

# MARINE INSURANCE ACT, 1963 : AN ANALYTICAL STUDY



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**CERTIFICATE**

This is to certify that the dissertation entitled “**MARINE INSURANCE ACT, 1963 : AN ANALYTICAL STUDY**” submitted to National Law University And Judicial Academy, Assam is a bonafide study conducted by **Pubali Krishnam** as a requirement for the completion of the course for the Master of Laws (LL.M) degree under my constant guidance and supervision.

This is also certified that she has fulfilled all the regulations and requisite of National Law University And Judicial Academy, Assam for preparing and completing a dissertation for Master Degree in Laws.

With the authority as her guide and the Associate Professor of Law, the dissertation is hereby recommended for submission and onward proceedings as per regulation.

Date: 13-07-2021

Place : Guwahati

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**DECLARATION**

I hereby declare that, this dissertation titled “**MARINE INSURANCE ACT, 1963: AN ANALYTICAL STUDY**” is a bonafide and genuine research work carried out by me under the guidance of **Dr. Ishrat Hussain, Associate Professor of Law, National Law University and Judicial Academy, Amingaon, Assam.**

I further declare that to the best of my knowledge the dissertation does not contain any part of work, which has not been submitted for the award of any degree either in this University or any other institutions without proper citation.

Date : 13-07-2021

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A handwritten signature in black ink that reads "Pubali" with a horizontal line underneath it.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

AIR	All India Reporter
CBNI	Covered But Not yet Incurred
CIF	Cost, insurance, and freight
CIP	Carriage and Insurance Paid
CPT	Carriage Paid To
DAP	Delivered At Place
DAT	Delivered At Terminal
DDP	Delivered Duty Paid
DDU	Delivered Duty Unpaid
EXW	Ex Works
FAS	Free Alongside Ship
FOB	Free On Board
IBNR	Incurred but not reported
ITCH	Institute Times Clauses Hull
v.	Versus

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# CHAPTER 1

## INTRODUCTION

### 1.1 RESEARCH BACKGROUND

Marine insurance covers loss or damage to conveyors or purchase points on boats, cargo ships, terminals, and carriages. The bundle includes marine insurance. By preventing transportation losses, this insurance protects carriers and couriers from potentially costly losses. Natural disasters that may cause damage to a ship or cargo are beyond the control of carriers unless the appropriate legislation and safety requirements are followed. In maritime business, weather hazards, pirate encounters, and border crossing hurdles all occur on a regular basis, resulting in losses that can put shipowners in serious financial problems. Maritime insurance is a good way to protect yourself from unexpected losses. This policy protects the interests of shipping companies and carriers.

Another key aspect of naval insurance is that the coverage provided by the carriers can be adjusted to their individual requirements. Depending on their specific coverage requirements, shipping companies can develop their own custom package. Several limits apply depending on the size of the ship and the routes it travels.

#### 1.1.1 Different feature of marine insurance policy

There is a strict maritime insurance policy in place, as well as well regulated contract insurance. Minor deviations or infractions may result in claim denials, thus insurers should constantly follow the rules. Officials must follow certain standards when it comes to claim reimbursement, which might result in costly claims being lost if they veer off track.

In this case, it's critical that you understand your policy's features and requirements to ensure that you're insured. Policies that are open - Inland water insurance provides coverage for inland shipments for a specified period of time, usually up to a year. This insurance extends the active insurance period indefinitely for shipping enterprises with a large annual turnover. Domestic marine insurance, as part of an extended maritime insurance policy, covers objects moved by land, such as merchandise on the coast and sent to warehouses. Full coverage – Protects the value of your product against entire or partial product losses, as well as all associated transportation expenditures, by covering a wider spectrum of cargo damage. Adjusted Marine Insurance is typically advised for enterprises with a wide range of requirements. You can choose your insurance limitations and policy options based on your organization's and individual needs.

Mark up value - The maritime mark-up sector is a sort of insurance that allows you to insure a considerable portion of your profits.

A navy policy should provide comprehensive coverage, however keep in mind that coverage exclusions must be taken into account.

Insurance companies will deny your claim if:

- The end result is a purposeful lack of interest.
- Faulty packaging is to blame.
- Radiation-induced radioactive pollution
- Strikes, riots, and civil instability are the primary reasons.
- Other exclusions could be another cause for having double control over your coverage.

## **1.2 MARINE INSURANCE IN INDIA: TYPES, COVERAGE, CLAIM & EXCLUSIONS**

Water transportation is influenced by environmental and human factors, making it a complicated and dangerous operation. As a result, suitable maritime insurance should be used to cover the risks connected with commodities transported in this manner.

### **Marine insurance**

Marine insurance is required for shipowners, freighters, port operators, and other maritime middlemen. In a variety of freight situations, such as weather, pirates, and navigational challenges, appropriate insurance should be supplied based on the nature and hazards of your company. If the activity is directly or indirectly affected, other parties must be included. Sea insurance can be tailored to your unique requirements and goals.

### **Marine insurance in India (1963)**

A contract that reimburses an insured nautical experience for legal damages is defined by the insurer as nautics insurance. To put it another way, any maritime adventure that results in damage to the boat and cargo during the journey is referred to as a maritime loss, and the losses may be covered by personal or corporate marine insurance coverage. In the context of marine risk aspects such as danger hazards, accidents, or vessel causes, for example, paragraph 2(d) of the legislation defines maritime adventure as fire, pirate, war hazard, and other components of maritime hazard. The dangers of the sea are a part of the adventure. Maritime insurance can be divided into four categories due to its limited scope. It's true:

## **1.3 TYPES OF MARINE INSURANCE**

You should be aware of the many forms of marine insurance so that you can select the finest policy for your company before making a purchase. The types are as follows:

**1.3.1 Hull and Machinery Insurance:** When there are no masts, the ship's most substantial basis is the hull. As a result, in the case of a shipwreck, the applicant is protected by the hull guarantee. The shipowners are the ones who take it the majority of the time. Machinery insurance, in addition to hull insurance, should cover the ship's machinery. The application must guarantee that the vessel's machinery is not harmed in any manner, including operational, mechanical, and electrical issues. Because both portions of the insurance package cover the entire ship, insurance companies combine Hull and Machinery.

**1.3.2 Marine Cargo Insurance:** At the terminal and throughout the journey, cargo owners are assaulted by cargo. It's possible that it's wrong or broken. Cargo transport insurance can be purchased for a reasonable price to protect the carrier from financial losses resulting from such events. The insurance covers damage to the port, train, boat, or other products or people caused by your consignment. It also has liability insurance for third parties.

**1.3.3 Liability insurance :** It is necessary in the event of a collision, crash, or piratic attack. It is necessary to get liability insurance. Under such circumstances, the commodity's value is jeopardized. The lives of the crew and other passengers are also in danger. Shipowners will be paid for any liabilities deriving from circumstances beyond their control, due to the appropriate liability insurance coverage.

**1.3.4 Cargo insurance:** This section focuses on cargo loss. The transport business will not be held liable if ship, cargo is lost and damaged. You can compensate for the loss with this insurance.

## 1.4 WHAT IT ALL COVERS?

Every customer's freight traffic is different. Insurance requirements differ for different consumers and at different times.

- Fire, explosion, sunbeds, and beaches are all prevalent features of maritime insurance.
- Loss of load and discharge
- Complete loss protection.
- Lightning or tremor
- Administrative charges that were not budgeted for.
- Is it hip or washboard?
- Crash, reversal, delay, and crasher are all terms for the same thing.
- Natural disasters
- The overall average

It covers a wide range of topics, following are the policies:

**1.4.1 Voyage policy:** Because the insurance coverage's validity is limited to a specific trip, it's also known as a voyage policy.

**1.4.2 Time policy:** Clients frequently want coverage for a specific length of time. A time policy is the name for this type of insurance.

**1.4.3 Mix policy:** A mixing policy applies to a certain trip and for a specific period of time. Mix policy: It allows customers to solve a range of issues related to the ship's movement and the commodities on board.

**1.4.4 Single Vessel Policy:** Because of its low cost and comprehensive coverage, this policy is ideal for shipowners with only one boat. For shipowners with a fleet of ships, the single ship method is not cost-effective.

**1.4.5 Fleet policy:** If a shipowner has a large fleet of vessels, fleet policy can be readily and cost-effectively enforced.

**1.4.6 Floating policy:** In the shipping sector, the floating policy is frequently used. The only information of the policy should be the maximum amount insured. If the ship sinks, the insurance company receives extra information. This is the best option for freight owners that need freight on a regular basis.

**1.4.7 Unvalued policy :** The maritime freight policy commonly refers to freight value. You must issue an unassessed policy if you do not determine the worth of the articles or the shipment before the cargo is hooked. It's also known as an open policy. After a thorough examination and research, the worth of the alleged cargo is established.

**1.4.8 Valued policy :** The value of the shipment must be clearly stated when issuing a maritime freight policy. All refund claims are restricted to the stated value of the Policy, subject to all relevant restrictions.

**1.4.9 Block policy :** Before arriving at its destination under the block policies, Cargo is transported by train, road, water and air. A package policy is the best way to cover cargo on a trip. The applicant is responsible for the full amount of insurance coverage for any loss that takes place during transport.

#### **1.4.10 Port Risk policy**

It is a policy adopted to safeguard the ship's safety while docked in a port..

Maritime insurance is basically intended to keep your business running smoothly. Let's have a look at this. It works as follows:

- In the event of a negative result, assess and analyze the risks and losses connected with your requirements.
- Compare and contrast the companies and policies you've identified to discover the best place to serve.
- Once you've chosen on a plan, get the paperwork for the policy purchase.

Please notify your insurance provider right away if something unexpected occurs.

- Fill out a claim form and attach any necessary documents, certificates, and proof.
- If the claim is found appropriate, it will be approved; otherwise, it will be refused.

### **Eligibility Criteria**

Consider the vast number of people who are eligible for maritime insurance. Manufacturers, procurement agents, buyers, importers and export dealers, sellers, banks, contractors, and anyone else fall into this category.

### **Claim Process**

If you need to submit a claim under this policy after you've purchased marine insurance, follow the steps below:

- The insurance provider must be notified immediately if the freight or vessel is lost or destroyed.
- The damage must be assessed by the investigator.
- All documentation and proof must be submitted in conjunction with a properly filled claim.
- The insurance company must file a monetary claim and receive a certificate of acceptance for the missing of a package.
- If you receive a receipt from an insurance company
- If you are dissatisfied with the outcome of this case, you can take it to court.

## **1.5 DOCUMENTS REQUIRED FOR CLAIM PROCESS**

To take advantage of marine insurance claims, the proper documentation must be filed. It's possible that the risk will be denied if there's a lapse. The following are some examples of papers:

- Original policy number and insurance certificate
- Completed application form
- A copy of the bill of lading
- You don't have a certificate or a survey report.
- Invoice, package list, and shipping instructions
- Exchanged copies of mail

### **Exclusions**

Marine insurance covers a wide range of dangers for every one of us. However, some eventualities, known as exclusions, are not covered by the insurance. In some instances, the following may be applicable:

- Crash, upheaval, and wars
- Poor cargo packaging quality
- Delays in general cargo leaking or tears
- Financial difficulty or insolvency in transport
- Wreck elimination

### **Companies Offering Marine Insurance in India**

Because India is bordered by water on three sides, shipping is a significant industry. A huge volume of freight is managed in these ports, hence insurance is essential.

- All major financial institutions and banks
- HDFC Ergo is one of the Indian companies that offer maritime insurance.
- TATA AIG
- United India Insurance Corporation is an insurance company based in India.
- Sundaram Royal is a royal family from India.
- The New India Limited Insurance Corporation is a company based in New Delhi, India.
- AXA Bharti

### **Important Aspects**

Before purchasing a maritime policy, you should research the firms and policies. Let's have a look at some key points to keep in mind:

- In the case of cargo insurance, the amount is calculated using the costs, insurance, and freight value of the invoices Cost, insurance, and freight (CIF). In most cases, the insurance company authorises an insured amount of up to 10-15 percent more than the entire CIF value shown on the invoices. In general, the company acknowledges that up to 10% to 15% of the insured amount exceeds the CIF total of the invoice.
- The sum is derived after a series of complicated calculations for the shipowner's insurance. It must include information such as the ship's route, the number of ships in the fleet, the ship's history, safety and precautions at various points of transit, and so on. However, in order to protect the ship, the cargo, and the people on board, shipping companies must use extreme caution.



- Your cargo can be transported by railway, road, sea, or air, among other options. In light of this uncertainty, it's a good idea to make sure your marine insurance covers the entire globe and that you review and file your claim globally.

## 1.6 DEVELOPMENT OF INDIAN LAW

India's independence necessitated the creation of Indian maritime insurance legislation that met Indian standards. General contract law and decision-making in English must be specified before legislation, according to common contract law. The Indian law is a carbon replica of its English counterpart, with only a few minor differences. The Indian Act's preamble indicates that it is "an act to codify maritime insurance legislation." It is general knowledge that the broad canon of construction for law codification should only be used where there is a dispute or ambiguity in the text or prior status of the Act. The Indian Act, like its English counterpart, covers some but not all criteria and procedures for maritime insurance. Its wording is so short and well-known that reading it in its entirety without reference to previous legislation has proven difficult, and instances without it have been difficult to incorporate or resolve. Since 1963<sup>1</sup> then, India has created sea insurance requirements.

### **Contract of Marine insurance**

Most naval assurance standards are based on a reinterpretation of the policy agreements. The underlying idea of an insurance contract is that the insurer's compensation match the insured' monetary loss.<sup>2</sup>

In maritime insurance arrangement insurer reimburse the insured for sea losses, including marine adventure losses, in accordance with an agreed upon<sup>3</sup>, and extent. The marine insurance contract's particular terms and circumstances, as well as the usage of commerce, can be utilised to protect insured persons from inland water loss or to cover unfavourable land risks for any nautical excursion. Except for the contracts provided for by this Law, there is no change or revision in the Rule of Law in insurance arrangements. Except for the contracts called for in this Law, Law modifies governing insurance agreements.

Legal processes are covered by a Marine Insurance policy; however the 'notice' or 'notice' is informal preparation. The subjects assured and insurance evaluation is "Interest Insured" and "Prima." The "insurer" is the individual who receives payment from an insurance policy. The person is the insurance company. Property damage and loss of maritime danger are both included in the term "loss. "Any marine risks covered by this insurance, such as shipwrecks, fires, war, pirates, arrests, convictions, restrictions, imprisonment, and other comparable risks, are examples.

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<sup>1</sup> Cf. *Rickards v. Porestal*, (1942) A.C. 50, 79 H.L. (per Lord Wright).

<sup>2</sup> *Kulukundis v. Norwich Union Fire Insurance Society*, (1937) 1 K.B. 1, 34 C.A. (per Scott L.J.).

<sup>3</sup> Indian Marine Insurance Act, 1963, Section 3 (= Section 1, English Act of 1906).

A marine property exposure puts revenue, commodity purchase, transit money, commissions, revenue, and other currency benefits in jeopardy. The insurance agreement for a maritime policy or a fire policy, in my opinion, reveals that the insured person will never be fully reimbursed for the loss for which the policy was issued<sup>4</sup>. That is the insurance company's contract" That is the essential premise of the insurance policy, and any indication that contradicts it, such as blocking full reimbursement or jeopardising policy restrictions, is untrue. In principle, marine insurance is a compensation contract, but in practise, it does not always work out<sup>5</sup>. The Act only applies to one sort of contract law: maritime insurance. If they must comply with multiple rules and regulations, parties may draught their own agreements, eliminating or changing statutory terminology and basic common law requirements.

Both governments and courts wanted to use or apply the concept of compensation, which is critical in the insurance industry, to a wide range of factual and legal issues. Despite the fact that the primary objective of insurance is to compensate for losses, courts frequently recognise that a reward is unlikely since insurance companies are required to participate in particular activities. This is because, under both common law and Indian law, the value of the policies is indicative of the insurance company's wealth. This allows the parties to use any number to calculate the insured person's worth. If an overview does not violate the highest requirement of good faith and the policy of not exposing significant truth or fraud legislation, or a judgment against a bet<sup>6</sup>.

The importance of the Policies will be determined by the courts. The most common rule for interpreting maritime policy is that its meaning is established, whether by known trade or otherwise, in a way that is distinct from the popular interpretation of the same word. Because it is the parties' immediate language and meaning, and the word imprinted is a general formula that is equally suitable, the imprinted phrase takes precedence over the stamped or written sentence in terms of ordinary construction rules.

## **1.7 STATEMENT OF THE PROBLEM**

Globalization is progressing, and the economy is becoming more open to international trade, exports, and imports, as well as international commodities transportation by waterway, river, or other means. The risk of transportation has increased as a result of this. Marine insurance provides a solution to the risks associated with shipping costs. Maritime insurance is governed by a number of international norms and laws because it is such an important part

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<sup>4</sup> "Goods" means goods in the nature of merchandise, but does not include personal effects or provisions or stores for use on board a ship; Rule 17 of the Schedule to Indian Marine Insurance Act, 1963 .

<sup>5</sup> "Movable" means any movable tangible property, other than a ship or goods, and includes money, valuable securities and other documents; Indian Marine Insurance Act, 1963, Section 2(f).

<sup>6</sup> "A policy of assurance is not a perfect contract of indemnity. It must be taken with this qualification, that the parties may agree beforehand in estimating the value of the subject assured, by way of liquidated damages, as indeed they may in any other contract to indemnify: Irving v. Manning, (1847) 1 HLC 287, (per Patteson, J.)".

of international trade. Duplicate of the English law of 1906, which has had a considerable impact on the Indian economy.

## 1.8 OBJECTIVES OF THE STUDY

This research aims of the marine insurance in India and cover the risk by policies. Along with it, this research has following objectives of study:

- Research the evolution of marine insurance in India
- Research the various concepts of marine insurance
- Research the marine insurance in India
- Research the risk covered by the policies
- Research the marine losses and indemnity measures

## 1.9 RESEARCH QUESTIONS

- A review of the various maritime policies?
- What kinds of risks are covered by maritime insurance?

## 1.10 RESEARCH METHODOLOGY

In order to grasp the notion of maritime insurance in India, the researcher looked at a variety of web sources. The researcher employed the doctrinal research approach, which included the utilisation of books, journals, and case studies. Because this is a theory-based issue, the above strategy was thought to be appropriate.

The dissertation is divided into chapters as follows:

The **first** chapter dealt with the detailed introduction of the marine insurance.

The **second** chapter covered the marine insurance industry in India and Insurance Law in general.

The **third** chapter analyses the principles of marine insurance.

The **fourth** chapter examines the policies of marine insurance.

The **fifth** chapter deals with marine insurance and its legal aspects in India.

The **sixth** chapter gives an understanding of the marine insurance risk management.

The **final** chapter covers the conclusion and recommendations.

## 1.11 REVIEW OF LITERATURE

Marine insurance is a modest part of the global non-life insurance market, accounting for only around 2% of total premiums (deduced from global premium volumes as in). It is also very specialised, reflecting a wide range of risks as well as specialist insurance coverage. The term "marine" is used to describe the following subtypes:

From a different perspective, what are the genuine hazards in the marine sector? These can be classified into the following groups:

- Damage to or loss of a ship, an oil platform, freight, or any other marine-related object, or loss of the assured object in its whole (partial or complete loss);
- Liability of any kind (collision, environmental, port, crew, etc.).
- Income loss as a result of the object being unavailable for an extended period of time after a maritime insurance accident (see Loss-of-Profits Insurance).
- You can get reimbursed for expenses incurred as a result of a marine insurance accident (like salvage or wreck removal expenses etc.).

A range of hazards can result in these potential losses. To put it clearly, they are covered by a standard marine policy when they result from a marine danger. Any hazard related with the maritime sector, such as collisions, groundings, extreme weather, and so on, is referred to as a sea hazard. Furthermore, with the outbreak of the First World War, a Norwegian shipowners' Mutual War Insurance Association was founded to cover war and war damage, as well as extra risks such as war or terrorism.<sup>7</sup>

The term 'hull' is frequently used in the context of vessel or marine object coverage as an umbrella term. Although it usually covers all of the equipment on board other than the cargo that the vessel requires to fulfil its mission, hull and machinery insurance is the most frequent type of vessel insurance (H&M). Responsibility is normally limited to the value of the vessel for a maximum insured sum (see coverage). However, one of the distinctive features of hull insurance is that it usually covers accident liability as well as expenses like salvage and deletion for a percentage of the insured sum. As a result, the insurer may be held accountable for the aggregate risk up to three times the amount covered (the exact factor can be below three and is dependent on the set of clauses applicable). The hull policy covers all three types of risks: (A), (B), and (C) (D), as shown in the example below.

The P&I clubs, on the other hand, will cover any liability arising from a cause not covered by the hull coverage or that exceeds the insured sum. Additional hull insurance, as well as risk insurance for Loss of Hire (LOH), is offered for total loss, higher value, and additional particular coverage (C). For example, provides a complete

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<sup>7</sup> Institute Time Clauses Hull (1995). and other clauses, download available from e.g. [http://www.royalsunalliance.ca/royalsun/sections/marine insurance/hull/hull clauses.asp](http://www.royalsunalliance.ca/royalsun/sections/marine%20insurance/hull/hull%20clauses.asp)

summary of all coverages. Hull is divided into two sections for organisational purposes: Coastal Hull and Ocean Hull, the latter sometimes known as "Blue Water Hull." While Ocean Hull is clearly an international ship trader, a coastal hull is a ship trafficking location on the coast, often within a single country's borders.

