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South China Insurance War, Cyber War and Cyber Operation Exclusion No.4

111.07.01(111)華產企字第117號函備查

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 leading to two or more specified states becoming impacted 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. Paragraph 1.3 shall not apply to the direct or indirect effect of a cyber operation on a bystanding cyber asset.

3. The insurer shall have the burden of proving that this exclusion applies.

Attribution of a cyber operation to a state

4. 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.
5. 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.
6. 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:
 - 6.1 takes an unreasonable length of time to, or
 - 6.2 does not, or
 - 6.3 declares it is unable to

attribute 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

7. Bystanding cyber asset means a computer system used by the insured or its third party service providers that is not physically located in an impacted state but is affected by a cyber operation.

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8. 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.
9. 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.
10. 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.
11. Impacted state means any state where a cyber operation has had a major detrimental impact on:
 - 11.1 the functioning of that 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
 - 11.2 the security or defence of that state.
12. Specified states means China, France, Germany, Japan, Russia, UK or USA.
13. State means sovereign state.
14. War means:
 - 14.1 the use of physical force by a state against another state or as part of a civil war, rebellion, revolution, insurrection, and/or
 - 14.2 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.