

War, Cyber War and Cyber Operation Exclusion No. 3

(For use on commercial cyber insurance contracts)

1. Notwithstanding any provision to the contrary in this insurance, this insurance does not cover any loss, damage, liability, cost or expense of any kind (together "loss") directly or indirectly occasioned by, happening through or in consequence of:
 - 1.1. **war** or a **cyber operation** that is carried out in the course of **war**; and/or
 - 1.2. retaliatory **cyber operations** between any **specified states**; and/or
 - 1.3. a **cyber operation** that has a major detrimental impact on:
 - 1.3.1. the functioning of a **state** due to the direct or indirect effect of the **cyber operation** on the availability, integrity or delivery of an **essential service** in that **state**; and/or
 - 1.3.2. the security or defence of a **state**.
2. The insurer shall have the burden of proving that this exclusion applies.

Attribution of a cyber operation to a state

3. The primary but not exclusive factor in determining attribution of a **cyber operation** shall be whether the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located attributes the **cyber operation** to another **state** or those acting on its behalf.
4. Pending attribution by the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located, the insurer may rely upon an inference which is objectively reasonable as to attribution of the **cyber operation** to another **state** or those acting on its behalf. It is agreed that during this period no loss shall be paid.
5. In the event that the government of the **state** (including its intelligence and security services) in which the **computer system** affected by the **cyber operation** is physically located either:
 - 5.1. takes an unreasonable length of time to, or
 - 5.2. does not, or
 - 5.3. declares it is unable toattribute the **cyber operation** to another **state** or those acting on its behalf, it shall be for the insurer to prove attribution by reference to such other evidence as is available.

Definitions

6. **Computer system** means any computer, hardware, software, communications system, electronic device (including but not limited to, smart phone, laptop, tablet, wearable 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.
7. **Cyber operation** means the use of a **computer system** by or on behalf of a **state** to disrupt, deny, degrade, manipulate or destroy information in a **computer system** of or in another **state**.
8. **Essential service**, for the purposes of this exclusion, means a service that is essential for the maintenance of vital functions of a **state** including without limitation: financial institutions and associated financial market infrastructure, health services or utility services.
9. **Specified states** means China, France, Germany, Japan, Russia, UK or USA.
10. **State** means sovereign state.

11. **War** means:

11.1. the use of physical force by a **state** against another **state** or as part of a civil war, rebellion, revolution, insurrection, and/or

11.2. military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority,

whether war be declared or not.

LMA5566

25 November 2021