As a result, many smaller vessels, such as fishing boats, coastal ferries, coastal barges, and the like, will be classified as coastal hull, despite the fact that there are no clear distinctions between the coast and the ocean, and a number of vessels qualify for both. Cargo insurance covers almost any object being transported from point A to point B, and different levels of coverage are available to accommodate different demands.<sup>8</sup>

1. 1. All liabilities not covered by the hull policy or any basic insurance are frequently the responsibility of the P&I clubs. Because only a few P&I clubs around the world have conditions that are nearly comparable, a version of these rules can be found on the club's website (e.g., [www.gard.no](http://www.gard.no), [www.skuld.com](http://www.skuld.com), or [www.swedishlub.com](http://www.swedishlub.com); see 'Standards & Rules').
2. 2. Offshore or energy insurance began as part of engineering insurance, but as oil production moved to the open sea, it was put into the marine underwriting scope. Finally, it was protected by offshore insurance, which included not only the platforms and supply vessels, but anything else related to onshore oil production as well. It's a highly specialised and diverse sector that, as you might expect, comes with a lot of risk and a lot of money. Marine insurance is a highly specialised field as well. As a result, insurance coverage is usually tailored to each oil production unit's individual needs. The line between 'offshore' and 'hull' is also blurring, as many objects, including as supplies and the increasingly popular floating drilling machines, might fit into either category.
3. 3. The Institute's Time Limitations Hull (ITCH) and other Institute Times Clauses are among the most widely used insurance provisions in the world. In 1997, a new version was launched, and another is now being considered. Several countries, including Norway, have developed, reviewed, and updated their own market conditions on a regular basis for both domestic and international clients. Although diverse market regulations may provide similar coverage, discrepancies in what is actually covered or excluded must be considered. In the British clause, for example, the notion of "specific dangers" prevails, as opposed to the Norwegian provisions' "all-risks" principle (i.e. certain details are provided in or the use of warranties).<sup>9</sup>

Common standard cargo clauses have also been developed, and they are currently being reviewed on a number of marketplaces. Offshore rules were tailored to the specific needs of the production unit and the huge complexity of the business. Whether or not an actuarial study is successful is determined by the availability of adequate

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<sup>8</sup> Cleve, A. (2003). Marine Insurance – Hulls, Forsikringsakademiet (Norwegian Insurance Academy, a Division of the Norwegian School of Management), Oslo, [www.forsakad.no](http://www.forsakad.no).

<sup>9</sup> Norwegian Marine Insurance Plan (1996). Version 2003, Copyright Central Union of Marine Underwriters Norway (CEFOR), Oslo

statistical data at some point and over time. Furthermore, the criteria for the usage or unavailability of historical data should not have altered significantly. One justification for the value of actuarial studies is that marine insurance, by its very nature, entails a wide range of distinct objects, as well as market volatility and continuous changes in the underlying conditions. Marine insurers are frequently small and well-qualified businesses. Nonetheless, there is a strong and growing demand for good statistics to support the organisation, as well as for loss control and prevention to conduct advanced risk analysis. So, what should I remember?

The marine insurance data are produced on an annual basis, allowing the total amount of final claims for a particular policy to be calculated in relation to the whole premium paid in line with that policy. It makes sense because marine enterprises can be divided into two categories: short to "mid" tail (hull) and long-tail (hull) (P&I). Claims for a number of years can be reviewed and paid in full this way. Premium cycles, on the other hand, are long and deductible over time, therefore the technique only discloses if the initial award was reasonable for the final claim. More arguments and concerns about underwriting versus the accounting year and accident year procedures can be found in., See also statistical pitfalls.

To obtain good data, the analyst must divide the organisation into sensitive subgroups in order to offer as much relevant information as possible to each of them while leaving enough items for statistical value within each group. In maritime assurance, ships are often classified by their age, size (tonnage), kind (bulk, tank, passenger, etc.), classification, and flag. Claims must also be classified by kind or cause, such as fire, collision, grounding, and so on, in order to identify areas of concern for loss prevention and to ensure that an appropriate premium is paid.

Additionally, analyses of propulsion systems, hull types, navigational aids, and any other specific component of the vessel that may be relevant in certain circumstances may be necessary. A regular ship comprehensive data update can be subscribed to cover more or less the whole fleet of the world over defined sizes in order to obtain appropriate statistics. These data can be electronically linked to one's own insurance data, allowing for more extensive analysis and studies on claims. As a result, the numbers generated on the Norwegian hull market are publicly available samples. As previously stated, the maximum possible loss is usually limited to three times the amount insured by the amount assured by the insurance policy. To separate complete losses and constructive total losses from partial losses, calculating the expected loss for Incurred but not report (IBNR) and covered but not yet incurred claims (CBNI) (see Reserving in nonlife insurance) may make sense. When an object is lost, the term "constructive complete loss" refers to a sort of recognised total loss in which the restoration costs exceed what is considered a repair threshold (precise loss varies depending on the laws in effect). When a total loss happens, the entire sum insured is fully reimbursed. These losses are distinguished by the fact that they are extensively publicised quickly after the accident, and the fact that the claim cannot deteriorate over time due to the total

insured, which is a different growth pattern than partial losses. When a repair is done, partial losses occur, and they frequently grow over time while the claim is processed and repairs and payments are made. IBNR techniques such as Chain-Ladder, Bornhuetter Ferguson, and others, as well as their combinations and derivatives, are covered in depth in the substantial actuarial literature. There's also a link to naval insurance and an introduction to many common procedures.<sup>10</sup>

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<sup>10</sup> Hertig, J. (1985). A statistical approach to IBNR reserves in marine insurance, *ASTIN Bulletin* 15(2), 171–183  
<http://www.casact.org/library/astin/vol15no2/171.pdf>.

## CHAPTER 2

### MARINE INSURANCE INDUSTRY IN INDIA AND INSURANCE LAW

#### 2.1 INTRODUCTION

The concept of marine insurance is relatively new. Its existence can be traced back thousands of years. Questions regarding it arose throughout time, and by 1906, when the English Naval Insurance Act was established to codify the law, it had taken on a definite structure. Contrary to popular assumption, London Lloyds was not the first firm to offer marine commerce insurance. The first kind of marine insurance dates back to BC 3000, when Chinese merchants dispersed their goods among several vessels to lessen the chance of product loss. The first insurance account was a monetary payout known as 'bottoming,' which protects sellers from debt in the event that things are lost or destroyed.

The 'generic average' was another sort of early insurance. A merchant would follow his products during cargo shipment in 916 BC to ensure that they were not intentionally thrown overboard or thrown overboard in the case of a storm or sinking. To protect themselves from this mutual interest in safety and merchant conflict, the Rhodians devised the 'general average,' which ideally meant that the pro rata contribution of other merchants would reimburse a person if his goods were hurled during the transport process. There were a few further improvements in maritime insurance between the 11th and 18th centuries. In 1132, the Danish began reimbursing damages sustained at sea.

These premiums were pooled by the Merchant State of Venice for It was the first time in 125 that piracy, spoiling, or pillage losses were compensated. In 1384, the first marine insurance policy for fabric bales travelling from Pisa to Savona was issued. In the next century, Lombard merchants created the first insurance practise in London. Finally, in 1688, Edward Lloyd's London organisation, Lloyd's, commenced high-risk operations. It expanded from a coffee shop in London to become the largest shipping insurance company in the world. The Marine Insurance Act of 1906, which went into effect on January 1, 1907, established the legislation in England. This was planned and began with the intention of clarifying and defining maritime insurance rules as well as policy considerations. According to this decree, which aimed to codify only those legal ideas that were wholly related to maritime insurance, the common rules, including the law merchant, were to continue to apply to marine insurance contracts, with the exception of the express requirements of the Law.

#### **Requirements of taking an insurance policy**



Aside from the first criterion, an insurance contract requires an insurable interest in the subject matter, which has a monetary value and is not formed by betting. The policy must also follow the principles stated in the Annex as well as the standards outlined in Articles 24 through 34 of the Indian Act.

### **Insurable interest**

The marine legislation declares all maritime insurance plans null and void if the assurable interest is not valid at the time of loss. According to the Act, all persons interested in marine adventure have an insurable interest, subject to the requirements of the Act. He or she is interested in a marine adventure if he or she has a legal or fair relationship with or in any of the insurable properties at risk, in which he or she may profit or be injured by an insurable property's safety or timely arrival, loss or damage, or delay. The definition of "interest" is "anything that piques your attention."

- a. A physical object must be exposed to the dangers of the sea.
- b. As a result of its preservation or loss, as well as any disasters related with it, the comforted person must be legally tied to that thing in some way.
- c. The insured must be somehow linked to the insured thing, so that the insured benefits from its security, loss, or duty. If the insured person is legally related to the insured person or if the insured person suffers a loss as a result of destruction, the insured person has insurable interests. This results in exorbitant interest rates.

The Indian Act lacks a comprehensive description of "insurable interest." The word "insurable interest" is difficult to define, while the usual rule is that it must affect the guaranteed by its proximate effect if it is to be insurable against a danger.

### **Valuation of Insurance**

The insurable worth of the covered subject-matter is relevant if a policy compensation without an evaluation is assessed and the assessment is inconsistent or should be dispersed.

- a. A definite insurable value limit must be established: a. to establish the compensation measure for an undervalued policy
- b. Determine the amount of compensation in the limited cases where a profitable insurance policy can be opened.
- c. In a valued policy, to establish an approximate value standard.

In modern practise, unvalued insurance is extremely rare, as it is almost exclusively limited to commodities and, in some cases, products payable on arrival. Other people's interests are almost always protected by well-intentioned policies. In terms of commodities, a trip coverage for commodities is both an adventure insurance and a product insurance.

## **2.2 OTHER POLICY REQUIREMENTS**

A maritime policy essentially provides for the repayment of unliquidated damages in the case of nonpayment. A marine policy, on the other hand, must incorporate a maritime insurance agreement. Naval insurance contracts must be proven in accordance with Section 24 of the Indian Act 1940 in a marine policy governed by that law. Before or after the contract is signed, the policy may be prepared and issued.

No maritime insurance arrangements are admissible unless they are correctly specified in the marine policy, according to Section 7(1) of the 1899 Indian Stamp Act. The plaintiff sued the defendant for breaching a maritime insurance contract for the following commodities, and the Court determined that the transaction was unlawful since the products were not covered by the policy. The court found that an agreement for the infringement had been made.

Section 25 of the Indian Act also identifies a number of significant marine policy challenges.

1. The insured or the insurance management acting on his behalf: 1/1
2. The insured person's travel, time, or both, as applicable. Insurance is used to give protection.
3. Credit card or insurance debts.
4. The insurance company's name (or names).

A maritime policy, which might be the "travel," "duration," or both, must be signed by an insurance firm. (The Indian Act, paragraph 26)

### **Section 28 of the Indian Act covers the following topics :**

The insured in a marine policy must be identified with reasonable certainty. The coverage does not cover the nature or scope of the insured's interest in the subject. When the assured's subject is broadly expressed in the policy, the interest to be safeguarded is considered relevant. In order for this provision to apply, the insured subject-matter designation must be utilised.

The amount of insurance supplied may not be larger than the amount offered for the same journeys in two or more policies issued on behalf of the covered parties, but it may not be "double insured." If the same person is covered by two or more insurance plans, this is true. Separate rights do not apply when multiple people insure the same

thing. There are 'excess insurance plans' in all. The fact is that if the insurer 'conserves' both marine and maritime properties and a policy, the allowance will be over-assured if both are lost.

**When a double insurance company is over-insured:**

- a. If an insured claimant does not have the legal right to compensation in excess of that provided by law, the insured will, unless otherwise specified, seek payment from insurers in the order in which they see proper.
- b. b. If an insured claims policy is valued, the insurer is entitled to the total value of all losses, regardless of the covered subject matter's actual value.
- c. c. Rather than providing full insurable value, an insured claims policy shall provide loans for whatever amount it receives in accordance with other policies;
- d. If an insured person is awarded a sum in excess of the compensation authorised under this Act in accordance with his right of contribution, the insuring person is required to hold that amount in trust.

Only all losses might be utilized in an insurance policy. With the exception of a 'sea risk' accidental average, it may contain all sorts of partial, so-called average, losses and may differ between averages, including the 'global average' to prevent total losses in all travel. All sorts of partial losses are covered under the policy.

The term "average" refers to material damage or loss in maritime cargo. The term "average" is derived from this and is extensively used. The average is the percentage of losses claimed freely and correctly from the owners of all rescued properties, such as the ship, freight, or cargo, for the safety of the common adventure. Owners must pay their share of any property held under the average Act if the voluntary act results in a loss. Ships, freight, and transit products in general are among these groups of interest. It contributes to the general average, regardless of their assurance, owing to the transportation of items by water and the desire of property owners in England. The policy could potentially be implemented under the Rules of Procedure in the Act's Annex.

**Duties of the parties**

A maritime insurance contract is defined as an *Uberrimae fidei* in Article 19 of the Indian Marine Insurance Act. The term "highest faith" refers to a sort of insurance policy. The principle of greatest good faith, which underpins maritime insurance, is based on the well-known case of *Cater v. Boehm*.

**Reciprocal Duty**

Sections 19-22 defined the concept, stating that paragraph 19 must disclose the differentiating theoretical traits, as well as the insured person's (paragraph 20) and broker's (paragraph 21) representation (paragraph 21). As a result, it is the most eloquent portrayal of the responsibility to behave in good faith, deliver accurate information,

and avoid mistakes. In the case of such violations, the innocent party's only option is to avoidance ad initio, or avoidance from the start, even if the breach occurs during the contracting process.

### **Obligation to each other**

The phrase "either" in paragraph 19 suggests that a common requirement to maintain the highest level of good faith has been established. Material facts reporting is unquestionably a necessity for insurers and insureds who exclude one another.

Currently, maritime insurance contracts are governed by Section 17 of the English Law. Furthermore, good faith obligation is a distinct and crucial responsibility that will be discussed further in the next sections. Furthermore, the parties were required to operate in good faith when interpreting Sec. 19.

### **Payment rights of the insurer**

Insurance firms have three rights under the Marine Insurance Act: replacement, contribution, and insurance rights. In the absence of a formal agreement, the insurer will conduct subrogation-related remedies on behalf of the insured. A right of subrogation is required if a compensation agreement is in effect. You have a right to the underwriter's rights in the insured subject-matter if you have compensated your underwriter.

- a. Under section 80, the insurer must pay a loss rate proportional to the amount payable to the insurer under their contract.
- b. If an insurer pays more than his fair share of the losses, he has the same right as the other insurers to seek access to a guarantee payable in excess of his fair share of the debt through a contribution procedure.

Under the Halsbury Act in England, a requirement must be met before a donation can be made. The following is the situation: "At the time of the loss, each insurance policy must be applied for. If insurance is void or hasn't been linked to a threat, there are no costs authorised. If a donor is required to pay the insurer, he or she will not be held responsible if the policy requirement is not met." The insurer may not be held liable in the event of insurance coverage.

Marine insurance refers to coverage for goods being transported from their point of origin to their final destination. The term comes from the ancient practise of exporting goods for international trade via sea. Despite its name, marine insurance includes all methods of commodity transportation. Marine freight insurance is used to cover things that are shipped by air. Many export business agreements include a requirement for maritime insurance.

The exporter or importer may be forced to pay for the shipment's insurance, depending on the contract's terms. However, the need for marine insurance goes beyond contractual responsibilities, and there are a number of compelling reasons to buy it before launching the export cargo. Only one of the following three parties should insure items during transit:

- Agent forwarders
- The exporting firm
- Importer

### **How Marine Insurance works?**

Marine insurance transfers product liability to the insurance provider between the parties involved and the middlemen. To begin with, intermediaries' legal responsibilities in the processing of products are limited. Instead of bearing sole responsibility for the commodities, the exporter can seek insurance and marine insurance coverage for the exported goods in the event of loss or damage.

The product firm is responsible for the products on board, whether it be an aircraft or a shipping company. The agreed price, on the other hand, is usually based on a 'per box' or 'per delivery.' This insurance does not cover the cost of shipping merchandise. Exporters prefer to ship their goods after they have been insured by an insurance firm.

The extent of maritime insurance is essential to meet exporters' contractual obligations. To protect the buyer's interests and fulfil contractual duties such as insurance and freight insurance (CIF) or carrying insurance, the exporter must get maritime insurance (CIP). Similarly, while sellers are typically required to insure products for terms such as Delivered Duty Unpaid (DDU) and Delivered Duty Paid (DDP), they may not be compelled to do so (DDP).

### **To avoid insurance claims, ensure the following :**

- Goods should be packed with care to ensure their safety during loading and unloading, and should be strong enough to withstand natural risks to the greatest extent possible.
- Consider the likelihood of sloppy handling or theft during packaging.

## **2.3 NATURE AND SCOPE OF MARINE INSURANCE CONTRACT**

## **Nature of the Contract**

A marine insurance contract is one in which the insurer agrees to indemnify the assured in the way and to the extent agreed upon against maritime losses, that is, losses incurred as a result of a marine adventure. A policy of maritime insurance, according to Blackburn J in *Lloyd v Fleming*, is a contract of indemnification against all losses incurred by the subject matter of the policy as a result of specific risks during the adventure. A marine insurance contract may be extended, either expressly or by usage of trade, to protect the guaranteed against losses on inland waters or any land risk that may arise as a result of a sea voyage. When a policy covers a ship in the process of being built or launched, or any experience that is similar to a marine adventure, the relevant provisions of the Act are applied as if it were a marine policy.<sup>11</sup>

## **The Marine Adventure**

The subject of maritime insurance is distinct from the subject of insurance in a strict sense. What is insured in a maritime insurance contract is not the property that is perilously exposed, but rather the assured's risk or adventure. For example, in a case of "constructive total loss," the contract's subject matter, the commodities insured, may be present and safe, but the assured may still be able to recover their costs if the costs of recovery are shown to be more than the cost of products. The insurer is responsible to indemnify the cargo owner in *S Chinnaswamy Nadar v Home Insurance Company, Madras*, when the cargo was damaged by sea water as the sea became stormy. There is one type of adventure in particular: marine adventure:

- i. Any insurable property is exposed to maritime perils;
- ii. The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loans, or disbursements, is jeopardised by the exposure of insurable property to maritime perils;
- iii. Any liability to a third party may be incurred by the owner of, or other person interested in or reselling, insurable property.<sup>12</sup>

## **A Slip in Marine Insurance**

In marine insurance, generally the broker contacts the parties and takes the particulars on a slip of paper. He takes them to different insurance companies and the insurance company which is willing to insure makes a mark or initials of the officer on the slip. From that time it is called a "slip" proper. In this

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<sup>11</sup> The Indian Act, section 4(2); The English Act, section 2(2).

<sup>12</sup> The Indian Act, section 2(d); The English Act, section 3 (2).

context it is established that the Lloyd's Broker is the agent of the assured and not the agent of the underwriter.<sup>13</sup> In *Queen Insurance Co v Persons*, the Privy Council laid down that the slip contains the heads of the contract. Though invalid at law for want of certain statutory requirements, in practice it is a complete and final contract between the parties.

### **Slip as Evidence**

Under English Law, where there is a duly stamped policy, reference may be made, to the slip or covering note in any legal proceeding.<sup>14</sup>

In India, however, "cover notes," which are similar to slips, are issued. The "cover note" is not a policy, according to *Latif Ali v Royal Exchange Corp*, and a contract of marine insurance must be embodied in a sea policy and correctly stamped under section 7 of the Stamp Act. Because it is not customary to stamp a "cover note," it can only be used to prove the agreement. It can only be used to compel the delivery of a policy in conformity with the conditions of the policy.

### **Rules in India regarding Marine Insurance**

#### **Before the passing of the Marine Insurance Act, 1963**

For purpose of the Stamp Act, a policy of sea insurance or sea policy means:

- i. Any insurance on goods, merchandise, or property for transit, whether for marine or inland navigation, or on the ship's machinery, tackle, or furniture, or on goods or property on board the ship that may be lawfully insured;
- ii. A sea policy includes any insurance on goods, merchandise, or property for transit, whether for marine or inland navigation, or on the ship's machinery, tackle, or furniture, or on goods or property on board the ship that may be lawfully insured.

#### **Under the Marine Insurance Act, 1963**

A contract of marine insurance must not be entered as evidence unless it is contained in a marine policy in accordance with the Act, according to section 24 of the Marine Insurance Act. The

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<sup>13</sup> *American Airlines v Hope*, [1974] 2 Lloyd's Rep 301, 304 per Lord Diplock: *General Insurance v Tanter*, *The Zephyr*, [1984] 1 Lloyd's Rep 75 reversed in part on other grounds [1985] 2 Lloyd's Rep 529.

<sup>14</sup> The English Act, section 89.

policy can be completed and issued at the moment the contract is signed, or afterwards. Section 25 lays out the text of the maritime policy and says that it must include specific information:

- i. The name of the assured or the person who makes the insurance;
- ii. The subject matter insured and the danger insured against;
- iii. The voyage or the period of time or both;
- iv. The sum or sums insured;
- v. The name of the insurer or insurers.<sup>15</sup>

## **2.4 DIFFERENCE BETWEEN FIRE INSURANCE & MARINE INSURANCE**

Fire insurance is a sort of risk insurance that protects you against the effects of a fire. Any tangible item or property is fair game for debate. In this case, moral accountability is required. In the case of fire insurance, there is no expected profit margin. Both before and after the loss, there must be an insurable interest. The functions of marine insurance, on the other hand, cover risks linked with water. The topic of discussion is the ship, cargo, or freight. It says nothing about the cargo owner or the ship's moral responsibility. The profit margin on marine insurance is estimated to be in the range of 10% to 15%. The insurable interest in maritime insurance should also only be at the time of the loss.

## **2.5 LEGAL ASPECTS OF MARINE INSURANCE IN INDIA**

The requirement to insure property against the financial consequences of its loss or destruction has become an integral part of modern society. Insurance benefits individuals, communities, and organisations because it provides security and safety. This facilitates business and trade; it creates jobs; it encourages risk-sharing; it encourages innovation by encouraging individuals and firms to engage in more risky businesses, thereby promoting a higher level of economic activity; and it mobilises domestic savings by collecting premiums from insurance companies to help a country's financial market develop.

