KLE LAW ACADEMY BELAGAVI

(Constituent Colleges: KLE Society's Law College, Bengaluru, Gurusiddappa Kotambri Law College, Hubballi, S.A. Manvi Law College, Gadag, KLE Society's B.V. Bellad Law College, Belagavi, KLE Law College, Chikodi, and KLE College of Law, Kalamboli, Navi Mumbai)

STUDY MATERIAL

for

INSURANCE LAW

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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This study material is intended to be used as supplementary material to the online classes and recorded video lectures. It is prepared for the sole purpose of guiding the students in preparation for their examinations. Utmost care has been taken to ensure the accuracy of the content. However, it is stressed that this material is not meant to be used as a replacement for textbooks or commentaries on the subject. This is a compilation and the authors take no credit for the originality of the content. Acknowledgement, wherever due, has been provided.

COUR COURSE-III: OPTIONALTIONAL -II: INSURNCE LAW

Objectives:

The insurance idea is an old-institution of transactional trade. Even from olden days merchants who made great adventures gave money by way of consideration, to other persons who made assurance, against loss of their goods, merchandise ships and things adventured. The rates of money consideration were mutually agreed upon. Such an arrangement enabled other merchants more willingly and more freely to embark upon further trading adventures. The operational framework of insurance idea is provided by the general principles of contract. The insurance policy, being a contract, is subject to all the judicial interpretative techniques of rules of interpretation as propounded by the judiciary. Besides, the insurance idea has a compensatory justice component. This course is designed to acquaint the students with the conceptual and operational parameters, of insurance law.

Course contents:

UNIT – I

Introduction: Nature- Definition- History of Insurance- History and development of Insurance in India- Insurance Act, 1938- (main sections) Insurance Regulatory Authority Act, 1999: Its role and functions.

UNIT – II

Contract of Insurance: Classification of contract of Insurance Nature of various Insurance Contracts- Parties there to- Principles of good faith – non disclosure – Misrepresentation in Insurance Contract- Insurable Interest- Premium: Definition- method of payment, days of grace, forfeiture, return of premium, Mortality; The risk – Meaning and scope of risk, Causa Proxima, Assignment of the subject matter.

UNIT – III

Life Insurance: Nature and scope of Life Insurance- Kinds of Life Insurance.

The policy and formation of a life insurance contract Event insured against Life insurance contract- Circumstance affecting the risk- Amount recoverable under the Life Policy- Persons entitles to payment- Settlement of claim and payment of money- Life Insurance Act, 1956Insurance against third party rights- General Insurance Act, 1972- The Motor Vehicles Act, 1988 – Sec. (140-176), in India. Nature and scope- Absolute or no-fault liabilities, Third party or compulsory insurance of motors vehicles- Claims Tribunal- Public Liability Insurance –Legal aspects of Motor Insurance –Claims – Own Damages Claims – Third Party Liability Claims.

UNIT – IV

Fire Insurance: Nature and scope of Fire Insurance –Basic Principles – Conditions & Warranties – Right & Duties of Parties – Claims – Some Legal Aspects. Introduction to Agriculture Insurance – History of Crop Insurance in India – Crop Insurance Underwriting, Claims, Problems associated with Crop Insurance – Cattle Insurance in India.

UNIT – V

Marine Insurance: Nature and Scope- Classification of Marine policies- Insurable interest- Insurable values- Marine insurance and policy- Conditions and express warranties Voyage deviation- Perils of sea- Loss- Kinds of Loss- The Marine Insurance Act, 1963 (Ss 1 to 91).

Prescribed Books:

K. S. N. Murthy and K. V. S. Sharma - Modern Law of Insurance

M. H. Srinivasan - Principles of Insurance Law.

Reference Books:

E. R.Hardy Ivamy - General Principles of Insurance Law,

relevant Chapters.

Insurance Act, 1938.

The Marine Insurance Act, 1963.

General Insurance (Business) (Nationalization) Act, 1972.

The Life Insurance Corporation Act, 1956.

Motor Vehicle Act, 1988.

CONCEPT, NATURE AND SCOPE OF INSURANCE

Insurance is of primary importance both in the national economy and international trade. Insurance premium cash-flows generate funds for investment in the economy. The development of the insurance sector depends on the general level of economic development and prospects for the immediate future.

Generally, there is a positive correlation between the economic development of a country and the amount which people spend on insurance; contractual, financial and legal aspects of insurance.

