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Extension of the Period for Delay in Start Up Cover (DSU)

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Extension of the period for Delay in Start Up Cover (DSU)

Basic Principles

In DSU cover we have only one single named insured, one single completion date (the date when the project is capable of generating revenues), one single delay (irrespective of the number of individual accidents contributing to the overall delay), one single indemnity for lost revenues (no reinstatement of indemnity period), and one single time excess.

The intention of the cover is to indemnify the insured in respect of the ascertained loss sustained from deferred receipt or partial receipt of revenues as a result of the delay in completion of the permanent works beyond the anticipated commencement date of the business caused by an insured event.

In DSU cover we have basically to deal with two periods (i) the **insurance period** which defines the period during which an insured accident has to occur in order to qualify for consideration in establishing the indemnifiable delay and (ii) the **period of indemnity** which designates the maximum length in time for which insurers agree to pay. In addition we have the **delay period** which is the length of time between the anticipated date of commencement and the actual commencement of the business. The **anticipated commencement date of business** is defined as the date on which the business could have commenced had no insured event occurred which ultimately resulted in a delay of the commencement of the business, but not earlier than the date stated in the Schedule.

At the outset of the policy the DSU insurance period coincides with the insurance period of the underlying works policy (works plus testing but excluding maintenance period) but may have to be extended if the works progress falls behind Schedule. The length of the indemnity period, however, remains unchanged.

DSU Insurance Period (example policy wording)

The period of insurance for this section of the policy shall begin upon commencement of physical work or storage of material at site or the inception date stated in the Schedule which ever is the later. It shall cease (unless otherwise endorsed) on the anticipated commencement date of business as stated in the Schedule or on the date of actual commencement of business (as defined hereinafter) whichever shall occur first

Important to note: extensions of the underlying material damage cover do not automatically lead to an extension of the DSU insurance period; any extension in DSU insurance period needs the written consent of the insurer (separate endorsement) and entitles the insurers to readjust the premium as well as the initially agreed time excess according to the additional risk assumed.

Actual commencement of business (example policy definition)

For the purpose of DSU cover the business shall be deemed to have commenced on the date of the certificate of practical completion, or taking over by the employer, or taking into use (whichever shall occur first) of the permanent works, or part thereof, which shall be capable (at that date) of earning revenues

Scenario 1:

Non-insured events; as a result of such events the works progress falls behind Schedule and the anticipated commencement date of business cannot be met, consequently if

1. the insurance period is **not extended**: the cover ceases with the expiration of the DSU insurance period (ie on the anticipated commencement date of business as stated in the Schedule), irrespective of whether or not the business actually commenced.
2. the insurance period is **extended** : a new (revised) anticipated commencement date of business has to be agreed and the cover continues to be effective subject to mutual agreement of adequacy of amended terms. The length of the initially agreed period of indemnity remains unaltered, but Insurer's liability attaches at the earliest on the revised anticipated commencement date of business.

Example wording for extension of DSU insurance period due to **non-insured** events:

It is noted and agreed that the DSU insurance period is extended by months and the anticipated commencement date of business ie the earliest trigger date for DSU cover (commencement of indemnity period) as stated in the schedule is

Underwriter's note: *The additional premium for this extension of the DSU insurance period is to be calculated by taking into consideration the actual risk situation and if considered necessary the time excess has also to be readjusted commensurate with the increase in risk insurers have to assume.*

Scenario 2:

Insured events; as a result of such events Insurer's liability will be triggered ie delays beyond the (revised) anticipated commencement date of the business will be considered in establishing the indemnifiable delay, which can only be done once the business commences. The Insured does **not intend** to change the initially agreed indemnity period (no increase in initially bought loss limit). This is the most likely scenario to occur for which the following two options are to be considered:

1. The insurance period is **not extended**: insurers liability runs as from (revised) anticipated commencement date of business up to (actual) commencement of business but not for more than the initially agreed indemnity period. Any delay in excess of the time needed to repair or replace the damaged item(s) with the exercise of due diligence and dispatch to its condition prior to the occurrence of the accident are however not counted as indemnifiable delay. Additional events causing further delay in the commencement of the business are not

covered (occurring outside the period of insurance) except for events in direct causal connection with the repair/replacement of the initially damaged item(s). However in no event shall insurers be liable for a delay exceeding the initially agreed indemnity period .

Any prudent insured would however ask to have the DSU insurance period extended in order to avoid a gap in coverage in case another event not in causal connection with repair of the initially damaged parts would occur and also any prudent underwriter would support such a demand to avoid any dispute in respect of the indemnifiable portion of the loss in case of additional accidents further delaying the completion of the project. The maximum length of time the DSU insurance period could be extended is the length of time indicated as the indemnity period. Any such extension in insurance period does represent a material change in degree of risk and inevitably necessitates an adjustment of the initially agreed time excess and premium to reflect the additional risk assumed by underwriters.

2. The insurance period is **extended** up to the estimated completion date : insurers liability runs as from (revised) anticipated commencement date of business up to the (actual) commencement of business but not for more than the initially agreed indemnity period. As the insurance period is extended (subject to mutually agreed terms and conditions) any additional events falling within the scope of the underlying material damage policy causing further delay in commencement of the business would now be covered (occurring within the period of insurance) until the estimated completion date or the actual commencement of the business or up to the expiry of the indemnity period (for which he bought cover) whichever is the earlier. Any delay in excess of the time needed to repair or replace the damaged item(s) with the exercise of due diligence and dispatch to its condition prior to the occurrence of the accident is however not counted as indemnifiable delay.

Example wording for extension of insurance period due to insured events.

It is noted that the project is delayed beyond the (revised) anticipated commencement date of business due to insured event(s) and thus it is agreed to extend the DSU insurance period from the (revised) anticipated commencement date of business (.....) to (.....) which is the estimated completion of the project, or up to the actual commencement of the business whichever shall be the earlier.

Underwriter's note: *Time excess and additional premium for such extension(s) of DSU insurance period have to be determined and agreed case by case based on the particular circumstances prevailing.*

(Beware of the project which has already suffered a delay, the buffer time is fully consumed and the project may be in a critical phase)

Scenario 3:

Insured events; as a result of such events a substantial delay occurs and the Insured fears that in case of a new event occurring during the delay (repair period) commencement of the business could not be achieved within the initially agreed Indemnity period for which he bought cover and consequently wants to reinstate (or to increase) the indemnity period in order to secure the revenue stream in a worst case scenario. Although some possibilities exist to tackle this situation

there is no standard solution to this problem. Anyhow, this scenario is highly unlikely to occur and if it occurs the project may not any longer be economically feasible and an acceptable risk for insurers.

Diagrams : Delay in Works Progress and its Influence in DSU Insurance





