-like operations (not the same definition as terror).

If a specific endorsement is agreed to provide cover for war or war-like operations, it should be clearly stated on the policy sublimit section and/or as a separate clause in addition to the general terms.

General and Products Liability Insurance

The General and Products Liability Insurance covers liability for bodily injury and property damage. However, there are a few exclusions which might be relevant in the current situation.

Most international based general and products liability insurances contain an exclusion for damage or loss due to war, invasion or similar acts. It is not common that Danish/Nordic based liability insurances contain such an exclusion.

Note however, that the insurance coverage is based on liability and it is unusual that the insured is liable for a damage or loss due to the conditions in Russia and Ukraine. There might, however, arise a situation where the insured is faced with claim for damage or loss due to raw material, semi-manufactured products or finished products are stranded or delayed. Notwithstanding the war exclusion mentioned above, the insurance does not cover liability for damage or loss due to non-delivery or late delivery of goods or services. The reason for the delay does not matter.

FINEX (Directors & Officers Insurance (D&O), Employment Practices Liability (EPL), Crime og Professional Indemnity (PI))

For FINEX policies in general, war and terror exclusions are not common practice. However, this is not the case for Crime policies specifically in which such exceptions are more common. We are therefore expecting Crime policies to be the segment, which most realistically could be subject to exclusions for coverage for loss or damage caused by terror or arising from war or war-like acts.

FINEX policies often contain general provisions regarding limitations and exceptions related to sanctions. Thus, the insurance company may not provide coverage or be liable for any claims or coverage if claims payable or other related compensation is in violation of applicable sanctions.

Many companies will now, and in the near future, have to decide on sanctions in relation to their level of activity in Ukraine and Russia. In terms of D&O, it is even questionable whether a possible D&O claim for violation of sanctions is insurable at all.

Marine Cargo

A standard marine cargo insurance does not cover loss damage or expense caused by war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power or capture, seizure, arrest, restraint, or detainment (piracy excepted), and the consequences thereof or any attempt thereat cf. Institute Cargo Clauses (A) section 6.

Nonetheless most Danish clients have endorsed the basic coverage with a war insurance according to usual market terms (Krigsforsikringsbetingelser 2010/2018, Institute War Clauses (Cargo, Sendings by Post, Air Cargo)). These terms can potentially provide coverage for loss of or damage to the subject matter insured. However, the coverage can be very narrow as English terms do not provide coverage for road transports and as a number of exceptions continue to apply including delay and any claim based upon loss of or frustration of the voyage or adventure.

Some clients may have taken out insurance for War on Land in Europe (road and rail transport). However, Russia and Ukraine will typically not be included in the geographical definition of Europe.

Following Russia's invasion of Ukraine some insurers chose to cancel the war coverage or exclude certain geographical areas (typically Ukraine, area around the borders to Ukraine as well as the Black Sea and the Sea of Azov).

Overall a potential insurance coverage for loss of or physical damage to cargo as a result of war or warlike events still require insurable interest (risk according to Incoterms) at the time of the event and that the obligation to mitigate is observed. If you ship goods to or from affected areas, there is a potential risk that the insurer will not indemnify a claim as it is not a fortuitous event. Sanction Limitation and Exclusion Clauses also apply to marine cargo and may also be relevant in the adjusting of a claim.

Construction All Risk

Are you as owner or contractor currently involved in a construction project in Ukraine? Have the construction works already commenced, or is it planned to commence shortly? Have you considered which party will be contractually liable / responsible for damages related to the current war/invasion by Russian troops? And do you consider how your Construction All Risk policy responds to such claims?

In order to determine if such a risk is contractually the risk of the owner or the contractor you need to study the details of the contract. In general, if you have decided to use a standard contract such as the Danish AB18 or the international FIDIC Yellow Book they state that the risk of damages related to war is the risk of the owner, not the contractor.

How does a Construction All Risk insurance respond to damages caused by war regardless of who contractually bears the risk? In order to determine the cover, you have to read the actual policy and terms carefully. In general, standard Construction All Risk policies and conditions do not cover loss or damage related to war. Examples are Tryg A/S's Danish standard CAR 460-04 conditions as well as the international standard Munich Re Comprehensive Project Insurance E 347.2.E conditions.

Cyber insurance

Companies in Ukraine, as well as Ukrainian websites and governmental agencies, have been subject to various cyberattacks in recent times, of which the broad majority believes that those attacks are connected to Russian hackers. Reports during the day of the invasion have indicated that Ukrainian authorities, critical infrastructure and banks in Ukraine are currently subject to organized DDoS and malware attacks.

Cyberattacks on Ukrainian entities are nothing new. In 2017 Ukrainian companies were victims of the costliest ransomware attack in history, known as 'NotPetya'. The attack, which has been linked to Russia, spread outside of Ukraine and affected, amongst others, Maersk.

There is risk of a similar attack and any company with locations in Ukraine should actively consider the risk of malware infections spreading from the locations in Ukraine into the rest of the organization's

systems. All companies, regardless of them having locations in Ukraine or not, should be extra vigilant towards cyber exposures in the near future, as the situation in Ukraine is expected to increase the risk of cyberattacks in general and thus also affecting companies with little to no activity in Ukraine.

Any company covered by a cyber insurance should be aware that these insurances typically come with a war exclusion. While the definition of said exclusion will differ between insurers, most insurers will exclude cover for any loss or claims that is the result of war, whether war is declared or not – including invasions and warlike operations. In the light of recent events, this exclusion becomes highly relevant to observe for any company that has bought a cyber insurance and especially for those organizations that has activities in Ukraine.

The NotPetya attack in 2017 was closely connected with Russia's annexation of Crimea. This has naturally led to an intense debate within the insurance industry, as to whether or not that event should be considered an act of war and thus excluded from cover of any cyber insurances. Opinions on the matter are divided depending on who you ask and will ultimately have to be decided in court. Russia has denied being involved in the NotPetya attack, but the US and UK governments have blamed Russia for the attack.

Insurers will undoubtedly consider war exclusions in relation to any claims under cyber policies in the near future, which might have a connection with Russia's invasion of Ukraine. However, it is not granted that such exclusion even applies to a potential cyberattack as multiple factors will need to be considered beforehand – including the relation between the attack affecting the company and the situation in Ukraine.

Those factors unfortunately also make it difficult to provide a clear answer, as to how a company is covered by its cyber insurance, should it be affected by a cyberattack that could potentially be linked to the situation in Ukraine. Insurers will ultimately have to decide, if they believe such exclusion applies to the specific situation and prove why it does. Any rejections of cover could be brought before a court of law, in order to have a final verdict on the complicated matter.

Any company that has a cover for ransom payments under their cyber insurance, should be aware, that 'brutal sanctions' has been threatened against Russia.

All cyber insurances have a sanctions exclusion that effectively hinders indemnification under the policy if such indemnification would be in violation of any sanctions imposed by the US, UK or EU. The US has previously imposed sanctions on organizations and individuals suspected of carrying out cyberattacks, in order to hinder any payment of ransom to those same organization or individuals. Due to this, there is a risk of the insurer denying to indemnify any such ransom payment, should they suspect the receiving party of the payment to be a sanctioned individual.