Insurance is a contractual relation between insurer and the assured through which the former undertakes to indemnify the loss caused to the latter due to an uncertain risk involved or to pay a certain sum of money in the event of an incident happening or not happening, against a consideration called as premium.

Everything in this universe is subject to accident, destruction and will perish. A businessman used this idea of risk as the substance of his business. He undertakes the burden of risk against a consideration by a probability study and affixation of an adequate consideration. He therefore earns profit on the trade of risk whereas the insured is entitled to receive the indemnification or a fixed sum on the happening of the uncertain event causing loss. Hence, the contract of insurance then is described as a mechanism of risk distribution and sharing.

SOME IMPORTANT DEFINITIONS

The aim of insurance is to protect the owner from a variety of risks which he anticipates. Fundamental function of Insurance is to

‘Shift the loss suffered by a sole individual to a willing and capable professional risk-bearers in consideration of a comparatively small contribution called premium’

Economist say

‘It is a process whereby the risk of financial loss arising from death or disability of a person or damage, deterioration, destruction or loss of property owing to perils of which they are exposed, is assumed by another’

*According to **Maclean***

'Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual'

In the words of **Riegel & Miller**

'It serves social purpose; it is a social device whereby uncertain risks of individuals may be combined in a group and thus made more certain; small periodic contribution by the individuals providing a fund out of which those who suffer losses may be reimbursed'

Hardy Ivamy writes in his work - "*General Principles of insurance Law*" that,

'*A contract of insurance is a contract whereby one person called the 'insurer', undertakes in return for the agreed consideration called the 'premium' to pay to another person, called the 'insured' a sum of money or its equivalent on the happening of a specified event'.*

In ***Prudential Insurance Company v. Inland Revenue Commissioner**,* Channel J. said

'*There must be either some uncertainty whether the event will ever happen or not, or if the event is one which must happen at some time or another, there must be uncertainty as to the time at which it will happen'.*

Generally, an insurance agreement to be a valid contract must be

i. A contract between an 'insurer' and the 'insured';

ii. The contract is based on the loss due to happening or not happening of a future incident;

iii. A consideration in the form of payment of an amount by the insured and

iv. The insurer promises to make good the loss in so far money can do it, in case the loss occurs on the happening of the contingency.

Thus, one can observe that in a contract of insurance, one can insure ship or house but cannot ensure that the ship shall not be lost or the house shall not be burnt, but what one can insure is that a sum of money shall be paid on the happening of a certain event. Thus, the subject matter of insurance is the compensation in the form of money to be paid to the assured on happening of a risk.

Objectives of insurance

Insurance serves two-fold purpose

1. Immediate – short ranged & proximate purpose Loss/risk/damage spread over large number of risk bearers and the immediate beneficiary is the insured.
2. Far-sighted – long-range & remote purpose, where it accelerates economic growth of nation through investment by Insurance Companies the in development of commerce & industry of the nation.

HISTORY

In India insurance was mentioned in the writings of Manu (Manusmrithi), Yagnavalkya (Dharmasastra) and Kautilya (Arthashastra), which examined the pooling of resources for redistribution after fire, floods, epidemics and famine. The life-insurance business began in 1818 with the establishment of the Oriental Life Insurance Company in Calcutta; the company failed in 1834. In 1829, Madras Equitable began conducting life-insurance business in the Madras Presidency. The British Insurance Act was enacted in 1870, and Bombay Mutual (1871), Oriental (1874) and Empire of India (1897) were founded in the Bombay Presidency. The era was dominated by British companies.

In 1914, the government of India began publishing insurance-company returns. The Indian Life Assurance Companies Act, 1912 was the first statute regulating life insurance. In 1928 the Indian Insurance Companies Act was enacted to enable the government to collect statistical information about life and non-life-insurance business conducted in India by Indian and foreign insurers, including Provident Insurance Societies. In 1938 the legislation was consolidated and amended by the Insurance Act, 1938, with comprehensive provisions to control the activities of insurers.

The Insurance Amendment Act of 1950 abolished principal agencies, but the level of competition was high and there were allegations of unfair trade practices. The Government of India decided to nationalize the insurance industry.

An ordinance was issued on 19 January 1956, nationalizing the life-insurance sector, and the Life Insurance Corporation was established that year. The LIC absorbed 154 Indian and 16 non-Indian insurers and 75 Provident Societies. The LIC had a monopoly until the late 1990s, when the insurance industry was reopened to the private sector.

