

Insurance Implications of COVID-19 in Mexico

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No country appears to be immune from the spread of coronavirus. COVID-19 is now impacting individuals and businesses in Mexico, as it has impacted many of their trading partners in recent weeks. According to Mexican health authorities, coronavirus is not likely to peak in Mexico for a number of weeks, but precautionary measures are now being implemented. Just as Mexican individuals are adapting to the need for social distancing, so too are Mexican companies assessing how to lessen the impact of this pandemic, including reviewing the coverage afforded by insurance policies.

Health insurance: Coverage for illness related to COVID-19 is available both under Mexico's public universal health care program, as well as through private health insurance. The Mexican Institute of Social Insurance (IMSS) affords health care coverage to persons registered with IMSS. Under the IMSS program, employers must register all employees with IMSS and pay a monthly fee giving employees access to the IMSS clinics. Individuals registered with IMSS will have access to those clinics for diagnosis and treatment of COVID-19. As in the United States, it is reported that these clinics lack supplies (personal protective equipment such as respirators, masks, gowns, face shields, and ventilators) needed to handle their patients.

In connection with private insurance, the Mexican Association of Insurance Companies ("AMIS") recently reported that 28 out of the total 32 private health insurers operating in Mexico will cover treatment of COVID-19 as a respiratory disease. According to AMIS, only the health insurance policies issued by 4 of these insurers have exclusions relating to diseases with pandemic effects (such as COVID-19). A review of the terms and conditions of a specific health insurance policy would be needed to fully understand the conditions of coverage; however, the main concern is that hospitals' capacity may be insufficient to attend all cases if the contagious wave increases, as experienced in other countries, and as is anticipated in Mexico. In this regard, on March 30th, President Lopez Obrador urged Mexicans to stay at home to help limit the COVID-19 spread, as the number of confirmed cases rose to 717. It is anticipated that this date may likely shift into April or further.

Life insurance: According to this AMIS report, life insurance policies issued in Mexico by Mexican insurers afford coverage for death resulting from COVID-19. Mexican authorized life policies do not exclude pandemic as a cause of death. It is possible that, as insurance regulators in other countries have noted, life insurance companies in Mexico may experience financial difficulties if the number of deaths covered by insurance policies rises to unexpected levels, and/or if the investment yields of these life insurers is impacted, as is presently the case, given the volatility in capital markets.

Travel insurance: Many travel policies in Mexico, which include health insurance coverage, likely will cover expenses for treatment of COVID-19 (e.g., cover expenses for diagnosis and treatment as a result of coronavirus infection incurred during travel). However, COVID-19, as a pandemic, has not generally been accepted as cause for cancellation of a trip or for trip interruption under those policies. Thus, there would be no coverage if an insured elects to cancel for fear of contracting the virus or for any other reason relating to COVID-19. Some travel insurance companies are now offering travel insurance plans with restrictive or limited coverage, and other travel insurance companies have disclosed that as of March 12, 2020, any coverage relating COVID-19 will be excluded. Therefore, it would appear that travel insurance policies are being amended in Mexico to exclude treatment of COVID-19. Also, travel insurance companies are offering information on travel restrictions as such information is provided to the IATA Travel Centre (their list is updated regularly.)

Business Interruption Insurance: This coverage is generally available as a rider or optional coverage included in commercial property insurance policies in Mexico. Coverage for business interruption in Mexico is usually triggered by the physical loss or damage caused to the property of the insured in certain situations such as fire, flood, earthquake, and hurricane. Determining whether loss of business income due to COVID-19 would be covered by these types of policies would require an analysis of the specific policy terms and conditions, and many policies expressly exclude loss caused by virus or bacteria, such as COVID-19, and COVID-19 contamination on business premises might not satisfy the physical damage to property requirement of many of these policies. Also, this coverage would need to be analyzed in light of any future government orders (i.e., civil authority) that may require businesses to shut down (or if civil authority imposes conditions denying access to buildings). It is also possible that other types of policies such as General Liability or Directors and Officers insurance, may offer some type of coverage whose conditions are met by the COVID-19 crisis, again dependent on the policy language in the context of possible policy exclusions. All of these coverages are available in Mexico; the insurers issuing these policies are regulated in Mexico by the Comision Nacional de Seguros y Fianzas (CNSF) and governed by the General Law of Insurance Companies. Given that Mexico insurance law does not regulate business interruption insurance specifically, any claim for business interruption or relating to COVID-19 arising under other these types of insurance policies would need to be interpreted under the general provisions in Mexico's Insurance Contract Law. Recognizing that the interpretation as to availability of coverage relative to a particular type of policy derives from the Insurance Contract Law as opposed to case law, it is not clear, absent express business interruption coverage language in a policy, whether such coverage would be available in Mexico.

Mexican insurance companies will undoubtedly be impacted by claims derived from insurance policies relating to COVID-19. Mexico's sovereign rating downgrade from BBB+ to BBB by Standard & Poor's credit rating agency on March 27, 2020, coupled with the decrease in oil prices and the devaluation of the Mexican peso against the U.S. dollar, may be evidence of economic turmoil yet to come.