Maritime traffic is the backbone of international trade in the context of globalisation, accounting for more than 80% of global goods trade by volume. 'Sea hazards' are risks that come with marine transportation. When property such as ships and cargo are transported by sea, marine insurance is a strategy for reducing the risk of financial losses.

As a result, insurance is an important part of doing business around the world and plays a big role in international trade. The purpose is for a shipowner, buyer, or seller to be able to conduct business while avoiding the severe financial repercussions of losing or losing property owing to various high-sea perils. As a result, marine insurance

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<sup>15</sup> The Indian Act section 26; Corresponding to the English Act, section 23, but cll (b) to (e) re-added.



offers the necessary financial protection to keep international trade from being impacted by the possibility of an accident during shipment. Marine insurance is a boon to international seaborne commerce in this way .

As a result, for growing economies like India to fully integrate into the global economy, they must have an efficient and competitive insurance market. This document discusses the legal ramifications of India's maritime insurance. In this context, the Marine Insurance Act of 1963 provides an overview and analysis .

## **2.6 EVOLUTION OF LEGAL FRAMEWORK FOR MARINE INSURANCE**

When British legislation began to regulate insurance, the Oriental Life Insurance Company was created in Calcutta in 1818, followed by the Bombay Life Insurance Company in 1823, 1829, and 1874. The Oriental Life Insurance Company was established in 1818. In 1850, the first general insurance firm in Calcutta, Triton Insurance Firm Ltd, engaged British nationals. Indian Mercantile Insurance Company Ltd., formed in Mumbai in 1907, was the first general insurer founded by an Indian. In 1912, the first Indian Life Insurance Companies Act was approved. Other non-life insurance undertakings were left out of the 1912 Act, which was still primitive at the time and didn't seek to regulate them.

Finally, due to the rise in fire, accident, and maritime insurance, the statute was judged to cover these types of insurance. While various attempts to pass such legislation had been attempted over the years, the Non-Life Insurance Act was finally passed in 1938 in accordance with 1938. The General Insurance Business (Nationalization) Act of 1972 resulted in the nationalisation of the insurance industry in 1973. In accordance with the conditions of the GIC Act, existing Indian general insurance firms and other existing insurers' undertakings were transferred to the GIC in order to ensure the development and regulation of the general insurance business in India.

The Central Government established the GIC in November 1972, in accordance with the provisions of the Comps Act of 1956, and it began operations on January 1, 1973. Before 1973, India had 1007 general insurance companies, including multinational companies. GIC's four subsidiaries, National Insurance Company Ltd, New India Insurance Corporation Ltd, Oriental Insurance Corporation Ltd, and United India Assurance Corporation Ltd, were combined and renamed. In addition to aviation insurance, GIC's main business is reinsurance. The four subsidiaries are in charge of the general insurance of the bulk of fire, marine, car, and other insurance businesses.

“India's government has made a number of financial sector reforms since 1991, paving the path for the Indian economy's liberalisation. In 1993, the Indian government formed an eight-member committee led by Mr. R. N. Malhotra to improve the present regulatory structure and supervision of the insurance business. The report of the Committee was presented in January 1994.” The principal recommendations of the Committee were to privatise the insurance industry by allowing private corporations to enter the life and general insurance businesses, as well as to create an Insurance Regulatory Authority. Following Malhotra's advice, the Indian government allowed private participation in the insurance industry and established a regulatory agency in 1999 to “form an Authority, defend policyholder interests, regulate, encourage, and enforce Indian policies.”

Life and general insurance in India are governed by the Insurance Act of 1938, which has been modified over the years and is still the principal statute governing the business. “Fire insurance firm,” “marine insurance business,” and “different insurance firms” are all broad definitions of insurance. The Life Insurance Corporation Act of 1956 and the Life Insurance Corporation Act of 1963 are two more pieces of legislation in this field. Maritime insurance contracts are governed by the Indian Contract Act of 1872. Similarly, insurance companies are governed by the 1956 company legislation.

At all stages of operations, the marine insurance company is fundamentally worldwide and subject to legislation and international rules. India is governed by the Act on Marine Insurance of 1963, which is inspired by the ILU's different sections and the ICC's “Incoterms” international commercial terms (International Chamber of Commerce).

The transactions of hull, freight, and freight insurance businesses are governed by the Marine Insurance Act of 1963. They also have Insurance Act 1938 Sections 64VB(1) and 64VB(5), which control the payment of the premium before the danger begins. The journeys are governed by specific Underwriters' Institute (ILU) clauses, which specify the start and end of insurance coverage as well as the hazards covered by insurance.

## **2.7 FUNDAMENTALS OF MARINE INSURANCE CONTRACT**

The business of executing insurance contracts with vessels of any description, including freight, cargo, and other legal insurance, in or in connection with those vessels, freights and freights, goods, merchandise of goods, and property of any description, insured by land, sea, air, or all three for any transit is referred to as marine insurance. Any other hazards generally covered by a maritime insurance policy, as well as any additional or incidental warehouse risks or comparable risks, may be included. As a result, certain insurance companies accept the risks of others, and they must abide by the insurers' agreements. Among other things, insurers keep their risks under control by pooling independent risks, spreading and re-insuring key risks, preventing fraudulent claims, and

effectively managing asset liability. In order to keep their promises, insurers charge the insured a "premium" based on their risk assessment and must maintain adequate capital levels.

To put it another way, any sort of insurance is intended to replace something that has been lost. The goal is to get worse than before, not to profit from the assured person's loss. Furthermore, an insurance coverage will not be able to replace a lost item or repair damage, restoring the damaged property to its former condition. Any benefits must be monetary, and this method of repayment is known as "remuneration." As an alternative,

## **1. Marine Insurance: Definition**

A contract or marine insurance is an agreement in which an insurer or underwriter offers to indemnify another individual, known as an insured, for damages incurred in the case of property, such as ships, cargoes, or other goods, travelling by sea transport under specific contractual terms. ( Section 25).

### **Section 3 of the Marine Insurance Act, 1963, defines 'marine insurance' as follows :**

A marine insurance contract is an arrangement in which the insurer undertakes to reimburse the insured for maritime losses or losses suffered as a result of participation in a marine adventure in the methods and to the amount agreed upon by the parties.

A marine adventure is defined as any adventure that includes marine hazards, such as hazards arising from maritime transit, of any insurable property. It also covers all freight, money-passing, commissions, profits, or other monetary gains; or the exposure of insurable goods to marine risks jeopardises the security of any advances, loans, or payments (ibid., Sections 2(e)). Marine adventure also includes any liability owed to a third party by the owner or other person interested in insurable property or responsible for it as a result of maritime dangers.

A marine insurance policy may be extended to protect the insured against any loss in internal waterways or land risk incidental to any marine voyage by its specific terms or through the use of commerce. (ibid., Section 4[1]).

## **2. Insured Risks: Perils of the Sea**

An insurer subscribes to or takes on a risk in exchange for the insured's payment of the premium (ibid., sections 23, 33, 54 and 86). "The premium is used to compensate for the ongoing risk of the property covered, and it is normally kept whether the property is lost or not." The insurer's appraisal of the risk of loss and reimbursement for the insured property determines the premium amount. In general, insurers spread their possible liabilities among a vast number of risks so that the "law of averages" only causes them to lose a small proportion of the time.

The term 'risk' in this context refers to the risk of loss of insured property, which includes not only property in exchange for premium payment by insured losses, but also financial losses such as freight loss, transient funds, commissions, or profits, as well as certain liabilities for which they are incurred.

The types of incidents for which the insurer will offer compensation are usually limited in most insurance contracts. These occurrences are referred to as "assured hazards" or "insured perils." The term "sea risks" refers solely to marine accidents and causes, not to normal wind and wave action. Fire, war, pirates, confiscations, and discard are all examples of maritime hazards. A naval insurance policy may cover only some maritime threats, or "sea hazards."

## **CHAPTER 3**

### **PRINCIPLES OF MARINE INSURANCE**

#### **3.1 INTRODUCTION**

The contract is founded on basic principles such as compensation, insurance, greatest good faith, proximate cause, subrogation, and contribution, as is the case with all property insurance contracts. The Maritime Insurance Act of 1963 established the basic concepts of marine insurance. When drafting contracts and settling contractual disputes, marine insurance practitioners must be conversant with and respect the law. These principles must be followed by practitioners.

#### **3.2 MARINE INSURANCE**

Understanding the importance of marine insurance in the shipping sector and the special regulation that governs it is crucial. The majority of shipowners keep their shipping hull insurance and use "protection and compensation" insurance to defend themselves against third-party claims. Almost all waterborne freight is covered against sea risks. It's difficult to get into any of the unique complexities of maritime insurance law in such a quick explanation. The majority of damage to a ship or its cargo is handled by insurance companies. Proposals for changes to maritime law must always be viewed in this light, because imposing responsibilities for which no insurance can be obtained may deter the wealthiest ocean carriers from participating in the trading concern.

The oldest sort of insurance is marine insurance. Indeed, broad institutions, such as the partners in a marine business, might be considered a primitive type of mutual insurance because they contribute to the losses of a few people for the benefit of everyone. Insurance for hull and cargo is usually written in forms that haven't changed much in terms of wording since the 18th century. The 'perils' clause, which outlines the risks covered, typically includes not only natural hazards that a ship may face, but also man-made threats such as enemy capture or destruction. However, Lloyd's London underwriters were the first to include 'Free of Capture and Seizure' (FC&S) provisions in basic policies in 1898, thus removing war and related hazards from coverage. In exchange for the removal of the FC&S provision, shipowners and cargo owners must either acquire separate war risk insurance or pay a higher premium to their seafarers. This is getting increasingly common. The covered vessel's liability for damage to other vessels was safeguarded by an early kind of marine hazard insurance. The addition of a "run-down" or "collision" clause to the basic hull policy, which covers the vessel's owner or operator against loss or damage, has influenced this type of insurance. The argument is that if owners and operators are given complete protection, hull underwriters will refuse to insure them for more than 75% of accident responsibility, as well as maintenance of their boats and crew selection.

Shipowners' potential liabilities surged when steam-powered iron and steel boats were built in the nineteenth century. To protect themselves, shipowners in the United Kingdom organised "protection and compensation" clubs, often known as P. and I. clubs, to insure one other against liabilities incurred while running their ships.

This included a 25% share of the blame for damage to other vessels that the hull companies refused to cover, as well as cargo damage, personal injury, and damage to platforms, bridges, and other permanent structures. The P. and I. clubs were immediately recruited by foreign owners, and by 1973, the operators with British clubs and their Scandinavian and Japanese members had insured almost 80% of the world's ocean tonnage.

## **International regulations**

Maritime law is generally seen as an international rather than a local or municipal branch of law. It is worth noting that it has a distinct preference for international marine law. In uncertain matters, tribunals from one country commonly seek inspiration or guidance from precedents and/or statutes from another country.

Aside from being bound by international agreements, each country has the authority to create maritime legislation that it sees fit. Despite the developing international consistency in maritime law achieved during the Middle Ages, many of these rules are not equivalent in most maritime countries. In various fields, the International Maritime Committee (IMC), which is made up of maritime law organisations from more than 30 countries, has been a leader. The primary responsibility of the Committee is to draught international maritime law conventions. When a draught like this is finished, it is given to the Belgian government, and a diplomatic meeting is organised to examine and change the IMC document as the official delegates see fit. If the conference approves the revised draught, it will be transmitted to the national governments for approval. Despite the fact that many of these agreements were not well-received, others were enormously successful.

All maritime nations accept the international rules for collision prevention at sea, which were first established at a Washington international conference in 1889 and have been routinely amended in the London maritime safety conferences since 1914. In fact, the regulations serve as a worldwide navigation code. In other fields, much has been done to ensure international uniformity through private agreements that are consciously followed by affected parties; the most well-known example of such agreements is the general average Rules of York Antwerp, which were first promulgated in 1890 and last amended in 1950.

## **Key Principles of Marine Insurance**

### **3.2.1 Principle of Utmost Good Faith**



The mortgagee is responsible for the entire cost of the insurance, and any payments made to him have an insurable interest.

An insurable interest exists in any trust property owned by a trustee.

When it comes to advance freight, the person transporting it has an insurable interest in having the goods repaid if it is lost.

A "insurable interest policy" is any insurance policy in which the insured has an insurable interest.

### **3.2.3 Principle of Indemnity**

Except for life and personal accident insurance, the insurer undertakes to indemnify the insured against actual loss caused by the incident in most forms of insurance contracts. A marine insurance contract is an agreement between the insurer and the insured in which the insurer undertakes to indemnify the insured in line with the contract's provisions (ibid., Section 75). Even if the insured is to be placed in the same condition as if the loss had never happened, some criteria may limit the amount of compensation :

- The insured must show that he or she has suffered an injury or suffered a loss.
- The amount of compensation is restricted to the amount specified in the insurance.
- The insured will only be rewarded for close causes.
- The amount of compensation is determined by the property's market worth.

### **3.2.4 Warranties**

In theory, a guarantee is a contractual agreement, and if it is breached, the insurer is released from responsibility under the insurance policy. The insured swears that the claims he makes are true, and the insurer has the authority to withhold payment if any of the claims are discovered to be fraudulent. The Naval Insurance Act deals with promissory guarantees. A promissory warranty is a guarantee that an insured person will perform, or will not perform, a certain activity, or an order that asserts and/or denies the existence of a specific status.

Warranties are as certain as they are and do not impose any restrictions on the insured that he or she must follow or meet in order to execute the policy. The warranty<sup>16</sup> must be honoured once it has been accepted.

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<sup>16</sup>*Supra* Note at 13 P-268



- If circumstances change and the warranty may no longer be applied, Article 36 of the Act defines circumstances in which the insurer may be excused from violating the warranties and the policy will remain in effect.
- Any promise breach is waived by the insurer if the assurance becomes void owing to a change in the legislation.

“Though an insured contracts on the basis of a false promise and suffers a loss, the policy will be voided, even if the loss is not caused by the false promise found in *Woolmer v. Muliman*<sup>17</sup> *Bank of Nova Scotia v Hellenic War Risks Assn.*, *The BOOD LUKE*, *The Good Luck*<sup>18</sup>, the court stated the effect of breach of warranty. It was decided that breaching the warranty had the same legal consequences as breaking any other statute. Infringement of the assurance may have the following effects”<sup>19</sup>:

- The insurer can be given the authority to cancel the contract.
- If the insurer so desires, they may also renounce their obligations under the policy and depend on other terms of the insurance.

Warranties can be either implied or explicit. A contract that specifically defines what must be done and what must not be done is referred to as a "expressed guarantee." An express promise would only prevent an implicit guarantee if both could not be mutually guaranteed. An implied guarantee is a promise made in an insurance contract regardless of the type of coverage provided. Implied guarantees are divided into three categories:

#### **3.2.4.1 Warranty of neutrality**

The ensured neutrality of Section 38 of the Act is examined. This means that the insurance subject is risk-agnostic from the start. This isn't necessarily implied because it presupposes that the insurable property will always be neutral. This means that if any subject has an express neutrality guarantee, the covered ship or products must be neutral at the time the risk is initiated.

#### **3.2.4.2 Warranty of seaworthiness**

The assurance of maritime safety is addressed under Section 41 of the Act. The navigability guarantee only applies to travel policies. This means that the insured ship must be insurance-worthy or capable of completing the journey covered by the policy. According to the seaworthiness guarantee, the ship must be seaworthy at the "risk start."

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<sup>17</sup>1763. 3 Queen Bench Division 419

<sup>18</sup>(1992)3 All ER 1: (1991) 2 WLR 1279 (HR)

<sup>19</sup>*Supra* Note at 31 P 121

A ship that is "seaworthy" has the minimal minimum of equipment and a sufficient crew to survive the ordinary perils of the sea. This guarantee of navigability is exclusively for ships; it does not apply to the goods on board.

According to the court in *Peacock Plywood (P) Ltd v Oriental Insurance Co Ltd*, the guaranteed person would be protected from these risks if the policy's extended terms cover any risk. Due to the stranded shipment, the items were not delivered, and no delivery risks were taken into account under the policy's enhanced conditions.

When the boat has to go on break trips, it is expected to be seaworthy on all of its journeys. As a result, if the insurer can demonstrate that the boat is hazardous, it can avoid liability under the policy. It is the insured's responsibility to demonstrate a ship's navigability. *Sea lark fisheries v. United India Insurance* is a good example. While a time policy does not include an implied assurance of navigability, if the insurer's proof of unshipability is judged to be untrustworthy, the insurer may be relieved from obligation.

#### **3.2.4.3 Warranty of legality**

The travel insured must be legitimate, and the insured must ensure that the voyage is performed legally, according to Article 43 of Act 42. In some circumstances, this assurance is expressly stated in the insurance contract.

In the case of *Harbour Inn Seafoods v Switzerland General Insurance Co*, unlawful behaviour is regarded a violation of a local or foreign law. In this scenario, the ship had drifted onto a reef while "leaving." The claim was denied because the vessel was not operated in accordance with applicable legislation. The Court found that "looking away" was a violation of the regulations, and that the insurance company couldn't afford to pay the claim because the legality guarantee had been broken.

#### **3.2.5 Principle of Subrogation**

Subservience is a consequence of the compensation principle. Subrogation is the process of replacing the insurer with the insured in order to secure third-party compensation for the insurance-covered damages. As a result, the insurer has the right to recover any third-party loss compensation paid to the insured (*ibid.*, Section 79[1]).

Under maritime insurance, the claim must have been paid before the insurer is entitled to subrogation rights (*ibid.* Section 79[2]). The whole or partial insurers that covered the harm have full subrogation of the insured's rights and remedies. Only the money that the insurer has been reimbursed for under subrogation can be kept by the insurer.

The right to recover from third parties encompasses such rights and remedies. If the items are lost at the destination, the insured sum will be refunded, which is the agreed value. The amount due in the case of product

damage during transportation will be estimated by the auditors as a percentage of the amount insured by depreciation rate.

### **3.3 WHAT IS ALL-RISK MARINE INSURANCE?**

#### **All Risk Marine Insurance**

Freight insurance refers to any marine insurance that protects your cargo from theft, loss, or damage. The coverage is extensive, and it includes the following robberies, losses, and damage: <sup>20</sup>:

- Stranding
- Sinking
- Burning
- Collision
- Fault of vessel management
- Bursting of boilers
- Latent defects in hull
- Explosion
- Water damage
- Heavy weather

All of the foregoing is covered by all-risk marine insurance. However, natural product problems (decay, germination, packaging flaws), strikes, riots, or civil conflicts are not covered by intrinsic vice (hopefully not something you have to worry about).

#### **Using Protection Is Important**

This should be your guiding principle at all times. There is no such thing as enough protection. In terms of cargo security, that is! Many people feel that proper packing, blocking and bracing, and other safety measures eliminate

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<sup>20</sup><https://www.interlogusa.com/answers/blog/all-risk-marine> As%20the%20name%20entails%2C%20all,Sinking

the need for shipping insurance. After all, you won't need insurance if you make your products damage-proof. Unexpected occurrences may cause harm or loss to your cargo, despite your best efforts to protect it.

### **Uncontrollable Factors**

Block and strain, packaging, wrapping bubbles, newspapers, packing peanuts, old t-shirts, tape duct tape, and so on are many options for preserving your goods. What about those scenarios that might generate freight difficulties, regardless of your preparation? These are just a few reasons why having all-risk marine insurance to cover any potential damage or loss is in your best interest:

### **3.4 GENERAL AVERAGE LAW**

**Maritime law** is quite similar to other types of law. In principle, a captain of an ocean vessel can sacrifice any cargo onboard to save the vessel in severe circumstances. This might be due to a number of things, such as bad weather, running aground, a fire on board, or engine failure. You will be in control of a few things in this situation. Captains may jump containers onto to save the ship.

First and foremost, you will be responsible for your own belongings. You're SOL - "Ship Out of Luck" if you don't have them insured (the last, we promise). Second, you must split the value of all products on board equally among all shippers with containers on board. In other words, if the general average claim is made, the steamship company will raise the cost of all voluntary cargo sacrificed and distribute the cost to all parties with cargo aboard the vessel. You'll end up paying for your own lost cargo and your share of the General Average claim if you don't have all the risks covered by marine insurance.

### **Theft and Piracy**

It happens all the time - and more frequently than you would think. There were 439 pirate assaults in 2011, with 45 commercial boats being captured. We highly advise against loading your belongings into The Black Pearl, which looks to be a pirate hangout.

No one believes cargo theft will happen to them until that day arrives. It's scary to be left without your belongings or a plan for a reimbursement. Any maritime risk insurance coverage will cover any cargo loss, including theft and piracy. While you have no control over what happens to your cargo while it is in transit, you may safeguard yourself from a number of unpleasant incidents at sea.

### **Storms at Sea**

The ocean, especially during storms, is a scary environment. And that happens on a regular basis. Despite the fact that ocean boats are huge and can resist many storms, big storms have taken containers overboard in a number of occasions. You have no choice but to acquire any risk marine insurance to protect your container from extreme sea storms.

## CHAPTER 4

### POLICIES OF MARINE INSURANCE

#### 4.1 INTRODUCTION

Due to the immensity of sea insurance, there can be no typical marine insurance contract. The extent and nature of the parties' obligations and responsibilities are up to them to determine. The contract terms are usually mentioned in the insurance policy. Under section 24 of the Act, a marine insurance contract is inadmissible as evidence unless it is significantly incorporated in a marine policy. There is a technicality in this case that has significant implications for the insured. It indicates that if there is no maritime insurance in existence, a person cannot demonstrate the contract terms in court and so cannot bring a claim.

