HAMILTON

War and Cyber Operations Exclusion No.4
(For use on commercial cyber insurance contracts)

If there is a conflict between any provision in this policy and this Endorsement, the terms of this Endorsement will prevail.

1. Notwithstanding any provision to the contrary in this insurance, this insurance does not cover that part of any loss, damage, cost, or expense, of any kind:

   1.1 directly or indirectly arising from **war**, and/or
   1.2 arising from a **cyber operation** that is carried out as part of a **war**, or the immediate preparation for a **war**, and/or
   1.3 arising from a **cyber operation** that causes a **state** to become an **impacted state.**

   Paragraph 1.3 shall also apply to exclude the direct or indirect effect of a **cyber operation** on a **computer system** used by an **insured** or its third party service provider that is not physically located in the **impacted state.**

Attribution of a **cyber operation** to a **state**

2. Notwithstanding the insurer's burden of proof, which shall remain unchanged by this clause, in determining attribution of a **cyber operation** to a **state**, the insured and insurer will consider such objectively reasonable evidence that is available to them. This may include formal or official attribution by the government of the **state** in which the **computer system** affected by the **cyber operation** is physically located to another **state** or those acting at such other state's direction or under its control.

3. The parties shall attempt in good faith to resolve any dispute arising out of or relating to the determination of attribution to this exclusion promptly by negotiation. Should the parties be not able to resolve the issue of attribution within thirty (30) days of the issue being raised in writing, either party may submit the dispute for a binding decision from a competent and disinterested umpire with the relevant knowledge and experience in international law matters to determine the attribution of a **state** backed cyber-attack to one or more **states**.

   All applicable statutes of limitations and defences based upon the passage of time shall be tolled, or a standstill agreement shall be agreed by the parties, until the attribution issue is determined. The parties will take such action, if any, required to effectuate such tolling or standstill agreement.

   The parties agree that no suit will be filed by either party against the other party seeking resolution of any dispute arising out of or relating to this exclusion no sooner than thirty (30) days after the conclusion of a binding decision from a competent and disinterested umpire, or the parties have otherwise resolved the attribution issue if sooner.

Definitions

4. **Computer system** means any computer, hardware, software, communications system, electronic device, server, cloud infrastructure or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility. If there is any inconsistency between definitions of **computer system** in this exclusion and the contract of insurance, the definition in the contract of insurance shall apply.

5. **Cyber operation** means the use of a **computer system** by, at the direction of, or under control of a **state** to:

   5.1. disrupt, deny access to, or degrade functionality of a **computer system**, and/or

   5.2 copy, remove, manipulate deny access to or destroy information in a **computer system.**

6. **Essential service** means a service that is essential for the maintenance of vital functions of a **state** including, but not limited to, financial institutions and associated financial market infrastructure, health service or utility services.

7. **Impacted state** means any **state** where a **cyber operation** has a major detrimental impact on:

   7.1 the functioning of that **state** due to disruption to the availability, integrity or delivery of an **essential service** in that **state**, and/or

   7.2 the security or defence of that **state**.

8. **State** means sovereign state and any non-member observer state as classified by the United Nations.

9. **War** means armed conflict involving physical force:

   9.1 by a **state** against another **state**, or

   9.2 as part of a civil war, rebellion, revolution, insurrection, military action or usurpation of power, whether **war** be declared or not.

LMA5567A (amended)