General insurance in India began during the Industrial Revolution in the West and the growth of sea-faring commerce during the 17th century. It arrived as a legacy of British occupation, with its roots in the 1850 establishment of the Triton Insurance Company in Calcutta. In 1907 the Indian Mercantile Insurance was established, the first company to underwrite all classes of general insurance. In 1957 the General Insurance Council (a wing of the Insurance Association of India) was formed, framing a code of conduct for fairness and sound business practice.

Eleven years later, the Insurance Act was amended to regulate investments and set minimum solvency margins and the Tariff Advisory Committee was established. In 1972, with the passage of the General Insurance Business (Nationalization) Act, the insurance industry was nationalized on 1 January 1973. One hundred seven insurers were amalgamated and grouped into four companies: National Insurance Company, New India Assurance Company, Oriental Insurance Company and United India Insurance Company. The General Insurance Corporation of India was incorporated in 1971, effective from 1 January 1973.

The re-opening of the insurance sector began during the early 1990s. In 1993, the government set up a committee chaired by former Reserve Bank of India governor R. N. Malhotra to propose recommendations for insurance reform complementing those initiated in the financial sector. The committee submitted its report in 1994, recommending that the private sector be permitted to enter the insurance industry. Foreign companies should enter by floating Indian companies, preferably as joint ventures with Indian partners.

Following the recommendations of the Malhotra Committee, in 1999 the Insurance Regulatory and Development Authority (IRDA) was constituted to regulate and develop the insurance industry and was incorporated in April 2000. Objectives of the IRDA include promoting competition, to enhance customer satisfaction with increased consumer choice and lower premiums while ensuring the financial security of the insurance market.

The IRDA opened up the market in August 2000 with an invitation for registration applications; foreign companies were allowed ownership up to 26 percent. The authority, with the power to frame regulations under Section 114A of the Insurance Act, 1938, has framed regulations ranging from company registrations to the protection of interests of policy-holders, since 2000.

In December 2000, the subsidiaries of the General Insurance Corporation of India were restructured as independent companies and the GIC was converted into a national re-insurer. Parliament passed a bill de-linking the four subsidiaries from the GIC in July 2002. There are 28 general insurance companies, including the Export Credit Guarantee Corporation of India and the Agriculture Insurance Corporation of India, and 24 life-insurance companies operating in the country. With banking services, insurance services add about seven percent to India's GDP.

In 2013 the IRDAI attempted to raise the foreign direct investment (FDI) limit in the insurance sector to 49 percent from its current 26 percent. The FDI limit in the insurance sector was raised to 100 percent according to the budget 2019.

History of insurance in India can be studies in the following 5 important stages

1. Period of Mushroom growth (1900-1912) – during this period there was a mushroom growth of Indian companies and this was mainly due to the swadeshi movement which prompted the boycott of British goods, British institutions and everything British. The indiscriminate mushroom growth of insurance companies led to the appearance of some evil which had to be checked by passing Indian Life Assurance Act, 1912. For the first time publishing of returns of life insurance began from 1914.

2. Period of struggle & steady growth (1913-1938) – the period between two world wars. The indigenous companies had to pass through tough time. Sudden growth of companies due to impetus given by swadeshi movement brough with it evil of accumulation of wealth and inexperience in business. This has led to economic slump, business had to struggle for its growth. Many small offices had to be wound up and few that survived had to face the competition of many flourishing foreign offices.

   Government was compelled to protect the interest of Indian insurance business and hence in 1934 Sri SC Sen was appointed as special officer to investigate and report on reform of insurance law in India. In 1936 a committee under chairmanship of Sri NN Sircar was appointed to examine the report of special officer, which led to the passing of Insurance Act, 1938 which provides for uniform control by government over all insurers. Foreign offices discontinued their business in India.

3. Period of stability & Consolidation (1938-1950) – being free from foreign competition Indian offices gained stability. After second world war swadeshi movement gained strength and national spirit increased. Large amounts of capital were available with them for investment in the developing industries. In 1945 Cowasji Jehangir committee condemned the malinvestment by insurance companies, this led to regulation of investment and Insurance Act 1938 had to be amended several times. Partition of the country had made situation worse. Sri SR Ranganathan committee reviewed the entire insurance law and based on this report amendment of 1950 was carried out which made far reaching changes to make insurance institutions more useful for the country's economic growth.