Boundaries aren't simply for shipping by water; products are delivered all over the world. The voyage from "Origin" to "Destination" is treacherous. You (Seller/Consignor) or the customer (Consignor) may be exposed to severe financial loss if shipments are damaged or lost during domestic transit, import and export of products. To protect these items from a range of potential calamities, it is important to give you with simple business/business administration. The phrase "domestic shipment" refers to the movement of commodities between two locations or states inside the United States.

#### **Facts**

**Specific Policy:** Covers the single specific shipment only during the policy period.

#### **What are Marine Cargo Insurance / Transit Insurance?**

Transit insurance protects products and/or people as they travel from one point to another.

#### **Who can buy marine cargo insurance?**

The Marine Cargo Insurance Policy may be accepted by sellers, purchasers, import/export merchants, contractors, banks, or anybody with an insurable interest in or who imports and exports products and transports from within the country.

#### **What are the types of shipments?**

The types of shipments include the following:

- **Domestic Shipment:** signifies transportation of goods between two points or states inside a country.
- **Import :** indicates that items are transported to India by land, sea, or air and are exclusively paid for in foreign money.
- **Export :** implies transporting things out of India by land, sea, or air and only receiving payment in foreign currency.
- **Deemed Export :** refers to transactions in which items are supplied but do not leave the country, and payment is done in Indian or free foreign exchange rupees.
- **Third Country Shipment :** signifies the shipment of goods from two nations to India, with payment made only in foreign currency.

### **What does Perils of the Sea means?**

Ordinary wind and wave effects are not included in the definition of sea hazards, which refers to unintentional mishaps or marine damage.

## **4.2 WHAT ARE INCOTERMS?**

The International Chamber of Commerce publishes Incoterms, a compendium of international business terminology. These terms are often used in international business transactions to distinguish between the rights, risks, and obligations of both parties engaged in the shipment of goods (the Seller/Consignor and the Buyer/Consignee).

There are a number of Incoterms that apply to all modes of transportation, and each mode has its own nomenclature.

### **Rules for Any Mode (or modes) of Transport**

- CIP - Carriage and Insurance Paid
- CPT - Carriage Paid To
- DAP - Delivered At Place
- DAT - Delivered At Terminal
- DDP - Delivered Duty Paid

- EXW - Ex Works
- FCA - Free Carrier

### **Rules for Sea and Inland Waterway Transport Only**

- CFR - Cost and Freight
- CIF - Cost, Insurance and Freight
- FAS - Free Alongside Ship
- FOB - Free On Board

### **Content of Marine policy**

The Marine Insurance Act does not define a marine insurance, however it does state that specific information must be included in all marine policies. Maritime policies exist in a variety of shapes and sizes, but the fundamentals remain the same.

- The insured person's name, as well as anyone else who can insure on his behalf;
- The subject matter that must be covered, such as whether it is a ship or merchandise; According to Article 25 of the Act, every maritime policy must at the very least include the following provisions:
- The risk or danger that they are covered for;
- The journey or time frame for which an insurance policy will be valid. Both travel and time should be stated if both are covered.
- the quantity of insurance to be purchased;
- The name of the insurer or insurers.

Each insurer is needed to sign the policy when it is issued on behalf of a separate contract with the insured since each insurer has a separate contract with the insured.<sup>21</sup>

### **What it all covers?**

For each customer, the cargo movement is not consistent. Insurance demand fluctuates according to the customer and the time of year. Some of the most common features of marine insurance are listed here:

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<sup>21</sup>Section 26, Indian Marine Insurance Act 1963



- There's a sink, a beach, a fire, and an explosion.
- Freight load or unloading loss
- Total loss coverage
- A tornado or a flashlight
- Unexpected administrative costs
- Washing or chipping too much
- Overturning, collisions, derailments, and collisions
- Natural disaster
- Overall, average

It is divided into several policies. Let us try to comprehend them:

**Voyage policy :** The validity of the insurance policy is limited to the travel indicated; as a result, this policy is also known as the travel policy.

**Time Policy:** Customers frequently request coverage for a specified time period. This coverage is referred to as a time policy.

**Mixing policy:** A mixing policy extends maritime insurance coverage to a specific voyage and for a defined amount of time. It allows customers to cope with a wide range of factors linked to ship movement and cargo.

**Single Vessel Policy:** For ship-owners with only one ship, this policy is appropriate in terms of cost and coverage. For ship-owners with a fleet of ships, the single vessel policy is not economically effective.

**Fleet Policy:** The fleet policy is cost-effective and simple to manage when there are many ship-owners (fleet of ships).

**Floating Policy:** The shipping company receives the floating policy on a regular basis. The only element stated in the policy is the maximum insured sum. At the start of the cruise, the insurance company is informed of all additional data. This is the ideal approach for saving time and money for ordinary cargo owners who need to move their goods frequently.

**Unvalued Policy:** During the marine transport policy, the cargo value is generally stated. However, the policy that issues the unvalued policy does not define the value of the items and consignment before the cargo is uploaded. The policy is also well-known for being open. This amount is stated when a claim is due and the facts surrounding the cargo under the claim have been confirmed.

**Valued Policy:** If it is not confusing, the value of the shipment is mentioned when the Marine Policy is issued. The amount of a refund is limited to the value specified in the policy in respect of any claim, subject to any policy limits.

**Block Policy:** Prior to arriving at their destination, cargo travels by train, road, water, and air. The block policy is best for covering cargo for the duration of its travel. If a loss happens, the value of the insurance coverage will be paid to the applicant at any time during travel.

**PPI Policies:** Finally, policies known as "PPI" plans were popular before to 1909. These are sometimes referred to as wagering policies. A "wager" policy is one in which the insured has no insurable interest at stake or in which the insurer is ready to waive any demonstration of interest. P, P, and I stand for "Policy Proof of Interest," and these policies are also known as "Interest or No Interest" policies. The Marine Insurance Act explicitly states that any marine insurance contract obtained through gambling or wagering is invalid. Despite the fact that such policies are void in the eyes of the law, they are considered as a record of a duty between the parties based on honour rather than law, and are thus referred to as "honour" policies. Such insurances definitely provide a business benefit if the insured has an interest that is difficult or impossible to prove. As a result, they were authorised and grew in popularity. In *Anderson v Morice*, for example, it was ruled that a policy "without interest" is not always a wager policy because if the aggrieved bona fide expects to have an interest but does not get it, the policy is not a wager policy. With time, English merchants began to use these policies as a form of pure gambling, and the Marine Insurance (Gambling Policies) Act 1909 was established to combat this trend. The Marine Insurance Act has reaffirmed this concept.<sup>22</sup>

The primary goal of marine insurance is to provide peace of mind to your company. Let's take a look at how it works:

- Evaluate and analyze the risk and loss you would face in the event of a disaster. custom specifications
- After you've made your list, go over it and compare the providers and policies to see where you can obtain the best rate.
- After you've narrowed it down, get the paperwork in order for the policy purchase.
- If an unanticipated claim is made, notify the insurance company right away.
- In their claim form, include all properly filled documents, proofs, and certificates.
- If the claim is found to be valid, it is rejected; otherwise, it is accepted.

## Eligibility Criteria

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<sup>22</sup> Ibid.

Consider the demographics of those who are eligible for marine insurance. Producers, purchasing agents, purchasers, importers/export traders, sellers, banks, contractors, and anybody else involved in the flow of products are all included.

### **Claim Process**

If you need to submit a claim under your maritime insurance coverage after you've acquired it, you can do so by following the steps below:

- If the cargo or ship is lost or damaged, you must tell the insurance provider right away.
- An investigator will assess the harm or loss mentioned above.
- All evidence and witnesses must be supplied, as well as the completed claim form.
- The insured must file an insurance claim with the insurance provider and obtain approval for the missing package.
- If the case is appropriate, the provider will authorize the claim; otherwise, it will deny it.
- If you are dissatisfied with the case, you can take it to a court of law.

### **Documents Required for Claim Process**

To lodge a claim under marine insurance and collect compensation, the proper paperwork must be supplied. In the event of a failure, there is a probability that a risk may be rejected. The following are some examples of documents: a few papers

- Original policy number insurance certificate
- Completed application form
- Billing Copy Billing Lading
- A certificate or survey report is missing.
- Original invoice, packing list, and shipping information
- Mail copies were exchanged

## **4.3 VOYAGE --- DEVIATION**

### **Voyage**

A “Voyage policy” contains a contract to insure the subject matter “at and from” or “from” one place to another or others. Sections 44- 51 of the Indian Act<sup>23</sup> deal with voyage. If the subject matter is insured

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<sup>23</sup> English Act, sections 41-52.

by a voyage policy “at and from” or “from” a particular place, according to the Act it is not necessary that the ship should be at that place when the contract is concluded,<sup>24</sup> and the words “at and from” in common parlance also conveys almost the same meaning; but when used as prelude to a clause describing the voyage in the policy they have a different import and effect in law.

If two separate policies are effected with two different insurers one for an onward voyage and another for the return voyage, the policy for an onward journey not only covers the onward journey till the ship reaches the destination, but extends over a period varying from 24 hours to 30 days, and the policy on the return journey, if described as “at and from” commences the moment she arrives in the port of destination in good and safe condition.

The Marine Insurance Act says that where the subject matter is insured by a voyage policy “at and from” or “from” a particular place, there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.<sup>25</sup>

### **Change of Voyage**

After the commencement of the risk if the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage. Where there is change of voyage, unless the policy otherwise provides the insurer is discharged from liability from the time of change. There needs to be a physical change but it is sufficient if there is a determination to change and it is manifested.

### **Deviation**

The Act provides that there is a deviation from the voyage contemplated by the policy:

- If the policy specifies a particular course of trip and that course is followed; or
- If the policy does not specify a specific course of voyage and the usual and customary course is followed.<sup>26</sup>

### **Excuse for Deviation or Delay**

Even if there is a deviation or delay, the insurer is not released from obligation in the following situations:

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<sup>24</sup> The English Act, section 42 (1); The Indian Act, section 44(1).

<sup>25</sup> The Indian Act, section 44(1); The English Act, section 42(1).

<sup>26</sup> The Indian Act, section 48(2); The English Act, section 46(2).

- i. **If authorized by a Special Term in the Policy-** According to it, if a deviation is permitted under the insurance's provisions, the policy will not be rendered worthless. This power is granted under a provision known as the "deviation and/or modification of trip clause."
- ii. **If caused by circumstances beyond the control of the Master or his Employer-** This provision applies when a vessel gets blown off course, as in *Delaney v Stoddart*, and therefore deviates from its intended course. *Vis Major* is unquestionably a legitimate reason. It is not required in any instance that it be done through the use of natural components. The master may be forced to alter his path of travel due to unforeseen events.<sup>27</sup>

**If it is reasonably necessary to comply with an express or implied warranty-** Where the delay or deviation is made to comply with the implicit assurance of seaworthiness for the journey, the insurers cannot escape their obligation .
- iii. **If it is reasonably necessary for the safety of the Ship or Subject-matter Insured**
- iv. **If it is for the purpose of saving human life or aiding a ship in distress where human life is in danger**
- v. **If it is reasonably necessary for the purpose of obtaining medical or surgical aid for any person on Board the Ship**
- vi. **If it is due to the Barratrous Conduct of the Master or Crew if Barratry be one of the Perils Insured against.**<sup>28-</sup> in this clause "barratrous conduct" means any wrongful act willfully committed by the master or crew of a vessel in violation of their duty to the shipowner, and without his connivance. If deviation is caused due to such act, the deviation is excusable .

#### 4.4 VALUED OF MARINE POLICY

A valuable marine insurance policy is a type of marine insurance cover that provides the guaranteed property, such as a ship's hull or cargo, a specific value before claims are made. If fraud is not proven, a well-received marine policy will pay a fixed amount to compensate for damages.

A valued or open maritime policy varies from a helpful maritime policy. This type of coverage would provide invoices, estimates, and other documentation of the property's worth following a loss.

#### ***Key takeaways***

- *A valued marine policy is a type of insurance that assigns a special value to maritime property before claims are filed.*

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<sup>27</sup> (1780) LTR 22.

<sup>28</sup> The Indian Act, section 51(1); The English Act, section 49(1); Enumerates the 7 cases of permissible deviation.

- *If a loss is incurred a valued maritime policy will pay a specified predetermined price.*
- *That means if the value of the insured item is depreciated, the amount that could be reimbursed in case of a total loss is not affected – and vice versa.*
- *Valued marine insurance differ from maritime policies that value property and damage only after a claim has been lodged.*

#### **4.5 How a Valued Marine Policy Works**

Insurance provides financial protection to individuals or entities against any sort of loss in exchange for the payment of a premium. Even for high-stakes commodities like ships and freight, practically everything can be guaranteed for a charge. Every maritime policy has a monetary worth. There is no dispute about the value of remittances in the event of a total or partial loss to the ships, cargo, and terminals covered by this policy, thus a monetary value is preset and specified in the policy<sup>29</sup> paper .

Such policies help to avoid disagreements over the covered property's value. If a marine insurance contains the terms "evaluated" or "evaluated," no re-evaluation or revaluation is usually necessary if a loss or an insuring event occurs.

The preset amount of a valuable marine coverage, irrespective of damage severity. An insurance company may, for example, pay \$1,000 for every cargo box, irrespective of whether the cargo costs \$500 or \$2,000 each box .

#### **Special Considerations**

It's worth noting that if the object is depreciated, the amount that may be claimed in the event of a total loss is unaffected. If the insured is unable to collect any extra damages as a result of the increase in the item's worth, the same is true.

The Marine Insurance Act of 1906 stipulates that the measure of compensation for an unexpected policy is the insurable worth of the subject insured, making shipowners with valuable policies better off if they claim during a price decline. Those with unvalued Policies may conclude that any recovery is just a fraction of the ship's value at the time the policies were issued in such circumstances.

People that insure ships must have policies that are correctly written, especially because there are legal disputes in a number of countries about the value of valued and invalued marine insurance.

#### **Marine insurance Act 1963**

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<sup>29</sup> The National Archives. "Marine Insurance Act 1906

The insurable worth of the subject-matter insured must be calculated as follows, subject to any particular provisions or valuations in the policy: -

1. The value of the vessel in ship insurance at the start of the risk shall be that of an insurable ship, including all equipment, supplies, and shops for officers and crew, advanced wage money, and other payments (if available), making the vessel fit for the voyage or adventures specified in the policy, as well as all insurance charges.
2. The insurable value of a steamship includes the equipment, boilers, and coals, if owned by the insured person, as well as the engine shop; for a powered ship other than a steamship, the equipment, furniture, and engine stores, if owned by the insured person, are also included; for a ship engaged in a special trade, the ordinary fittings required for such trade are also taken into account; for a ship engaged in a special trade, the ordinary fittings required for such trade :

(1) The total value of the cargo at the insured's risk, whether paid in advance or not, plus the insurance charges, is the insurable value in cargo insurance.

(2) The principal cost of the covered property, plus transportation charges and insurance expenditures as a whole, must be guaranteed in the case of products or commodities insurance:

(3) The insurable value of the insured in any other subject-matter insurance is the insurable value of the insured in any other subject-matter insurance plus the insurance costs when the policy is attached.

A portion of the commodities, goods, and other items were misplaced. In the case of partial loss of commodities, products, or other mobile items, the following amount of compensation will be given, subject to any specific policy restrictions:

1. The compensating measure is a percentage of the amount established by the policy, such as the insurable value for that portion of the loss determined by the insurable value of all goods, commodities, or other moveable covered parties;

2. Where the unvalued insurable policy is part of the commodities or commodities, the compensating measure is a percentage of the amount established by the policy, such as the insurable value for that part of the loss defined by the insurable value.

3. Where damage is caused to all or part of the goods or goods insured at their final destination, the amount of the indemnification measure is such that the difference between the gross sound value and the damaged value on the

point of arrival bears the gross sound value of the valuable pool's insurance value, or that, in the case of an unvalued policy;

4. The bonded price is the gross value for products or items commonly sold on bond, whereas the large price is the wholesale price or, if no value is given, the anticipated value, either with or without freight, landing, and duty payables. The expression "large proceeds" refers to the whole sale price, which includes the sellers' fees.

### **Assignments of Marine Policy/Law**

"A contract of marine insurance is an arrangement whereby the insurer promises to compensate assured, in the manner and to the extent so agreed, against marine losses, that is, the losses incidental to Marine Adventure," according to Section 3 of the Marine Insurance Act of 1963."

### **Marine policy**

This document is proof of the marine insurance coverage. It contains details like as the identity of the insured, the nature of the products, and so on. These had been recognised previously. The risks are explicitly mentioned in the policy. A particular insurance is one that covers a single cargo or consignment.

### **Open policy**

An open policy is also known as a "floating policy." It is typically drafted and issued for all "shipments" that fall within its jurisdiction. It is offered to cover large shipments or shipments over a long period of time. There are conditions in the open policy that reduce the amount of money covered. In most cases, open policies are given for a year. A new policy or confirmation of the increased cost may be provided if fully specified before that time. If the insurance has reached the end of its term and is cancelled, the insured gets repaid a proportionate premium on the unused amount if the whole prime was collected earlier. A unique insurance certificate will be issued upon receipt of each declaration. No insurance certificates are issued since an open policy is a stamped document. General open policies apply to inland shipping. When opposed to specialised policies, an open policy has numerous advantages.

- a. Insurance is automatically and continuously protected.
- b. Clerical labour is significantly reduced.
- c. Savings on stamps. This can add up quickly, particularly for domestic shipments.

### **Open Cover**



When numerous frequent shipments are involved, an open cover for big export and import companies is very helpful, since providing insurance protection for each cargo separately would be difficult. It's also conceivable that the insured's surveillance of a specific cargo leaves it vulnerable, and that the insured will be held responsible if the shipment is lost. To prevent this disadvantage, major businesses that export on a regular basis choose for an open cover, which is a type of permanent insurance coverage.

While carrying all goods within its region, an open cover automatically recognises cargo, journey, and cover. It is typically granted for a 12-month term and can be renewed once a year. It can be ended at any time by either the insurer or the insured informing the other. The Stamp Act is used to manufacture and stamp specialised insurance policies or certificates since the open cover does not include stamps. The total number and value of shipments declared under open cover are unrestricted. The following are some of the most important features of an open policy/open cover:

A. Transport limits or bottom limits.

The bottom limit stipulates that the value of a single open cover shipment cannot exceed the given amount.

**Basis of valuation**

The 'base' is often made up of item prime costs, freight and other transportation incidental charges, insurance expenses, and a 10% profit margin (the percentage to cover profits may be sometimes higher by prior agreement with the clients).

**Location clause**

In fact, the bottom limit indicated in (a) above is helpful in limiting the insurer's commitment to one vessel, but a variety of cargo covered may accumulate in the port of transportation. Prior to shipment, the location clause limits insurers' obligations at any time or location. In most situations, this is the same restriction as the cover's bottom or conveyance limit, although in rare cases, up to 200 p. 100 can be agreed upon.

**Rate**

Each open cover is accompanied by a rate schedule that has been agreed upon.

**Terms**

Different words may apply to different commodities covered by the open cover, and they are clearly stated

## **Declaration clause**

Within the scope of open cover, the insured must declare every shipment. Some remarks may be removed to save money on premiums, especially if the shipment is deemed secure by the insurance. This is why the provision was enacted in the first place.

## **Cancelation clause**

This clause says that any party can cancel the contract with a specific amount of time, such as a month's notice. The warning time is significantly shorter in the case of war and S.R.C.C. danger.

## **Distinction between “Open policy” and “Open cover”**

The open policy differs from the open coverage in a few key ways .

- a. Open policy is a stamped document, it is legally enforceable in and of itself, whereas the unbundled policy is not legal unless it is accompanied by a stamped policy/insurance certificate .
- b. A public policy is issued for a specific amount of insured, but the amount is not covered by the limit. Whenever shipments are made under an open policy, the open policy's sum insured must be declared to the insurers and reduced by that amount. If the sum of the declarations equals the open policy's insured amount, the open policy must be replaced with a new open policy. The open policy has reached its limit.

## **Certificate insurance**

The insured or banks' conditions for each declaration made under an open cover and/or an open policy are satisfied according to an insurance certificate. A basic document containing shipping or transmission information can be used in place of a specific policy certificate. It periodically shows the number of contracts for which it was issued, as well as the original cover's terms and conditions. If the original policy has been correctly stamped, certificates do not need to be stamped.

## CHAPTER 5

### MARINE INSURANCE AND ITS LEGAL ASPECTS IN INDIA

#### 5.1 INTRODUCTION

Business has no boundaries in today's globe. Due to the predominance of cross-border activities, people have access to a wide range of products and services. The more the distance our products travel, however, the greater the risk they pose. Marine insurance is one of the world's oldest forms of protection. Maritime transport was the backbone of international trade throughout the globalisation era, accounting for more than 80% of all items moved by sea. Maritime transportation, on the other hand, implies a significant amount of danger for both the ship and the commodities being transported.

As a result, it should be insured in order to provide safety and protection to persons, communities, and enterprises, as well as to facilitate business and reduce the risk of financial losses on the property. It ensures risk sharing and encourages entrepreneurs to develop and invest in riskier businesses, resulting in increased economic activity in the country.

“Maritime insurance therefore constitutes a fundamental component of international trade and trade. The maritime insurance laws of India are governed by the Marine Insurance Act of 1963 and by the rules of the Institute of London Underwriters' (ILU).”

Managing the development of the maritime industry would have been exceedingly difficult without the convenience of naval insurance to handle long-distance commerce.

Trading internationally was riskier and more expensive. And the various marine developments would have followed an entirely different course and at a far faster pace. "In exchange for a premium, an insurance company's underwriter agrees to take some of the maritime risks posed by a vessel, cargo, or both in a marine insurance contract. These hazards could involve a variety of threats at sea or in port, for a certain journey or for a specific length of time.<sup>30</sup>”

The history of the marine insurance contract can be traced back hundreds of years. The 'earliest authenticated insurance contract,' the maritime insurance agreement, demonstrates the features of a risk transfer insurance because of any unavoidable occurrence rather than any premium payment.

