

Cyber insurance

## Cyber conditions: critical aspects of the insurance cover

The discussion on customized insurance cover for cyber risks has moved up a gear and offers an occasion and an opportunity to address critical individual aspects of cyber cover.

The complexity of risks is also proven by cyber conditions. Here as well, all market operators should, in the interest of a contract certainty, pay attention to a clear structure and manageable terms and definitions. Also relevant clauses regarding cover, for example on insured events or exclusions, are often not well detectable in conditions - much less continuously clearly worded.

How far do policy holders expose themselves to an information transparency toward insurers? Encompassing risk assessments before concluding the cyber insurance do concern the core area of the insured company and sensitive information. External IT service providers carry out risk analysis for the insurer's risk assessment by the policy holder. Perhaps the same IT experts which, in case of a claim, shall document the insured event in the policy holder's interest – a usual part of cyber conditions. Here it is particularly important to avoid possible conflicts of interest.

Often the focus is mainly on external hacker attacks. However, relevant damages are often caused by own employees. How do cyber conditions cover the employees' misconduct in the insured company? Are negligent violations such as e.g. operating errors

covered just as intentional violations? Damage potentials require special attention of policy holders and advising brokers.

Fines are not insurable – with this commonly very general invoked thesis, cyber conditions and the current discussion do remain below practical and legal conditions. Fines due to potential privacy breaches are relevant financial losses for companies. The question of the insurability of fines is controversial and has not yet been resolved by the Federal Supreme Court. The arguments put forward against the insurability at least do not convince with respect to negligent violations. A general inadmissibility does not follow from criminal law and neither from regulatory law. Valuations of judgments in other fields of law e.g. labour law are not mandatory transferable. The cover of fines cannot be commonly declared inadmissible by undifferentiated theses and general clauses (“violation of public policy”).

Insurers and policy holding industries are called upon to work constantly on customized insurance cover and to be not afraid of uncomfortable questions.

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