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<sup>30</sup> “Christopher Kingston, Marine Insurance in Britain and America, 1720-1844: A Comparative Institutional Analysis, EHS (Aug. 17, 2014, 11.13 PM), <http://www.ehs.org.uk/dotAsset/332686ee-2db9-4f09-abc6-cb900150d473.pdf>”

The earliest insurance account was a monetary payment called 'bottoming,' which protects dealers from debt when products are lost or destroyed.

## 5.2 HISTORY

Marine insurance may go back several centuries when it was just seen to safeguard the interests of ship-owners or cargo owners who, on their trips abroad, faced different obstacles.. “Marine insurance has facilitated the development of long-distance trade and as such has influenced economic growth and progress of, in particular, seafaring nations in the early modern period.<sup>31</sup>” "During the Middle Ages, marine insurances functions under contracts like 'bottom loans' which were reimbursable only if a trip was successful.

However, marine insurance companies hadn't emerged yet, and private companies were still entirely subscribed, often traders, who submitted specific risks on a case-by-case basis (several private companies covering each portion of the risk)."

The mother of all insurance may be marine insurance.

The regular movement of ships and goods over the high seas for commerce and trade in England is considered to have begun in England. Marine insurance is the earliest type of insurance. Marine insurance is not a new concept; it has a long history dating back hundreds of years. As long as there has been human existence, the primary premise of maritime insurance has been to distribute risk.

The earliest written insurance policy is engraved on a Babylonian obelisk monument next to King Hammurabi's law. The Hammurabi Code was one of the earliest pieces of written legislation. It provided the foundation for an insurance policy in which the debtor would be unable to repay his debts in the case of a calamity. In 1906, the first formulation of insurance law was completed. The English Naval Insurance Act was introduced in 1906, although its provisions had already taken shape much before then. The origins of maritime law can be traced back to Greek and Roman maritime borrowing. It is regarded to be the earliest and most advanced kind of insurance. Several maritime insurance contracts were promoted in places such as Genoa and several other Italian cities throughout the 14th century, and later expanded to northern Europe.

While the origins of contemporary marine law insurance may still be traced back to Lex Mercatoria, i.e. merchantability. In England, a specialist chamber was formed in 1601, apart from the other courts. In the late 17th century, London became a major trading hub, resulting in a surge in demand for maritime insurance. Edward

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<sup>31</sup> “Sabine Christa Go, Marine Insurance in the Netherlands 1600-1870 A comparative institutional approach, UBVU(Aug. 17,2014, 13:13 PM), <http://dare.ubvu.vu.nl/bitstream/handle/1871/15525/8950.pdf?sequence=5>”

Lloyd operated a café on Tower Street in London in the late 1680s. Its coffee shop quickly became a popular hangout for ship owners, captains, and merchants, making the most recent shipping news a credible source.

Lloyd's Coffee House established the first maritime insurance market soon after. It was a gathering spot for persons looking to insure cargoes and ships, as well as those looking to fund such ventures in the maritime sector. Because of these casual encounters, the Lloyd's coffee shop eventually became an insurance market. The insurance company ultimately established a committee and relocated to Cornhill on the Royal Exchange, similar to the Lloyds' Society. The establishment of specialised infrastructure such as shipbrokers, admiralty attorneys, surveyors, bankers, loss adjustors, average adjusters, and others, as well as the formation of insurance firms and the extension of British Empires, have strengthened English law in the Marine Assurance field.”

The Marine Insurance Act of 1906 in England was the first to be codified, and it became law on January 1, 1907. It has been recommended that the laws governing maritime insurance agreements be clarified and laid forth. This Act solely codifies certain legal principles that are unique to marine insurance and expressly enacts common law provisions, such as the law dealer, unless they are in conflict with the Act's special requirements.

### **5.3 INDIAN LAW**

India's marine sector has developed substantially since the country's independence. As a result, Indian law was needed to provide a standard and smooth marine insurance system in India. Maritime law issues were formerly addressed by general contract law and English decision-making based on common law contractual norms. The marine insurance legislation in India is mostly a reinterpretation of maritime policy standards. In India, insurance has a long history. They are referenced in the works of Manu (Manusmriti), Yagnavalkya (Dharmasastra), and Kautilya (Arthasastra). During calamities such as fires, floods, hunger, and illnesses, the articles discuss how resources might be pooled and shared. This was almost certainly a precursor to today's insurance.

The oldest evidence of insurance in marine trade loans and carrier contracts may be found in ancient Indian history. " In 1818, the Oriental Life Insurance Company was formed in Calcutta, and it was the first life insurance company in India. "Insurance in India has evolved dramatically over time in comparison to other countries, particularly England."

However, the business failed in 1834. During the Madras presidency, the Madras Equitable began trading life insurance companies in 1829. It was enacted under the British Insurance Act of 1870. It was founded in 1907 by Indian Mercantile Insurance Ltd. It was the first company to handle all kinds of general insurance. The Government of India released the results of Indian insurance companies in 1914. India's shipping legislation, in

particular, has seen considerable changes and development, needing codification in order for the country's marine insurance law to operate and expand effectively.

The Naval Insurance Act of 1963 became the first piece of legislation in the field of marine insurance. According to the Act's preamble, "the law on marine insurance codifies the legislation." "The construction canon that is generally relevant to a codifying statute is widely established," Lord Herschel said, "the language of the statute must be granted its natural meaning alone in instances of controversy or confusion when a statute is codified," he explained."

#### **5.4 ESSENTIALS OF MARINE INSURANCE**

Marine insurance is a contract, however the main rules of contract law do not apply to marine insurance contracts, despite the fact that it is a contract. The main or essential premise of the marine insurance contract follows the 'compensation' contract. The insurer recovers this in the form of a cash loss under the indemnity contract.

As a result, the insurer undertakes to reimburse the insured against marine losses - that is, losses suffered in maritime adventures - in the manner and to the extent agreed upon in Section 3 of the Indian Marine Insurance Act. During the 18th century, the naval insurance industry faced several uncertainties and tough conditions, and both the insurance agency and the insured faced their own set of problems. They were mostly dealing with one of three types of agency difficulties:

- Firstly, To begin with, the likelihood of a ship or freight being lost or damaged, as well as the threat from ships being caught by hostile vessels, is dependent on a variety of factors, including the travel route, distance, and crew quality.
- Secondly, some instances in which the insured may have an excessive risk, such as purposely sinking a ship or cargo, or the value of the products, or even the insurance of an already lost ship are taken into account by the underwriter when setting the premium.
- Thirdly, People who buy insurance are concerned about the underwriter's financial viability. If a large danger arises, buyers may not suffer a loss. Because of the risk exposure to insured persons and the issues between insured and insured agencies, merchants were looking for more dependable underwriters and were willing to pay more premiums to ensure their financial security.

"The 'police,' or formal document embodying the contract,' shall be the informal memorandum drawn up on the conclusion of the contract,' and 'the slip,' or 'covering note,' shall be the informal memorandum written up on the conclusion of the contract."

The subject matter insured and the account for the insurance are, respectively, the interest insured and the premium. As a consequence of his subscription to the policy or his underwriting of it, the person who is indemnified is referred to as "the assured," and the other party is referred to as "the insurer" or "the underwriter." Property damage or loss as a result of maritime risks is referred to as "loss." Section 25 of the Indian Marine Insurance Act defines the main issues to be addressed in a marine insurance:

1. The insured's or any other person acting on his behalf's name
2. The journey or time period covered by the insurance, or both if both are covered.
3. The covered risk and the subject matter of the insurance.
4. The names of the insurance companies.
5. The amount of insurance or the sum insured

“A contract of marine insurance is uberrimae fidei or, as enumerated in Section 19 of the Indian Marine Insurance Act, ‘a contract based upon the utmost good faith.’ The notion of utmost good faith, the cardinal principle governing the marine insurance contract, is a well-established doctrine derived from the celebrated case of *Cater v. Boehm*, decided long before the inception of the Act. With the codification of the law, the principle found expression in Sections 19-22.<sup>32</sup>”

Marine insurance is governed by a set of basic rules, which are mentioned below:

- • Compensation principle: a compensation policy is a maritime insurance policy. Furthermore, the insured has the right to sue the insurer for the real loss suffered by the insurer.
- • Principle of absolute trustworthiness: A maritime insurance contract is a very trustworthy arrangement. To the best of their ability, both the insured and the insurer must supply all important contract information. If the contract is not voided, the other party is free to select at any time.
- • The subrogation concept states that after a loss has been satisfied, the insurer is entitled to all remedies and rights available to the insured against a third party or against the insured person themselves.
- • Contribution principle: The subject matter has been insured two or more times for the same amount. This is referred to as double or overinsurance. The theory of contribution is applied in this case to ensure that the insured does not profit from it.
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- • Causa Proxima Principle: This concept is based on the Latin phrase "in jure non remota causa, sed proxima, spectatur," which means that in every law, the immediate cause of damages should be regarded

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<sup>32</sup> ibid

rather than the distant cause. When assessing injury, the immediate or proximate cause should be taken into account. If a loss is produced by a series of events, the most recent event should be evaluated.

## **5.5 RISK NOT COVERED UNDER MARINE INSURANCE**

People were always concerned about the danger, whether a group of enormous elk was haunted and risked dying, or merchandise was conveyed in several caravans so that the entire shipment was not lost to a violent tribe. "The risky<sup>33</sup>" nature of maritime trade throughout the Sailing Age made marine insurance a critical component of trade expansion, resulting in the emergence of increasingly sophisticated shared risk institutions."

"To effectively assess the danger of a voyage, the underwriter needed timely and precise information about ship movements and circumstances, political developments in the home country and abroad, and the character of the insurance merchant and the ship's charge.<sup>34</sup>" The following are the hazards associated with marine insurance:

1. The sort of loss that leaves the insured's property worthless is known as a complete loss. There are two types of losses: financial and non-financial:
  - Current total loss occurs when an insured object or object is destroyed or damaged to the
  - Constitutive total losses occur when the total loss of the object or subject matter insured appears to be unavoidable.
2. A special average refers to any vessel, cargo, or freight that has suffered partial or unintentional loss or damage.
3. In light of the common good, the average general sacrifice is in fact voluntary.

Threats to the sea, fire, conflict, pirates and robbery, striking and barreling are some of the additional dangers covered by the Naval Insurance rules.

### **Risks that are specifically excluded from the Insurance Contract :**

"Losses due to leaking or boathook losses of items wrapped in bags may be excluded by the insurance arrangement. Palm and cocoa oil solidification may be avoided unless warm storage is available.

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<sup>33</sup> Supra note 1

<sup>34</sup> Supra note 1



- Delayed arrival: Profit loss, market loss as a result of delayed arrival, and loss as a result of delayed arrivals are not included.
- Ordinary and unavoidable trading losses: shrinkages and evaporations in bulk or copra incidence are not included unless clearly stated.
- Violence: Certain threats, such as wars, strikes, riots, and civil wars, are excluded unless specifically endorsed.
- Dangerous Drugs Clause: Insurance policies that cover the transportation of opium or other hazardous medications include a clause that states that no losses will occur unless certain circumstances are met.<sup>35</sup>

Some things have inherent flaws, such as easy breakage under typical conditions. Unless adequately wrapped, any damage to glassware or easily breakable or fragile goods will not be covered by maritime insurance. Damage made during the initial packing is also forbidden.

The term "risk" refers to the risk of loss of insured property and loss of property can include both actual property and financial damages coming from the loss of cargo transit funds, commissions or earnings, and certain types of liabilities incurred in connection with the insured property in exchange for premium party.<sup>36</sup>

"Insurance was created to protect an insured from the financial consequences of a potentially catastrophic personal loss. The number of covered dangers has grown throughout time in response to changes in exposure intensity, frequency, and final cost; yet, the fundamental premise of insured protection has had little effect on the financial condition. The insured, on the other hand, are not protected against all types of financial loss.<sup>37</sup>" " The three primary categories of exclusion must first be recognized in order to comprehend the six grounds for excluding particular risks from the marine insurance clause. The following are the categories:

1. "Perils" that are defined as any genuine loss resulting from financial losses were omitted.
2. "Risks" where the hazard is defined as an increasing likelihood of a financial loss were omitted.
3. Excluded the term "property," which can refer to both tangible and intangible assets.

It's simple to categorize losses that aren't covered by the following six reasons if you understand the three basic exclusion categories:

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<sup>35</sup> "Risks Not Covered By Marine Insurance, HOW TO IMPORT EXPORT (Aug. 15, 2014, 13:03 PM), <http://howtoexportimport.com/RISKS-NOT-COVERED-BY-MARINE-INSURANCE-487.aspx>"

<sup>36</sup> "Legal Aspects Of Marine Insurance In India, LAW TEACHER (Aug. 15,2014, 13:05 PM), <http://www.lawteacher.net/commercial-law/essays/legal-aspects-of-marine-insurance-law-essays.php>"

<sup>37</sup> "Christopher J. Boggs, Six Reasons the Loss is Excluded, MY NEW MARKETS (Sept. 9, 2014, 16:27 PM), <http://www.mynewmarkets.com/articles/99788/six-reasons-the-loss-is-excluded>"

1. The exclusionary categories, such as hazard or property, can be better addressed elsewhere. Any loss of money, for example, is not covered by a loss of business property because any 'crime policy' can cover it better.
2. The loss or harm could be calamitous in nature. Individual disasters are usually covered by marine insurance, not community disasters.
3. No loss may be inadvertent or unexpected. According to conventional maritime policy, any insurable loss is accidental or unanticipated in nature. Intentional behaviour carried out with the intent of receiving insurance benefits will not be considered insurable.
4. If further information and premiums are supplied, the insurance provider may be willing to grant coverage. Even if the insurer does not wish to pay a higher price for the risk covered, marine insurance sometimes excludes the possibility that insurance carriers may be ready to pay a higher price for the risk insured.
5. The insurance company wants to be in charge of the coverage provided. When a policy excludes coverage for a risk but provides supplementary coverage to offset the risk, this occurs. It may appear perplexing, but adding specified coverage really simplifies things. Property and liability coverage are covered using this strategy.
6. Any business risk is accountable for property loss. The chance of loss, no change, or no gain is a solid risk in such exclusions. Any bad business choice is not covered by insurance. There will be no volunteer backlog, and there will be no market loss.

## **5.6 MARITIME LAWS IN INDIA**

Admiralty law, sometimes referred to as maritime law, is a branch of the law that deals with marine concerns and crimes. Admiralty law oversees the interaction of private entities operating ships on the ocean as well as domestic maritime law. It covers topics such as maritime commerce, marine trade, marine traffic, shipping, and sea transport. As previously noted, the Naval Insurance Act of 1963 established maritime insurance legislation in India in 1963.

Water or marine insurance protects against the loss or damage of commodities transported by sea, air, or land, as well as the loss or damage to a boat. Maritime insurance is required for each shipowner or freight firm. However, each nation has its unique insurance regulations, and maritime insurance is no exception.

Travel insurance for sea cruises As a result, marine insurance in every area of the world is governed by many of the same features that regulate international sea transit. "The Act is only dealing with a particular aspect of the

law of contracts-namely, those of maritime insurance,” according to the Court of Appeal (*Richards v Forest Land, Timber, and Railway Company Ltd* (1941) 3 All ER 62, HL).

Subject to various imperative provisions or prohibitions and general rules of the common law, the parties are free to make their own contracts and to exclude or vary the statutory terms. The object both of the legislature and of the courts has been to give effect to the idea of indemnity, which is the basic principle of insurance, and to apply it to the diverse complications of fact and law in respect of which it has to operate. In this way, the law merchant has solved or sought to solve, the manifold problems which have been presented by insurances of maritime adventures.<sup>38</sup>

Marine insurance is nothing more than a promise of payment that provides you the right to sue if your claim is unpaid. “A contract of marine insurance is inadmissible in evidence unless it is contained in a marine policy in conformity with this Act,” according to Article 24 of the Indian Act. The policy can be completed and issued either at the time the contract is signed or afterwards. ” The Supreme Court of India is the highest court in the country, and its rulings are binding on all other Indian courts and tribunals. The Supreme Court's ruling in *M v Elizabeth* limited the competence of Indian admiralty courts for claims in line with British statutory law until 1993.

“On the date of the 1890 Colonial Courts of Admiralty Act, the Supreme Court ruled that there was no reason to believe that the High Courts' jurisdiction had been frozen and atrophied, and that the High Courts were superior record courts with boundary jurisdiction and plenary powers to decide for themselves on remediation complaints under the principles of the High Courts' jurisdiction.”

As a result, the Supreme Court construed the principles of the International Maritime Conventions as part of Indian common law because there was no Indian statute establishing the Court of Justice's jurisdiction over maritime issues. In order to replace outdated laws and establish a comprehensive law to govern claims, jurisdiction, processes, and other elements of admiralty in India, the Government of India circulated a proposal for an Admiralty Act 2005.

In India, there are other maritime-related legislative acts in effect. The Indian Carriage by Sea Act of 1925, the Indian Carriage of Goods by Sea Act of 1856, the Indian Marketing Act of 1958, the Multimodal Carriage of Goods Act of 1993, and the Major Ports Act of 1963 are the legislation in question. One of them is the Multimodal Carriage Act of 1957. Throughout addition to this legislation, numerous Indian courts have issued judgements outlining fundamental principles of maritime law that are recognised and practised in India.

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<sup>38</sup> *Richards v Forest Land, Timber and Railway Co. Ltd*, [1941] 3 All ER 62, HL

“The Supreme Court in the case of (AIR1997 SC 544/ (1996) 8 Scale 505; also see AIR 1978 AP 306) held that ports in India are entitled to obtain and demand unconditional security before allowing a foreign vessel that has caused damage to port property from sailing out of the port and such security would be based on the port’s estimates of the damage as well as the costs of repairs / replacements. However, the quantum of the liability could later be challenged by way of a civil suit by the owner.<sup>39</sup>” “Under the Admiralty offences (Colonial) Act, 1849, the Court of Sessions of Greater Mumbai convicted 17 pirates who pirated a cargo vessel flying the Japanese flag in the Indian Ocean.

Upon receipt of information regarding the piracy of their vessel from the Japanese owners of the vessel, two vessels of the Indian Coast Guard intercepted the pirated vessel and apprehended the 17 pirates and escorted the vessel to the Mumbai port. On arrival at Mumbai, all the 17 pirates of Indonesian origin were arrested and charged. The prosecution was successful in getting a conviction of the pirates inter alia under the provisions of the aforesaid act. This was the first time in relation to piracy in the world that the pirates were not only arrested but were also successfully convicted.<sup>40</sup>”

Marine insurance is used to mitigate risk caused in dangerous situations and therefore causes ship, cargo, or goods or property to suffer financial loss while carrying them abroad. Marine insurance is intended to secure the risk of the shipowner, cargo or mobile property which can suffer in the course of traveling from financial instability. But the insurer does not like to insure certain risks in order to secure a job as a contractor.

These risks that are not covered by a marine insurance policy are typically those coming from the shipowner's or cargo owner's negligence, or from human behavior that the insurer does not intend to insure. Maritime law has recently evolved in India. A variety of acts address various aspects of admiralty law, and several court decisions have created precedents when dealing with concerns of admiralty law. However, the trend may be traced back several decades to the first Marine Insurance Market of coffee cafes in Lloyd. There have been numerous interpretations of the risks covered by marine insurance in recent decades. However, the protection of the underwriter's interests is fully excluded from the list of risks.

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<sup>39</sup> “V. Subramanian (Kumar), Shipping/Maritime Law in India, PAND INDIA (Sept. 13, 2014, 18:13 PM), <http://www.pandiindia.com/ShippingMaritimeLaw.htm>”

<sup>40</sup> *ibid*

## CHAPTER 6

### MARINE INSURANCE RISK MANAGEMENT

#### 6.1 INTRODUCTION

Marine coverage ranges from ordinary cargo and hulls to big and unusual exposures like as offshore exploration and production platforms. To satisfy your needs, you'll need to do imaginative risk analysis and brokering initiatives. We have the know-how and experience to assist you navigates these hazards. In four offices around the country, our marine brokers and claims professionals understand your insurance and risk management needs, and provide personalized solutions that are crucial for your business.

We offer risk based solutions that improve the efficacy and cost efficiency of risk management by extensively analyzing your needs and delivering solutions based on your needs, not what we can do. We can efficiently address the needs of our maritime industry customers in more than 60 countries across the world by employing a global team approach. This technique enables any of our marine professionals, regardless of location, to deliver solutions to our customers. Finally, we wish to provide you, our clients, with access to the Aon network's immense knowledge and expertise. As a result, we are able to provide the best service possible, with a strong focus on our clients<sup>41</sup>.

#### 6.2 MARINE SPECIALTY SOLUTIONS:

##### **Cargo**

For companies in the pharmaceutical, consumer goods, financial, mining, petroleum and gas industries, forest, defence, and aircraft industries, chemicals, commodities, electronics, and communication industries, our global network of offices can provide innovative cargo and logistical solutions to meet individual requirements.

##### **Hull & machinery**

“Our professionals are providing strategic solutions to meet your needs in a turbulent hull marine insurance market, as well as the dangers posed by shipbuilders such as tug and barge operations, ferry, passenger, dredging, fishing, construction, bulkers, lacquers, and delightful craft operators”.

##### **Marine liability**

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<sup>41</sup><https://www.aon.com/canada/productsservices/risk/specialty/marine.jsp#:~:text=Marine%20coverages%20range%20from%20standa rd,provide%20the%20coverage%20you%20need.>

“Our team of professionals may design single- or multiline solutions for waterborne exposures, such as those that operate a port or terminal, chartermant, ship repairer, wharfinger, Stevedore, marina, warehouses, or building contractors.”

### **Fine art & specie**

Our skilled staff can provide solutions for the protection of a wide range of commercial and personal products, including fine art, joys blocks, transit currency, and species risks, to deal with any danger of loss or physical damage.

### **Captive services**

In today's difficult insurance market, caps and other alternative risk programs can provide cost reductions, cash flow benefits, and specialist loss prevention services, as well as reimbursements services that would otherwise be unavailable. Our expertise is used to a wide range of advanced risk management, risk management, and risk finance solutions. and alternative-risk-financing challenges as the world leader in captive services.

### **Managing Marine Risk**

Numerous international conferences on the problem of managing maritime risks, i.e. risks on ships that affect the movement of massive tankers through mighty seas and oceans, cargo ships, and many other waterborne vessels with international prerogatives in moving goods and all kinds of cargo, have been held. However, few people have looked into the wide-ranging effects of marine dangers and how they affect international maritime trade. Nearly 40% of all goods carried throughout the world are transported by sea. The main reason for this not being done is that the authorities did not believe it was practical for a single agency to focus solely on the management of maritime hazards when there were so many agencies in the area, each responsible for a variety of activities linked to ships and freight.

Today, the term "risk management" is frequently used, but the aim and application of risk management in real-life circumstances are still debated. Some authors limit risk management to insurable risks, while others consider all types of uncertainty, including fire, accidents, travel, navigation, climbing, sports and games, engineering, construction, consequential loss, and much more.

Even defining "risk" in a way that is academically acceptable, appropriate, and universally acceptable is a challenge. The potential variability in the result in a future circumstance owing to 'uncertainty' is usually what we perceive and focus on when we consider how we may progress further. In this scenario, we associate "risk" with "future uncertainty," or the possibility that the predicted outcome would not be realized."

We'll discuss the hazard's origin and scope, as well as the severity, likelihood, and probability of occurrence, and how the damage could be disseminated.

We are deeply concerned about how any big risk or hazard can be economically minimized, in addition to comprehending risk morphology. Risk management is defined as "the identification, measurement, and economic monitoring of risk that threatens a company's assets and income, as well as the continuous production and provision of important services or goods."

Otherwise, risk management can be defined as "the identification, appraisal, and management of future threats or vulnerabilities in order to reduce their economic impact, use, or other repercussions."

When it comes to who controls risk, the widespread usage of the phrase "risk administrator," especially as a substitute for "insurance administrator," causes a lot of misunderstanding.

The buyer is not a risk manager; but, if he or she is aware of the components of a risk situation, he or she can only aid others in risk management.

The risk manager is a line manager, such as a firm or factory manager, a ship captain, an aviation manager, or an executive management manager.

Its actions are primarily intended to assess the effectiveness of its business, enterprise, government, or, in the case of risk management techniques, the anticipation, competence, and response to an occurrence.

In the context of marine insurance, risk can be divided into three types.

The first is the "risk that the shipowner or captain of the ship may directly manage or control as a result of his or her own management activity."

"Risks come from the environment, for example the technological, social, political, and physical conditions in which the shipowner or captain operates," the second section says.

"Insurable risk, including property, loss of life, bodily injury, liabilities, and business interruptions stemming from maritime or other risks," accords to the third class.

Risk management is not a new concept. It had been there since the day we were born.

Everyone who engages in any activity, particularly maritime activity, must manage risk, as has always been the case. The good news is that the company's future uncertainties are being given more and more coordinated attention.

Thanks to modern technology, computer programming can help us detect, how and when dangers occur, and how to handle them.

All of the possibilities for a certain action have been discovered.

An expert both inside and outside the organization uses this methodology to evaluate, measure, and produce specific action plans for risk monitoring and funding.

The most evident aspect of marine risk management today is its insufficiency. Diverse different institutions are active in research and practical work on various aspects of risk, and there is a great need to reconcile these many points of view in the hope of achieving a more efficient overall risk management effort.<sup>42</sup>

### **6.3 COMMERCIAL RISK'S -SHIPOWNER'S VIEW**

The term "*risk*" was coined in Italy. It has a positive and negative connotation and involves both facts and compassion. Because we work in the insurance sector, the term "risk" has a negative connotation for most of us: the possibility that terrible or improper events will occur in the future. Aside from the insurance industry, *risk* is a two-sided strategy that should not be avoided.

There are two categories of risks: insurable (which we are familiar with) and commercial (which we are not).

The latter is linked to the unknown future business environment in which one participates, such as supply and demand development, business turning points, technical and policy development, and so on. We normally cannot insure against these risks because they are speculative in nature or because we are required to do so, and the cost is prohibitively high.

In most commercial transactions, you currently commit resources (spend money) in the hopes of receiving a reward (earnings) that is greater than the future resources committed. The notion is that spending arrives on time and is predictable, whereas income arrives later and is less predictable. Because of the intrinsic nature of the industry, attempting to eliminate risks is pointless. Even if we were to eliminate this, there would be no uncertainty remaining, and thus no future or business. But don't worry, because we won't be able to entirely eradicate danger, there will still be room for business.

But what should be done if attempting to reduce risk isn't feasible? How are we going to get out of this? We can strive to pick the "correct" risks, but we must also make an effort to handle them appropriately. Taking the

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<sup>42</sup><https://rmaindia.org/managing-marine-risks.html>



appropriate risk implies concentrating on the areas where our abilities and resources can generate the most value. The question is, what services are we better suited to supply than others?

Another crucial part of this is the organization's risk mentality. Is it a risk-taker or a vehement hater? High risks are frequently accompanied by significant rewards, whilst lower risks are usually accompanied by lower returns. The sacrifice involved in this decision is a very personal one, and it's evident that talking about 'right' or 'false' risks in this context is pointless. A risk is a 'real' or 'false' danger that cannot be seen when a decision is made. Only after we see the end result do we realize the ramifications, and it becomes clear if we took the right or wrong risk. The main thing is to be aware of the risk situation and act accordingly.

When it comes to risk control, the first step is to clearly define the risks to assets and profits. The next stage is to try to comprehend and, if feasible, quantify the risk. Last but not least, the risk must be assessed. Financial risk control can take several forms: one insurance policy, one with many contingency plans, or lastly, leaving the organization. Let us try to understand how to manage business risks through a case study, based on these more basic points of view on the concept of risk.

### **The Williamson Shipping Group of Companies**

The Williamson Shipping Group was founded over a century ago in one of the Scandinavian nations and was one of 70 shipping companies with a combined turnover of around DWT2.7 million. They had a 16-unit administrative block built for roughly \$450 million. The company's backbone was the liner sector, although the tanker and bulk fleets were also quite important. Drilling plants, support vessels, and supply boats<sup>43</sup> have all emerged as part of the off-shore services sector in recent years. One of the concerns that was of particular importance for the risk management issue was the fact that the group of shipping companies was mostly privately held, with a primary shareholder owned by three partners.

Those who bear risk should, in theory, determine a company's risk posture. In this regard, the owners were unquestionably a large group. Owners had a unique opportunity to build a cohesive, overall risk policy while 'at home,' since they were tested and regularly updated with real events.

### **Their commercial risk management philosophy was built on:**

1. Diversification of interest, and
2. Corporate cash flow planning and control.

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<sup>43</sup> A.Ramachandran, (2018), "Managing Marine Risk", Risk Management association in India, available at: <https://rmaindia.org/managing-marine-risks.html>

They've made an effort to keep a diverse employment position in each industry. In the tank and bulk sector, there was a mix of long and short-term chartering as well as spot trading. They were active in the sector of liner services all over the world. Different lines rarely peaked or sank at the same time due to out-of-stage business cycles around the world. As a result, the liner sector's overall contribution has been stabilized.

The shipping group's main issue with freight vessel operation was commerce, which involved a high risk/high return trade and a low risk/poor return trade, which were frequently tied to distinct time frames. Liner services, for example, have long been able to deliver a reasonable, reasonably steady overtime return because to the establishment lead time. Their investment – the asset itself – was more limited in other industries.

Then it was easy to get in and out since the results were so volatile. It might be the same debate, or it may be about long-term or short-term work contracts. The problem is that by selecting company sectors in one's field of expertise, one might achieve strategic risk diversification at the investment level. Also, because to the variety of interest in each industry, one isn't entirely exposed because markets fluctuate with the business cycle.

Operating budgets, of course, were an important part of the cash flow system, with a detailed annual budget as well as a five-year budget. The budgeting cycle was coordinated by the financial division, but the cost and profit departments were in charge of the actual planning and budgeting. The budgets were presented to the Board and then to them for critical assessment following any necessary adjustments.

They desired target-oriented operating budgets that would excite and serve as a performance bar for company managers, without over emphasizing this. Taking into account the desired direction of the operational budgets, the Board should not have directly included the budgeted operative outcomes in the flow budget. They were willing to go above and beyond the budgeted values on average. In this instance, the cash flow budget's predicted total cost of operations would have to be decreased from some of the authorized operating budgets.

The risk or danger is the most important aspect of maritime insurance. The notion of insured hazards is crucial in the world of naval insurance. In the absence of marine insurance, the insured safeguards his property from specific dangers that he perceives to be maritime hazards and seeks compensation for the losses incurred as a result of such hazards. An insurance coverage can only cover marine dangers. A policy can cover the risk of marine risks or damage from fire, jettison, earthquakes, volcanic eruptions, or lightning, as well as the average overall sacrifice, sacrifice, rescue, and pirates.

### **Perils of the sea**

The perils of the sea are natural phenomena unique to the sea; they include anything that may happen to a ship during its trip as a result of a divine act with no human involvement, such as an accident caused by the winds or waves.

That is to say, any accident or mishap caused by something other than normal wind or wave movement, i.e., severe wind or wave movement, is considered a maritime peril. It's crucial to know the distinction between "sea risks" and "sea hazards." Fire, war risks, pirates, rovers, thefts, captured, confiscated, and detained people and prizes, fire-fighting, barrier, and any other comparable dangers or hazards that may be characterized as political risks are all included in the term "perils on the sea" or which may be designated by the policy<sup>44</sup>. Perils of the sea will include accidents or loss caused due to:

- **Stranding**- when a ship by accident gets stuck in a shallow region and suffers injury.
- **Foundering at sea**- It is forced to the coast when the ship hits an underwater object or, as a result of wind violence, the ship becomes merely a collection of boards.
- **Shipwreck**- It is forced to the coast when the ship hits an underwater object or, as a result of wind violence, the ship becomes merely a collection of boards.
- **Collision**- If a ship strikes a ship or an object or any other similar cause.

Storms, floods, and waves are examples of natural occurrences that are referred to as "God's acts." The premise is that the ship should be able to handle these events and foresee them at sea in order to avoid a loss. It should be emphasized that if the carrier acted in the best interests of the ship, insurers are held accountable for such losses if the carrier did everything a prudent man<sup>45</sup> would do to avoid any damages. When damage is caused by an action that is required to defend the products from a foreseeable hazard, the loss is nevertheless classified as a loss caused by marine danger.

*In Canada Rice Mills Ltd v Union Marine and General Insurance Co Ltd 68 justice Wright wrote: "Where there is an accidental incursion of seawater into a vessel at a part of the vessel, and in a manner, where seawater is not expected to enter in the ordinary course of things, and there is consequent damage to the thing insured, there is prima facie a loss by perils of the sea. The accident may consist in some negligent act, such as improper opening of a valve, or a hole made in a pipe by mischance, or it may be that seawater is admitted by stress of weather or some like cause bringing the sea over openings ordinarily not exposed to the sea or, even without stress of weather, by the vessel heeling over owing to some accident, or by the breaking of hatches or other coverings. These are merely a few amongst many possible instances in which*

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<sup>44</sup>Section 2 (e), Indian Marine Insurance Act 1963

<sup>45</sup>*Supra* note at 54

*there may be a fortuitous incursion of seawater. It is the fortuitous entry of the seawater which is "the peril of the sea in such cases. Whether in any particular case there is such a loss is a question of fact for the jury."*

Because they are more familiar with the loss and the chain of circumstances that led to it, the insured bears the burden of evidence in proving that the loss was caused by the insured risk of the sea. As a result, the assured must show that the maritime danger was so significant that he or she tried everything possible to safeguard against loss but was unable to do so, and if the loss was caused by the action of the wind or the wave, the insured or his representative must show an unusually high wind or wave.

### **Other perils**

As previously stated, the marine risks and the sea are two distinct ideas. Sea threats and other perils are included in Perilson's idea of the sea. The numerous perils against which insurance is available are discussed here.

### **Fire**

The sea faces a serious threat from fire. Any fire on board that results in a loss of ship or cargo might be covered by insurance. Losses from steam explosions or the inherent vice of any good are not included in fire losses. However, if pyrotechnics, explosives, compressed gases, and chemical compounds are carried and not properly maintained or damaged, they might leak and combine with one another, resulting in an explosion or fire.

The loss caused by the fire would also be covered by the policy if the ship's crew set fire to prevent pirates from being apprehended.

### **War risk**

During navy travel, there is a high danger of conflict, which can be mitigated by incorporating a policy provision. War is a very real possibility. A general war clause, with the exception of the FC&S (free from seizure and capture) clause, covers loss due to war risks other than capture and seizure. The insured has the option of opting out of the FC&S clause.

### **Capture and seizure**

Capture refers to the taking of another individual or group of people by force. When a ship goes on a war road, it may be seized by enemy country soldiers or pirates, depending on the situation.

## **Arrest and detention**

There may be instances where a governmental or public authority's constraint results in losses. A circumstance like this might be covered. When ships travel internationally, they may encounter difficulties in any jurisdiction due to ambiguous legislation in the other country, and the insured may suffer damages as a result. Because foreign travels are common in marine trips, the insured should be protected against such losses.

## **Jettison**

Jettison permission is the act of throwing cargo overboard for the benefit of the entire vessel, crew, and remaining cargo, with the goal of lightening a vessel. If a circumstance arises when the ship's captain can opt to dump some cargo overboard in order to save a major amount of the cargo while also saving the ship, he can do so. It may be necessary, for example, to lighten and throw the on-board cargo in order to liberate a stranded ship.

## **Piracy and theft**

Pirates are being robbed on the high seas. Pirates are the sea's criminals. They attack, hijack, steal, or other crimes against the crew and the boat from the shore. Passengers have also been known to perform pirate acts on the ship. Robbery refers to the act of stealing or removing items from a ship in order to sell them. When the merchandise is stolen by the personnel or a passenger, it is not considered stealing. Because marine travel takes place in international waters, such activities should not be neglected, and such losses should be insured.

## **Barratry**

Barratry is an act of purposeful misbehavior perpetrated by the master or crew of a vessel against the interests of the shipowner. By offering his approval to such acts or deliberately disregarding them, the master may be a party directly or indirectly to the barriers of acts such as ship robbery, fraudulent deviation from ship, unlawful refusal to unload the cargo, and so forth. "The goal is to carry it out at the expense of the ship's owner. This is not uncommon, especially if the ship's owner and the freight carrier are unaware of each other; thus, it is in the insured's best interest to be covered against such risks".

## **All other perils**

The insurance policy will be narrower and more technical as a result of these threats being covered. If the insured wishes, he can defend himself against any threat on the sea by including these particular conditions in his policy. These threats are not new, but they are of the same type as the ones listed above. All others perils include:

## **Inchmaree clause**

This clause was found to be based on the Inchmaree, the ship that was engaged in the case of Thames & Mersey Marine Insurance Co. v Hamilton, Fraser & Co., that was not directly associated with hazards on the sea but not avoidable in carrying out tasks such as loading, etc.<sup>46</sup> “where the court held that though the cause of loss is not directly related to the perils on the sea but the same cannot be avoided while carrying out the activities like loading etc”<sup>47</sup>. As a result, the inchmaree clause is established as a standard clause for insurance covering risks that are not directly related to maritime risks. This proviso states that the insurer is liable for damage to the vessel or cargo caused by the shattering of a boiler, shafts breaking, or any incident at docking facilities, even if the insurer exercised reasonable diligence. This includes the captain, crew, pilots, etc<sup>48</sup>, who have died as a result of navigational errors or negligence.

### **Running down clause**

The down clause ensures that the vessel's owner is protected in the event of a collision with another ship. In the event of a collision with another ship, this condition states that the insurer is responsible for three-quarters of the damage caused by the other ship. For damages payable, the insured has a limit of three-quarters of the value of the assured vessel. This clause is based on the concept that because the shipowner is not accountable for careless navigation, he should not be liable for loss of collision.

## **6.4 GENERAL EXCLUSION**

Certain dangers or risks are not covered by the insurance coverage. It's possible that the insurance policy does not cover the risk due to the nature of the risk or the risk itself. The most essential understandable exception is when the loss or harm is caused by the insured's voluntary wrong doing. Then there are other risks that are so evident that they are not covered by insured<sup>49</sup>. policies unless they are clearly stated. These are the ones mentioned in paragraph 55(2)(c).

### **Wear and tear**

Wear and tear is the natural deterioration of an object that occurs as a result of routine use. Ships are subjected to wear and tear as a result of wind and water activity, such as wood rot, sailing, and breakage. When a shipment of perishable items, such as fruit, is loaded onto a ship, it is evident that the contents will deteriorate. As a result, this is ruled out as a threat, as it will very certainly be a common occurrence.

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<sup>46</sup>(1887) 12AC 484

<sup>47</sup><http://www.duhaime.org/LegalDictionary/I/InchmareeClause.aspx> (Last visited on 25th May, 2014)

<sup>48</sup><http://www.businessdictionary.com/definition/Inchmaree-clause.html#ixzz32x2kzSsa> (Last visited on 25th May, 2014)

<sup>49</sup>Section 55(2)(a), Indian Marine Insurance Act 1963

## **Leakage**

If a ship leaks, it is not covered by any insurance coverage unless it is caused by an accident.

## **Breakage**

If the break is caused by the ship's movement, no insurance coverage will cover it. Broken goods at sea can be insured as a risk, but not when the ship is moving normally owing to a storm or turbulence. Leaks, breakdowns, and wear and tear are all unavoidable and not unintentional business losses.

## **Inherent vice**

This indicates that it's a good thing that the insured can't sue for reimbursement due to natural decomposition, as if the vegetables had gone bad. As a result, if the nature of the items has deteriorated, the insured will not be covered by insurance. The insured cannot be compensated for the cargo, nor can it be compensated if the cargo contains animals that die due to natural causes.

## **Inadequate packing**

If the loss happens as a result of inadequate packaging, the insurer is not responsible. It is the insured's responsibility to ensure that its goods are properly wrapped before sailing.

## **Fault of vessel**

Shipowners are sometimes not monitored by their ships due to financial difficulties, resulting in cargo losses or damage. The insurance company is not liable in this scenario because the insured individual has no control over the ship's fault.

## **Loss by delay**

The insurance policy will not cover a loss caused by a delay, even if the delay is caused by an insured risk. To cover delays in an insurance policy<sup>50</sup>, the policyholder must include this condition separately.

## **6.5 MARINE LOSSES AND MEASURE OF INDEMNITY**

The compensation given and agreed upon to the insured for losses is the basic purpose of an insurance policy. The damage to the insured property is referred to as a loss. The losses covered by naval insurance must have occurred as a result of a marine adventure.

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<sup>50</sup>Section 55(2)(b) Indian Marine Insurance Act 1963

Losses in a maritime voyage are similar to losses in other types of insurance, as they are related to marine risks. This chapter examines the many forms of maritime losses and how compensation is calculated in the event of a loss.

### **Kinds of marine loss**

The vessel is simultaneously exposed to different marine dangers, resulting in marine losses. When a ship is exposed to a marine hazard, the loss or damage is caused by the elements. On the outskirts marine loss can be broadly divided into two types:

- Total loss
- Partial loss

**6.5.1 Total Loss:** Section 56 of the Act gives vague declaration of total loss. It merely specifies a total loss can be divided into two types. The terms "totally lost and there is now" and "recovery" are used interchangeably in the phrase "in simple word to total loss." The section depicts a situation in which products are delivered to their destination but are not fully or partially identified. In the event of total loss indemnity would be the total insured value of the products. It would have been destroyed, and it would now be necessary to recover or restore it. Which is exactly what would be obliterated.

When the value of the subject matter after such mending or improvement is overtaken because of actual total losses or when expenses to repair or recover the subject matter are overtaken, this is referred to as constructive loss. This signifies that a constructive complete loss occurs directly to the topic, but the topic is dumped by the Insured due to a related entire loss or because the topic's repair expenses exceed the cost of the linked subject matter.

If the ship or products are lost completely, the loss is referred to as a total loss.

Total loss is divided into two types.

**Actual loss:** If the ship or products are the subject of the insurance, and the subject matter is nothing, the loss is referred to as an actual total loss. Section 57 of Act 90 has been defined up to this point. The following are some current examples of the situation:

When the ship is broken into pieces

- a. When the ship sinks into the deep of the sea.
- b. When the good sink into the sea and they cannot be searched



If, despite the repeated efforts of the insured, a ship is missing and cannot be traced, it would be deemed as a true total loss because the subject matter cannot be returned to the insured<sup>51</sup>. In *Loyal Marines v National Insurance Co Ltd*, the insured person is expected to reduce the damage to the fullest extent practicable in order to avoid loss.<sup>52</sup>

The insurance firm tried to avoid his liability when the ship was deeper stuck and the insurer could do no straightening at all on the grounds that the insured had not tried to avoid the loss, but the court held that the insured could not do much and held the insurer to be liable for the indemnification in the given circumstances.

### **Constructive Total Loss**

“A construction-total loss occurs when the subject matter has not been destroyed to the expected total loss or because of the cost of repairs”.

Section 60 of the Act says that the insured is deprived of the possession of his goods or he is unable to retrieve his goods or ship, as the case may be. It's possible that he won't be able to recover his belongings.

In the case of *Peacock Plywood(P)Ltd v Oriental Insurance Co Ltd*<sup>53</sup>

the interpretation of the "construction and total" is also subject to the policy's provisions and the policy's requirements. The most crucial rule of constructive total loss is abandonment. What is constructive and total loss is not primarily determined by the Act's requirements; the interpretation of the No constructive total loss may be possible without abandoning.

“It was quickly established that the insured as a no option to treat that loss as actual total loss or a partial loss was constructive. This power has been granted under the Act's Section 61”. A notice of abandonment has to be given to the insurer when the insured decided to treat a constructive total loss as an actual loss under the provisions of Section 62(1). When the requester or recipient of the claims has reassured him/her, no notice may be required to identify the receiver's risk<sup>54</sup>.

### **6.5.2 Partial loss**

All of them are stereotypes. Everything, in fact Partial loss refers to whatever suffers partial damage and is covered. The partial losses are the ones listed below.

### **Partial average loss**

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<sup>51</sup>Section 58, Indian Marine Insurance Act 1963

<sup>52</sup>IV (2006) CPJ 250 NC

<sup>53</sup>(2006) 12 SCC 673

<sup>54</sup>*Supra* note at 13 p 290

The act's section 64 defines a partial average loss as a loss that is not a general loss. The partial average loss is what it's called. It refers to when a portion of the insured subject matter is harmed. When a ship is exposed to a risk, it can be destroyed to some extent only or if only a specific portion of the products is destroyed. In the case of a partial loss, the insured would only be entitled to the repair costs if the loss occurred, i.e. Part of a three-kind average is lost;

- partial loss of a ship
- partial loss of goods, and
- partial loss of freight

### **General Average Loss**

A general average act<sup>55</sup> is used to calculate average loss. Any party makes a significant sacrifice or invests a reasonable amount of money in it. It must be taken and exposed with the intention of saving the spirit. The action must be carried out.

The average general contribution is the total amount of the party's contributions to the various parties<sup>56</sup>.

In plain terms, general average loss is the loss sustained by each party's sacrificed parties.

If several goods are thrown from the ship to lighten it, for example.

If products must be transported to port to prevent any attack from combining and money is spent on maintaining the mine storehouse, this is also considered an everyday act.

### **Salvage Charges**

Another significant idea that is part of the Partial loss is the idea of salvage charges. Charges that are incurred in order to prevent any loss from happening due to an insured peril can be recovered as a loss by the peril. Such provisions, on the other hand, should be addressed clearly in the marine policy<sup>57</sup>.

In marine law "salvage" is used similarly as the salvor's service and the salvor's reward. However, insurance coverage came to the rescue. It is used to mean the things saved and rescued.

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<sup>55</sup>Section 66, Indian Marine Insurance Act 1963

<sup>56</sup>S. "Huebner, *Policy Contracts in Marine Insurance*, 26 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 464 (September, 1905) available at <http://www.jstor.org/stable/1011017?seq=12> (Last visited on 27th May, 2014)"

<sup>57</sup>Section 65, Indian Marine Insurance Act 1963

## **CHAPTER 7**

### **CONCLUSION AND RECOMMENDATIONS**

#### **7.1 CONCLUSION**

Insurance fundamentally assists individuals or businesses in reducing their lifetime risk. It protects assets' economic worth and mitigates the impact of potential losses. In theory, insurance is a bet in which the insured pays a premium in exchange for a possible or unlikely future loss. The insurer will be compensated if this occurs, but will not be paid.

For ship owners or cargo owners, marine insurance is risk cover insurance against losses in transit of their vessel or cargo against risks at sea, i.e. the risk associated in the marine journey. There are a variety of hazards that you may encounter while travelling in marine waters, and determining whether the loss was caused by an anticipated hazard that is not covered by insurance, or if the insured's safety hazard is significantly complicated by marine insurance, is difficult. If the insured suffers only as a result of the insured risks, the insurance company undertakes to compensate the loss.

Because of its complexity and breadth, marine insurance follows the same general rules of insurance law as the rest of the world, but the same principle must be applied with greater precision when applied to marine insurance, as these are the guiding principles in deciding claims involving maritime losses. These principles are sometimes broadened to broaden their scope, and they must occasionally be narrowed to decide precisely what must and must not be included in them.

Marine insurance is one of the oldest types of insurance in the world. The 1906 maritime insurance law, on the other hand, established international norms and policies. The provisions of the Indian Marine Insurance Act are heavily mirrored by the British counterpart.

In its 21st Maritime Insurance Report, the Law Committee declared that law was needed and justified its adherence to the British Act by claiming that because they were a nation that traded on maritime voyages for a decade, the law was better able to assess its application and that Lloyd's policy was not unusual, but it was because they were a nation that traded on maritime voyages for a decade. The Commission, on the other hand, did not disregard the holes in British legislation, and moved to address them by explaining and putting additional provisions into the Act. It has resulted in several forms of marine insurance policies that must be in the form of a contract in order to be accepted as proof by a marine insurance company. Marine insurance contracts can be included in a variety of various sorts of policies available to an insured individual. These policies are exceptionally broad in scope and can cover a wide range of risks and losses. It is not incorrect to say that each policy can be tailored to the needs of the insured. It's incorrect. Because of the scope of maritime insurance, marine policymaking can adequately satisfy all of the policyholder's needs. As an example, ship owners utilize a travel policy to protect their ships against calamities while in transit.

There's also a time policy that protects ships for a set period of time, and it's applicable wherever the vessel is permitted to cruise. This guideline is also applicable to products and ships in port or docking zones. If a ship owner lends his ship for someone else's cargo, it's preferable to have a travel policy because the time taken does not include the ship, and the ship would be protected from sickness for the duration of the journey, which can take

months. If a carrier prefers to purchase a travel policy or a combination insurance, his products will be secured for the duration of the journey as well as for 30-60 days after arrival at the destination port.

There are other different policies accessible, including the beloved and unprecedented policy. According to an estimated policy, the amount payable for the loss to the topic is spelled out and paid to the insurer when the total loss is real or constructive. It is not determined in advance how much would be paid in case of loss and is determined based on the magnitude of the loss at the time of loss. This policy is the polar opposite of the valued policy, which determines the value.

An appreciated policy would be preferred by a shipowner over an unvalued policy since he would know how much the insurer would cover. Instead, a cargo owner would adopt an unusual policy, because the value of the items would be estimated at the time of loss, giving it an edge in recovering the loss in better condition. The risk and losses incurred by each voyage are also dependent on the type of journey, as well as the route or time of departure, making it necessary to have a variety of maritime policies. As a result, there is no one maritime policy that would apply to all maritime traffic. The insurance are designed to guard against a variety of risks and losses. A total loss or partial loss clause is an option. All maritime insurance policies must meet a minimum level and have content. The insurance might also state the risks it covers, such as losses covered by a naval policy. Marine hazards are also distinct from those covered by other types of insurance. These dangers are only tied to the sea. A policy may cover any hazards or risks and dangers mentioned in the policy. The insured must decide whether or not to be covered, and he must be informed of all potential hazards posed by his ship or cargo.

While the Indian Act does a good job of defining the various categories of maritime insurance risks, it does not specify what should be included in them. There must be provisions to encompass various and newer sorts of risks that are not covered by the Act but may arise over time or cause problems with marine traffic. Inchmaree is a crucial phrase that allows for the protection of risks that do not directly or indirectly pose a risk at sea, as defined by law. However, there are certain restrictions to this as well.

## **7.2 RECOMMENDATIONS**

1. Even when the act is read with a bear, it can be claimed that it is a highly generic act and that the Section requires interpretation when it is applied, regardless of how effectively the legislature's objectives were to include the separate maritime transport insurance law. Although the paragraphs specify what should be included, they do not specify how long the paragraph should be. A more specific action is required, as well as a clearer explanation of each part. All predicted risks at sea, including the risk, are not adequately covered in the Act, necessitating the adoption of the so-called "inchmaree clause."

2. Changing and enhancing the Act to include new forms of hazards, including as piracy, as defined by current jurisdictional legislation, as well as numerous other types of dangers that harm marine and passenger safety.
3. The Act must also incorporate a number of additional policies that are useful in business or that may be useful in light of current market conditions and economic need, though they are not widely used.

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# **APPENDICES**

## Appendix- I

# MARINE INSURANCE ACT, 1963

### Contents

Sections	Particulars
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1	Short title and commencement
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(1) This Act may be called the Marine Insurance Act, 1963.

(2) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint.

2	Definitions
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in this Act, unless the context otherwise requires, -

(a) "contract of marine insurance" means a contract of marine insurance as defined by section 3;

(b) "freight" includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or other movables, as well as freight payable by a third party, but does not include passage money;

(c) "insurable property" means any ship, goods or other movables which are exposed to maritime perils;

(d) "marine adventure" includes any adventure where-

(i) any insurable property is exposed to maritime perils;

3	Marine insurance defined
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A marine insurance contract is an agreement in which the insurer agrees to indemnify the insured, in the way and at the extent agreed, against marine losses, that is, losses incurred as a result of participating in a maritime adventure.

4	Mixed sea and land risks
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(1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship is being built, launched, or any adventure similar to a marine adventure is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as they apply, shall apply; however, except as provided in this section, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of insurance in the form of a marine policy<sup>3</sup>.

## 5 Lawful marine adventure

Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance

## 6 Avoidance of wagering contracts

(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

(2) A person is particularly interested in a marine adventure if he has a legal or equitable relationship to the adventure or any insurable property at risk therein, as a result of which he may benefit from the safety or timely arrival of insurable property, or may be harmed by its loss, damage, or detention, or may incur liability in respect thereof.

## 7 Insurable interest defined

(1) Every individual who is engaged in a maritime adventure has an insurable interest, subject to the terms of this Act.

(2) A person is particularly interested in a marine adventure if he has a legal or equitable relationship to the adventure or any insurable property at risk therein, as a result of which he may benefit from the safety or timely arrival of insurable property, or may be harmed by its loss, damage, or detention, or may incur liability in respect thereof.

## 8. When interest must attach

(1) The assured must be interested in the insured subject-matter at the time of the loss, but he does not have to be interested when the insurance is taken out:

Provided that, if the subject-matter is insured "lost or not lost," the assured may collect even if he did not acquire his interest until after the loss, provided the assured was aware of the loss at the time of executing the insurance contract, while the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

#### 9 Defensible or contingent interest

(1) A defensible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

#### 10 Partial interest

A partial interest of any nature is insurable.

#### 11 Reinsurance

(1) Under a maritime insurance contract, the insurer has an insurable interest in the risk and can reinsure it.

(2) Unless the policy expressly states otherwise, the original guaranteed has no right or interest in the reinsurance.

#### 12 Bottomry

The money on bottomry or respondentia lender has an insurable stake in the loan.

#### 13 Master's and seamen's wages

The master or any member of a ship's crew has an insurable interest in their salary.

#### 14 Advance freight

In the case of advance freight, the person who advances the freight has an insurable interest in the event that the freight is not repaid in the event of a loss .

#### 15 Charges of insurance

The assured has an insurable interest in the charges of any insurance which he may effect

#### 16 Quantum of interest

(1) When the insured property is mortgaged, the mortgagor has an insurable interest in the whole value of the property, while the mortgagee has an insurable interest in any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person with an interest in the subject-matter insured may insure on behalf of and for the benefit of other people who have an interest in the subject-matter insured, as well as for his own profit .

#### 17 Assignment of interest

Unless there is a clear or implicit agreement with the assignee to the contrary, when the assured assigns or otherwise disposes of his interest in the subject-matter insured, he does not transfer his rights under the insurance contract to the assignee.

However, the requirements of this section have no bearing on interest transfer by operation of law .

#### 18 Measure of insurable value

The insurable worth of the subject-matter insured must be determined as follows, subject to any specific provision or valuation in the policy: -

In ship insurance, the insurable value is the ship's value at the start of the risk, including the ship's outfit, provisions, and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus insurance charges on the whole :

#### 19 Insurance is uberrimae fidei

A maritime insurance contract is founded on the utmost good faith, and if one party fails to follow the utmost good faith, the contract may be avoided by the other party .



## 20 Disclosure by assured

(1) Subject to the terms of this section, the assured must disclose to the insurer any significant fact that is known to him before the contract is formed, and the assured is considered to know every circumstance that should be known to him in the regular course of business. If the insured fails to provide this information, the insurer may terminate the contract.

(2) Every element that might affect a sensible insurer's decision to set the premium or decide whether or not to assume the risk is significant.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely :-

(a) any event that reduces the risk;

b) any circumstance that the insurer is aware of or should be aware of. The insurer is presumed to know matters of general notoriety or knowledge, as well as matters that an insurer in the ordinary course of his business should know;

(c) any circumstance for which the insurer waives information;

(d) any circumstance for which disclosure is unnecessary due to any express or implied warranty.

(4) It is a question of fact in each case whether or whether any particular situation that is not revealed is relevant.

## 21 Disclosure by agent effecting insurance

Where an insurance is completed for the insured by an agent, the agent shall disclose to the insurer, subject to the requirements of the previous section regarding circumstances that do not need disclosure-

(a) every material circumstance that the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent; and

(b) every material circumstance that the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent in the ordinary course of business.

## 22 Representations pending negotiation of contract

(1) During the contract discussions and before the contract is signed, the insured or his agent must make every significant representation to the insurer that is truthful. If it is false, the insurer may refuse to honour the contract.

(2) A representation is something that would sway a sensible insurer's decision to set the premium or decide whether or not to assume the risk.

(3) A representation can be true or false, or it might be based on expectation or belief.

(4) A factual representation is accurate if it is substantially correct, that is, if the discrepancy between what is represented and what is actually correct is not regarded important by a responsible insurer.

## 23 When contract is deemed to be concluded

A contract of marine insurance is deemed to be concluded when the assured's proposal is accepted by the insurer, whether or not the policy is issued at the time; and for the purpose of demonstrating when the proposal was accepted, the slip, covering note, or other customary memorandum of the contract, even if it is unstamped, may be used.

## 24 Contract must be embodied in policy

A contract of marine insurance is not admissible as evidence unless it is contained in a marine policy that complies with the provisions of this Act. The policy can be performed and issued at the moment the contract is signed, or it can be done later.

## 25 What policy must specify

A marine policy must specify -

(1) the name of the assured, or of some person who effects the insurance on his behalf;

(2) the subject-matter insured and the risk insured against;

(3) the voyage, or period of time, or both, as the case may be, covered by the insurance;

(4) the sum or sums insured;

(5) the name or names of the insurer or insurers .

## 26 Signature of insurer

(1) The insurer must sign or have the insurer sign a maritime insurance.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription represents a separate contract with the assured, unless the opposite is expressly stated .

## 27 Voyage and time policies

(1) The policy is called a "voyage policy" when the contract is to insure the subject-matter at and from, or from one location to another or others, and a "time policy" when the contract is to insure the subject-matter for a specific length of time. Both a voyage and a time contract may be included in the same policy.

(2) Any time policy that is made for a period of more than twelve months is void .

## 28 Designation and subject matter

(1) In a maritime policy, the subject-matter insured must be specified with reasonable certainty.

(2) The nature and scope of the assured's interest in the subject-matter insured do not need to be stated in the policy .

(3) Where the policy designates the subject-matter insured in broad terms, it is interpreted to pertain to the assured's intended coverage interest .

## 29 Valued policy

(1) A policy can be either valuable or worthless.

(2) A valued policy is one that states the agreed-upon value of the covered subject-matter.

(3) Subject to the provisions of this Act and in the absence of fraud, the value established by the policy is conclusive of the insurable value of the subject intended to be covered, whether the loss is complete or partial, as between the insurer and the assured .

## 30 Unvalued policy

An unvalued policy is one that does not identify the value of the subject-matter insured, but does leave the insurable value to be determined later in the way previously described, subject to the limit of the sum insured .

### 31 Floating policy by ship or ships

(1) A floating policy is one in which the insurance is described in broad terms and the name or names of the ship or ships, as well as other details, are determined by a future declaration.

(2) The following statement or declarations may be made on the policy by endorsement or in any other usual method.

(3) Unless the policy specifies otherwise, declarations must be made in the order in which they were sent or shipped. They must, in the case of goods, include all consignments that fall within the policy's terms, and the value of the goods or other property must be accurately stated; however, an omission or erroneous declaration may be corrected even after loss or arrival, if the omission or declaration was made in good faith .

### 32 Construction of terms in policy

(1) A policy might be in the Schedule's format.

(2) The terms and expressions stated in the Schedule will be understood as having the scope and meaning assigned to them in the Schedule, subject to the requirements of this Act and unless the context of the policy demands otherwise .

### 33 Premium to be arranged

(1) A fair premium is due when an insurance is effected at a premium to be negotiated and no agreement is made.

(2) If an insurance policy provides for an additional premium to be paid in the case of a specified event, and the event occurs without such an arrangement, a reasonable additional premium must be paid .

### 34 Double insurance

(1) The assured is said to be over-insured by double insurance when two or more policies are executed by or on behalf of the assured on the same adventure and interest or any portion thereof, and the sums covered exceed the indemnity permitted by this Act.

(2) Where the assured is over-insured by double insurance, unless the policy expressly states otherwise, the assured may seek payment from the insurers in whatever order he sees proper, provided that he is not entitled to any sum in excess of the indemnity permitted by this Act;

### 35 Nature of warranty

(1) A warranty is defined as a promissory warranty in the following parts pertaining to warranties, which implies a warranty in which the assurance agrees to do or not do something, or to meet a condition, or to confirm or deny the existence of a certain state of facts .

(2) A warranty can be stated explicitly or impliedly .

(3) A warranty, as described above, is a condition that must be met exactly, whether or not it is important to the risk. If it is not followed, the insurer is released from obligation as of the date of the breach of warranty, subject to any stated provisions in the policy, but without prejudice to any liabilities incurred prior to that date .

### 36 When breach of warranty excused

(1) Non-compliance with a warranty is forgiven where the warranty no longer applies to the conditions of the contract due to a change in circumstances, or when compliance with the warranty is made unlawful by a subsequent legislation.

(2) If a guarantee is breached, the assured cannot assert the argument that the violation was repaired and the warranty was followed prior to loss.

(3) The insurer may waive a breach of warranty .

### 37 Express warranties

(1) An explicit guarantee can be expressed in any way that the purpose to warrant can be inferred.

(2) The policy must include, or be written on, an explicit warranty, or be stated in a document incorporated by reference into the policy.

(3) Unless it is inconsistent with implied warranty, an explicit warranty does not preclude implied warranty .

### 38 Warranty of neutrality

(1) When insurable property, whether a ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the start of the risk, and that the property's neutral character shall be preserved during the risk, to the extent that the assured can control the matter .

(2) Where a ship is expressly warranted "neutral," there is also an implied condition that she shall be properly documented, that is, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers, to the extent that the assured can control the matter. If a loss occurs as a result of a breach of this provision, the insurer has the option to terminate the contract .

39 No. implied warranty of nationality

There is no implied warranty as to the nationality of a ship or that her nationality shall not be changed during the risk

40 Warranty of good safety

Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day

41 Warranty of seaworthiness of ship

(1) In a voyage policy, there is an implied assurance that the ship will be seaworthy for the purpose of the adventure insured at the time of departure.

(2) Where the insurance applies while the ship is in port, there is also an implied assurance that she will be sufficiently fit to face the port's normal hazards at the start of the risk.

(3) Where the policy applies to a voyage that is completed in stages and during which the ship requires different types of or additional preparation or equipment, there is an implied warranty that the ship is seaworthy in respect of such preparation or equipment at the start of each stage for the purposes of that stage.

(4) A ship is considered seaworthy if she is substantially fit in all respects to face the ordinary hazards of the seas during the adventure insured .

42 No implied warranty that goods are seaworthy

(1) There is no implicit assurance that goods or other movables are seaworthy in a policy on goods or other movables.

(2) There is an implied assurance in a trip insurance on goods or other movables that the ship is not only seaworthy as a ship, but also reasonably fit to convey the goods or other movables to the destination envisioned by the policy at the time of departure .

#### 43 Warranty of legality

There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner

#### 44 Implied condition as to commencement of risk

(1) When the subject-matter is insured by a voyage policy "to and from" or "from" a specific location, the ship does not have to be there when the contract is signed, but there is an implied condition that the adventure must be started within a reasonable time, and that the insurer may avoid the contract if the adventure is not started.

(2) The implicit condition can be negative if the insurer can prove that the delay was caused by circumstances that were known to him when the contract was signed, or if he waived the requirement .

#### 45 Alteration of port of departure

Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach .

#### 46 Sailing for different destination

The risk does not apply if the insurance specifies a destination and the ship travels to any other destination instead of that stated in the policy .

#### 47 Change of voyage

(1) A change of trip occurs when the ship's destination is deliberately altered from the destination anticipated under the insurance after the risk has been established.

(2) Unless the policy expressly states otherwise, where a change of voyage occurs, the insurer is released from liability as of the time of change, that is, as of the time when the decision to change it is manifested; and it

makes no difference that the ship may or may not have left the course of voyage contemplated by the policy when the loss occurs .

#### 48 Deviation

(1) When a ship deviates from the journey intended by the insurance without justifiable cause, the insured is released from obligation as of the time of deviation, regardless of whether the ship regains her course before any loss occurs .

(2) There is a departure from the policy's intended journey-

(a) if the policy specifies the course of the journey and that path is deviated from; or

(b) if the policy does not specify the course of the journey, but the normal and customary course is deviated from .

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract .

#### 49 Several ports of discharge

(1) The ship may travel to all or any of the ports of discharge indicated by the policy, but she must proceed to them, or such of them as she goes to, in the sequence defined by the policy, absent any practise or substantial cause to the contrary. There is a divergence if she does not .

(2) Where the policy is to "ports of discharge" within a given region that are not named, the ship shall continue to them, or such of them as she travels to, in geographical order, absent any custom or substantial cause to the contrary. If she doesn't, there's a problem .

#### 50 Delay in voyage

In the event of a journey insurance, the adventure covered must be pursued with reasonable haste throughout its course, and if it is not pursued with reasonable dispatch without justifiable explanation, the insurer is released from obligation as of the time when the delay became unreasonable .

#### 51 Excuse for deviation or delay

(1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused-



- (a) where authorized by any special term in the policy; or
- (b) where caused by circumstances beyond the control of the master and his employer ; or
- (c) where reasonably necessary in order to comply with an express or implied warranty; or
- (d) where reasonably necessary for the safety of the ship or subject-matter insured ;

52 When and how policy is assignable

(1) Unless the policy specifically prohibits assignment, a maritime policy can be transferred through assignment. It can be assigned before to or following a loss.

(2) Where the beneficial interest in a marine policy has been assigned, the assignee of the policy has the right to sue on the policy in his own name, and the defendant has the right to raise any defence arising out of the contract that he would have been entitled to raise if the suit had been brought in the name of the person by or on behalf of whom the policy was effected .

(3) A maritime policy may be transferred by endorsement or in any other method that is usual .

53 Assured who has no interest can not assign

Any later transfer of the policy is ineffective if the assured has parted with or lost his interest in the subject-matter insured and has not expressly or impliedly consented to assign the policy before or at the time of doing so.

54 When premium payable

Unless otherwise agreed, the insured's or his agent's obligation to pay the premium and the insurer's obligation to issue the policy to the assured or his agent are contemporaneous conditions, and the insurer is not obligated to issue the policy until the premium is paid or tender .

55 Included and excluded losses

(1) The insurer is accountable for any loss proximately caused by a hazard insured against, subject to the requirements of this Act and unless the policy otherwise specifies, but he is not liable for any loss not proximately caused by a peril covered against .

(2) In particular -

(a) The insurer is not liable for any loss caused by the assured's wilful misconduct, but unless the policy stipulates otherwise, he is liable for any loss proximately caused by a danger insured against, even if the loss would not have occurred but for the master's or crew's misbehaviour or carelessness;

(b) Unless the policy expressly states otherwise, the ship or goods insurer is not responsible for any damage proximately caused by, even if the delay is caused by a danger covered by the insurance ;

#### 56 Partial and total loss

(1) A whole or partial loss might occur. A partial loss is any loss that is not a total loss, as described below.

(2) A total loss might either be a real or a constructive total loss.

(3) Unless the conditions of the policy indicate otherwise, protection against complete loss includes both a constructive and an actual total loss.

(4) If the assured sues for a whole loss but the evidence only establishes a partial loss, he may recover for a partial loss unless the policy expressly states otherwise .

#### 57 Actual total loss

(1) An actual total loss occurs when the subject-matter insured is destroyed or so damaged that it ceases to be an item of the sort covered, or when the assured is irreversibly deprived of it.

(2) No notice of abandonment is required in the event of an actual total loss .

#### 58 Missing ship

Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed .

#### 59 Effect of transshipment, etc .

When a voyage is interrupted at an intermediate port or place due to a peril insured against, the insurer's liability continues, notwithstanding the master's right to land and reship the goods or other movables, or to transship them and send them on to their destination, notwithstanding any special stipulation in the contract of affreightment.

#### 60 Constructive total loss defined

(1) There is a constructive total loss when the subject-matter insured is reasonably abandoned because its actual total loss appears to be unavoidable, or because it could not be preserved from actual total loss without an expenditure that would exceed its value when the expenditure was incurred, subject to any express provision in the policy.

(2) In particular, there is a constructive total loss-

(i) where the assured is deprived of the possession of his ship or goods by a peril insured against, and

(a) it is unlikely that he can recover the ship or goods, as the case may be, or

(b) the cost of recovering the ship or goods, as the case may be,

#### 61 Effect of constructive total loss

Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

#### 62 Notice of abandonment

(1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make enquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

#### 63 Effect of abandonment

(1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss .

#### 64 Particular average loss

(1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average .

#### 65 Salvage charges

(1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils .

(2) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred .

#### 66 General average loss

(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperiled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution .

#### 67 Extent of liability of insurer for loss

(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity .

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy .

#### 68 Total loss

Subject to the provisions of this Act, and to any express provision in the policy, where there is a total loss of the subject-matter insured-

(1) if the policy be a valued policy, the measure of indemnity is the sum fixed by the policy;

(2) If the policy be an unvalued policy, the measures of indemnity is the insurable value of the subject-matter insured.

#### 69 Partial loss of ship

Where a ship is damaged, but is not totally lost, the measure of indemnity subject to any express provision in the policy, is as follows-

(1) where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;

(2) where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;

(3) where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above ;

#### 70 Partial loss of freight

Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy .

#### 71 Partial loss of goods, merchandise, etc .

Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject of any express provision in the policy, is as follows:-

(1) where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole ascertained as in the case of an unvalued policy;

(2) where part of the goods, merchandise or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss

#### 72 Apportionment of valuation

(1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods .

#### 73 General average contributions and salvage charges

(1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under-insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liabilities must be determined on the like principle

#### 74 Liabilities to third parties

Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability

#### 75 General provisions as to measure of indemnity

(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

#### 76 Particular average warranties

(1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses

properly incurred pursuant to the provisions of the suing and laboring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage .

#### 77 Successive losses

(1) Unless the policy expressly states otherwise, and subject to the terms of this Act, the insurer is responsible for subsequent losses, even if the cumulative amount of such losses exceeds the sum covered.

(2) If a partial loss that has not been repaired or otherwise made good is followed by a total loss under the same policy, the assured can only collect for the total loss :

**Provided that nothing in this section shall affect the liability of the insurer under the suing and laboring clause.**

#### 78 Suing and laboring clause

(1) Where the policy contains a suing and laboring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and laboring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and laboring clause .

#### 79 Rights of subrogation

1) When the insurer pays for a total loss of the subject-matter insured, either of the whole or, in the case of goods, of any apportionable part, he becomes entitled to take over the assured's interest in whatever remains of



the subject-matter so paid for, and he is thus subrogated to all the assured's rights and remedies in and in respect of that subject-matter as from the date of payment.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he does not acquire title to the subject-matter insured, or any part of it that may remain, but he is then subrogated to all of the assured's rights and remedies in and in respect of the subject-matter insured as of the time of the casualty causing the loss, in so far as the assured has been indemnified, according to the terms of the policy .

#### 80 Right of Contribution

(1) When the assurance is over-insured by double insurance, each insurer is obligated to contribute ratably to the loss in proportion to the amount for which he is liable under his contract, as between himself and the other insurers.

(2) If an insurer pays more than his share of the damage, he has the right to bring a contribution suit against the other insurers, and he has the same rights as a surety who has paid more than his share of the obligation .

#### 81 Effect of under-insurance

Where the assured is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance .

#### 82 Enforcement of return

Where the premium, or a proportionate part thereof, is, by this Act, declared to be returnable-

(a) if already paid, it may be recovered by the assured from the insurer, and,

(b) if unpaid, it may be retained by the assured or his agent .

#### 83 Return by agreement

Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured .

#### 84 Return for failure of consideration

(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured .

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured .

#### 85 Ratification by assured

Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss

#### 86 Implied obligation varied by agreement or usage

1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negative or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

#### 87 Reasonable time, etc., a question of fact

Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.

#### 88 Covering note as evidence

Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding

#### 89 Power to apply Act with modifications, etc., in certain cases

The Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall, in their application to contracts of marine insurance relating to any class of ships exclusively used in inland navigation, be subject to such conditions, exceptions and modifications as it may specify in the notification .

#### 90 Certain provisions to override Transfer of Property Act, 1882

Nothing in clause (e) of section 6 of the Transfer of Property Act, 1882, shall affect the provisions of sections 17, 52, 53 and 79.

## 91 Savings

The rules of law, including the law merchant, which applied to contracts of marine insurance immediately before the commencement of this Act, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance .

# APPENDIX - II

# **MARINE INSURANCE ACT, 1906**

## **1. Marine insurance defined**

A marine insurance contract is one in which the insurer agrees to indemnify the assured, in the way and to the extent agreed, against maritime losses, that is, losses incurred in the course of a marine adventure.

## **2. Mixed sea and land risks**

(1) A marine insurance contract may be extended, either expressly or by usage of trade, to protect the guaranteed against losses on inland waters or any land risk that may arise as a result of a sea voyage.

(2) Where a ship is in the process of being built or launched, or any adventure similar to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as they apply, shall apply; however, except as provided in this section, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contingency contract.

## **3. Marine adventure and maritime perils defined**

(1) Every legitimate marine adventure may be the subject of a marine insurance contract, according to the restrictions of this Act.

(2) There is a specific aquatic adventure where -

(a) Maritime risks affect any ship's cargo or other moveables. Such property is referred to as "insurable property" in this Act.

(b) The earning or acquisition of any freight, passage money, commission, profit, or other financial gain, or the security for any advances, loans, or disbursements, is jeopardised by maritime risks;

(c) Maritime risks may expose the owner of insurable property, or any other person interested in or liable for it, to responsibility to a third party.

"Maritime perils" include perils of the seas, fire, war, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils of the same sort or which may be defined by the policy.

## **Insurable Interest**

## **4. Avoidance of wagering or gaming contracts**

(1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract--

(a) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(b) Where the policy is made 'interest or no interest,' or 'without further proof of interest than the policy itself.' or 'without benefit of salvage to the insurer,' or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

## **5. Insurable interest defined**

(1) Every individual who is engaged in a marine adventure has an insurable interest, subject to the terms of this Act.

(2) A person is particularly interested in a marine adventure if he has a legal or equitable relationship to the adventure or any insurable property at risk therein, as a result of which he may benefit from the safety or timely arrival of insurable property, or may be harmed by its loss, damage, or detention, or may incur liability in respect thereof.

## **6. When interest must attach**

(1) The assured must have an interest in the covered subject-matter at the time of the loss, albeit he does not have to be interested when the insurance is taken out: Provided, however, that if the subject-matter is insured 'lost or not lost,' the assured may claim even though he did not acquire his interest until after the loss, provided the assured was aware of the loss at the time of executing the contract of insurance and the insurer was not.

(2) If the assured has no interest at the time of the loss, he cannot acquire interest after becoming aware of the loss by any act or election.

## **7. Defeasible or contingent interest**

(1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

## **8. Partial interest**

A partial interest of any nature is insurable.

## **9. Re-insurance**

(1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance.

## **10. Bottomry**

The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

## **11. Master's and seamen's wages**

The master or any member of the crew of a ship has an insurable interest in respect of his wages.

## **12. Advance freight**

In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss.

## **13. Charges of insurance**

The assured has an insurable interest in the charges of any insurance which he may effect.

## **14. Quantum of interest**

(1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

## **15. Assignment of interest**

Unless there is a clear or implied agreement with the assignee to the contrary, when the assured assigns or otherwise disposes of his interest in the subject-matter insured, he does not transfer his rights under the insurance contract to the assignee. However, the rules of this section have no bearing on a legal conveyance of interest.

## **16. Measure of insurable value**

The insurable worth of the subject-matter insured must be determined as follows, subject to any stated provision or valuation in the policy:

(1) In ship insurance, the insurable value is the value of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus insurance charges on the whole: In the case of a steamer, the insurable value also includes the machinery, boilers, coals, and engine supplies, if owned by the assured, and, in the event of a ship engaged in a specific trade, the ordinary fixtures required for that activity:

(2) In freight insurance, whether paid in advance or not, the insurable value is the gross amount of freight at the assured's risk plus insurance charges:

54 (3) The insurable worth of products or merchandise is the primary cost of the property insured, plus shipping expenditures and incidental charges, as well as insurance charges on the whole:

(4) In any other type of insurance, the insurable value is the amount at risk to the assured at the time the policy is issued, plus the insurance charges.

## **Disclosure and Representations**

### **17. Insurance is uberrimae fidei**

A maritime insurance contract is based on the utmost good faith, and if one party fails to respect the utmost good faith, the contract may be avoided by the other party.

### **18. Disclosure by assured**

(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.



(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely:

(a) Any circumstance which diminishes the risk:

(b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;

(c) Any circumstances as to which information is waived by the insurer;

(d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.

(5) The term 'circumstance' includes any communication made to, or information received by, the assured .

### **19. Disclosure by agent effecting insurance**

Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer--

(a) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and

(b) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent .

### **20. Representations pending negotiation of contract**

(1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it be made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation be material or not is, in each case, a question of fact.

## **21. When contract is deemed to be concluded**

A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and, for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract.

## **The Policy**

### **22. Contract must be embodied in policy**

Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

### **23. What policy must specify**

A marine policy must specify -

(1) The name of the assured, or of some person who effects the insurance on his behalf:

(2)-(5) [Repealed].

### **24. Signature of insurer**

(1) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

## **25. Voyage and time policies**

(1) Where the contract is to insure the subject-matter 'at and from,' or from one place to another or other, the policy is called a 'voyage policy,' and where the contract is to insure the subject-matter for a definite period of time the policy is called a 'time policy.' A contract for both voyage and time may be included in the same policy.

## **26. Designation of subject-matter**

(1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

## **27. Valued policy**

(1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

## **28. Unvalued policy**

An unvalued policy is a policy which does not specify the value of the subject-matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner herein-before specified.

### **29. Floating policy by ship or ships**

(1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration .

(2) The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration .

### **30. Construction of terms in policy**

(1) A policy may be in the form in the First Schedule to this Act.

(2) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Schedule to this Act shall be construed as having the scope and meaning in that schedule assigned to them .

### **31. Premium to be arranged**

(1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable .

### **Double Insurance**

### **32. Double insurance**

(1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance--

(a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;

(b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;

(c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

(d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

## **Warranties, &C.**

### **33. Nature of warranty**

(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

### **34. When breach of warranty excused**

(1) Non-compliance with a warranty is excused when by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

(3) A breach of warranty may be waived by the insurer .

### **35. Express warranties**

(1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

(2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith .

### **36. Warranty of neutrality**

(1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted 'neutral' there is also an implied condition that, so far as the assured can control the matter she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract .

### **37. No implied warranty of nationality**

There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk .

### **38. Warranty of good safety**

Where the subject-matter insured is warranted 'well' or 'in good safety' on a particular day, it is sufficient if it be safe at any time during that day .

### **39. Warranty of seaworthiness of ship**

(1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

#### **40. No implied warranty that goods are seaworthy**

(1) In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.

(2) In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy.

#### **41. Warranty of legality**

There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

#### **The Voyage**

#### **42. Implied condition as to commencement of risk**

(1) Where the subject-matter is insured by a voyage policy 'at and from' or 'from' a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.

(2) The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

#### **43. Alteration of port of departure**

Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach.

#### **44. Sailing for different destination**

Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach.

#### **45. Change of voyage**

(1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

#### **46. Deviation**

(1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy--

(a) Where the course of the voyage is specifically designated by the policy, and that course is departed from;  
or

(b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

#### **47. Several ports of discharge**

(1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation.



(2) Where the policy is to 'ports of discharge,' within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not there is a deviation .

**48.**

In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable .

**49.**

(1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused--

(a) Where authorised by any special term in the policy; or

(b) Where caused by circumstances beyond the control of the master and his employer; or

(c) Where reasonably necessary in order to comply with an express or implied warranty; or

(d) Where reasonably necessary for the safety of the ship or subject-matter insured; or

(e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(g) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against .

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable dispatch .

## **Assignment of Policy**

### **50. When and how policy is assignable**

(1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected .

### **51. Assured who has no interest cannot assign**

Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative: Provided that nothing in this section affects the assignment of a policy after loss .

## **The Premium**

### **52. When premium payable**

Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium .

### **53. Policy effected through broker**

(1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium .

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent .

### **54. Effect of receipt on policy**

Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.

## **Loss And Abandonment**

### **55. Included and excluded losses**

(1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.

(2) In particular –

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

### **56. Partial and total loss**

(1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

(2) A total loss may be either an actual total loss, or a constructive total loss.

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.

(4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

(5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

### **57. Actual total loss**

(1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given .

### **58. Missing ship**

Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed .

### **59. Effect of transshipment, &c.**

Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other moveables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment .

### **60. Constructive total loss defined**

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

(2) In particular, there is a constructive total loss--

(i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and

(a) it is unlikely that he can recover the ship or goods, as the case may be, or

(b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered;  
or

(ii) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(iii) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival .

## **61. Effect of constructive total loss**

Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss .

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## **62. Notice of abandonment**

(1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his risk, no notice of abandonment need be given by him .

## **63. Effect of abandonment**

(1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss .

### **Partial Losses (Including Salvage and General Average and Particular Charges)**

#### **64. Particular average loss**

(1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average .

#### **65. Salvage charges**

(1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) 'Salvage charges' means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred .

#### **66. General average loss**

(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.

(7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons .

## **Measure Of Indemnity**

### **67. Extent of liability of insurer for loss**

(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy .

### **68. Total loss**

Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured,--

(1) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy:

(2) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

### **69. Partial loss of ship**

Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above :

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above .

## **70. Partial loss of freight**

Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy .

## **71. Partial loss of goods, merchandise, &c.**

Where there is a partial loss of goods, merchandise or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows:

(1) Where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy:

(2) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss:

(3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged valued at the place of arrival bears to the gross sound value :



(4) 'Gross value' means the wholesale price, or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. 'Gross proceeds' means the actual price obtained at a sale where all charges on sale are paid by the sellers.

## **72. Apportionment of valuation**

(1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole ascertained in both cases as provided by this Act.

(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

## **73. General average contributions and salvage charges**

(1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle.

## **74. Liabilities to third parties**

Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy is the amount paid or payable by him to such third party in respect of such liability.

## **75. General provisions as to measure of indemnity**

(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

## **76. Particular average warranties**

(1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable- but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

## **77. Successive losses**

(1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss: Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

## **78. Suing and labouring clause**

(1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.

(4) It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss .

## **Rights Of Insurer On Payment**

### **79. Right of subrogation**

(1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss .

### **80. Right of contribution**

(1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt .

### **81. Effect of under insurance**

Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance .

### **Return Of Premium**

### **82. Enforcement of return**

Where the premium or a proportionate part thereof is, by this Act, declared to be returnable ,--

- (a) If already paid, it may be recovered by the assured from the insurer; and
- (b) If unpaid, it may be retained by the assured or his agent .

### **83. Return by agreement**

Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured .

### **84. Return for failure of consideration**

(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured .

(3) In particular -

(a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;

(b) Where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable;

Provided that where the subject-matter has been insured 'lost or not lost' and has arrived in safety at the time when the contract is concluded, the premium is returnable unless, at such time, the insurer knew of the safe arrival.

(c) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering ;

## **Mutual Insurance**

### **85. Modification of Act in case of mutual insurance**

(1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association .

## **Supplemental**

### **86. Ratification by assured**

Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss .

### **87. Implied obligations varied by agreement or usage**

(1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negated or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement .

### **88. Reasonable time, &c. a question of fact**

Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact .

### **89. Slip as evidence**

Where there is a duly stamped policy, reference may be made, as heretofore, to the slip or covering note, in any legal proceeding.

## **90. Interpretation of terms**

In this Act, unless the context or subject-matter otherwise requires,- 'Action' includes counter-claim and set off: 'Freight' includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money: 'Moveables' means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents: 'Policy' means a marine policy.

## **91. Savings**

- (1) Nothing in this Act, or in any repeal effected thereby, shall affect -
- (a) the provisions of the Stamp Act 1891, or any enactment for the time being in force relating to the revenue;
  - (b) the provisions of the Companies Act 1862, or any enactment amending or substituted for the same;
  - (c) the provisions of any statute not expressly repealed by this Act.

## **92. [repealed by the Statute Law Revision Act 1927]**

This section was repealed by the Statute Law Revision Act 1927

## **93. [repealed by the Statute Law Revision Act 1927]**

This section was repealed by the Statute Law Revision Act 1927

## **94. [repealed by the Statute Law Revision Act 1927]**

This section was repealed by the Statute Law Revision Act 1927

## **SCHEDULES**

### **First Schedule**

#### **Form Of Policy**

Be it known that \_ as well \_ in own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause \_ and them, and every of them, to be insured lost or not lost, at and from \_

Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the \_

whereof is master under God, for this present voyage, \_\_ or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandised from the loading thereof aboard the said ship,

### **Rules For Construction Of Policy**

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require:

1. Where the subject-matter is insured 'lost or not lost', and the loss has occurred before the contract is concluded, the risk attaches unless, at such time the assured was aware of the loss, and the insurer was not.
2. Where the subject-matter is insured 'from' a particular place, the risk does not attach until the ship starts on the voyage insured.

3.--

(a) Where a ship is insured 'at and from' a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately.

(b) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

(c) Where chartered freight is insured 'at and from' a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(d) Where freight, other than chartered freight, is payable without special conditions and is insured 'at and from' a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo

4. Where goods or other moveables are insured 'from the loading thereof,' the risk does not attach until such goods or moveables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

5. Where the risk on goods or other moveables continues until they are 'safely landed,' they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.
6. In the absence of any further licence or usage, the liberty to touch and stay 'at any port or place whatsoever' does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.
7. The term 'perils of the seas' refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.
8. The term 'pirates' includes passengers who mutiny and rioters who attack the ship from the shore.
9. The term 'thieves' does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.
10. The term 'arrests, &c., of kings, princes, and people' refers to a political or executive acts, and does not include a loss caused by riot or by ordinary judicial process .
11. The term 'barratry' includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.
12. The term 'all other perils' includes only perils similar in kind to the perils specifically mentioned in the policy.
13. The term 'average unless general' means a partial loss of subject-matter insured other than a general average loss, and does not include 'particular charges'.
14. Where the ship has stranded the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.
15. term 'ship' includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.
16. The term 'freight' includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money.



17. The term 'goods' means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.