4. Period of Boom & Nationalization (1950- up to date) – by Five-Year Plans India has grown from agrarian society to industrialised society. Confidence in domestic companies increased. All this contributed to a boom in insurance business. Huge amount of capital was available with insurers and government found in handy to utilise these funds for its developmental plans and also to ensure the investing public, a better security. Later in 1956 Life Insurance Act, 1956 was passed nationalising life insurance business in India. Further in 1972 the General insurance was nationalised by passing of General Insurance (Emergency Provisions) Act, 1972. General insurance corporation was formed with four subsidiaries.

5. Era of Privatization (1991 onwards) – insurance sector open to private entities on the recommendations of Malhotra Committee. Both public and private companies played important role simultaneously. Growth of more private entities has led to the passing of Insurance Regulatory and Development Authority Act, 1999 to control and regulate insurance sector in India.

Registration of Insurance Companies

Insurance Act 1938 provides under sec 3 that no person shall start a new business on any branch of the insurance business, after the commencement of IRDA Act, 1999, unless he has obtained a certificate of registration.

Procedure for registration

An incorporated company must be registered under IRDA. Sec 3 of the IRDA Act provides for filing application for registration.

Important provisions of Insurance Act 1938

Prohibition of transaction of insurance business by certain persons, -

2C. (1) Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), begin to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall after the expiry of one year from such commencement, continue to carry on any such business unless he is-

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country outside India not being of the nature of a private company:

Provided that the Central Government may, by notification in the official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of Section 2 or for the purpose of carrying on any general insurance business:

Provided further that in the case of an insurer carrying on any general insurance business no such notification shall be issued having effect for more than three years at any one time:

Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority of India Act, 1999.

(2) Every notification issued under subsection (1) shall be laid before Parliament as soon as may be after it is issued.

(3) Notwithstanding anything contained in sub-section (1), an insurance co-operative society may carry on any class of insurance business in India under this Act on or after the commencement of the Insurance (Amendment) Act, 2002.

Registration

3. (1) No person shall, after commencement of this Act, being to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Authority a certificate of registration for the particular class of insurance business:

Provided that in case of an insurer who was carrying on any class of insurance business in India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this sub-clause shall not operate to invalidate any contract of insurance entered into by him if before such date as may be fixed in this behalf by the Central Government by notification in the official Gazette, he has obtained that certificate:

Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority of India Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority of India Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act

(2) Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by-

(a) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913 (7 of 1913), or under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866); or under any Act repealed thereby, or, in the case of any other insurer specified in sub-clause (*a*) *(ii)* or sub-clause (*b*) of clause (*9*) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside India, the document specified in Clause (a) of Section 63;

(b) the name, address and the occupation, if any, of the directors where insurer is a company incorporated under the Indian Companies Act, 1913 (7 of 1913), or under the Indian

Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866), or under any Act repealed thereby, and in the case of an insurer specified in sub-clause (*a*) (*ii*) of clause (9) of section 2 the names and addresses of the proprietors and of the manager in India, and in any other case the full address of the principal office of the insurer in India, and the names of the directors and the manager at such office and the name and address of someone or more persons resident in India, authorized to accept any notice required to be served on the insurer;

(c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;

(d) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorized in that behalf that the provisions of those sections as to paid-up equity capital or working capital have been complied with;

(e) in the case of an insurer having his principal place of business or domicile outside India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;

(f) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only insofar as the prospectus, forms and statements may be available; and

(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority.

(2A) If, on receipt of an application for registration and after making such inquiry as he deems fit, the Controller is satisfied that—

(*a*) the financial condition and the general character of management of the applicant are sound;

(*b*) the volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;

(*c*) the interest of the general public will be served if the certificate of registration is granted to the applicant in respect of the class or classes of insurance business specified in the application; and

(*d*) the applicant has complied with the provisions of Sections 2-C, 5, 31A and 32 and has fulfilled all the requirements of this section applicable to him, the Authority may register the applicant as an insurer and grant him a certificate of registration.

(2AA) The Authority shall give preference to register the applicant and grant him a certificate of registration if such applicant agrees, in the form and manner as may be specified by the regulations made by the Authority, to carry on the life insurance business or general insurance business for providing health cover to individuals or group of individuals.

(2B) Where the Authority refuses registration; he shall record the reasons for such decision and shall furnish a copy thereof to the applicant.

(2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Central Government.

(2D) The decision of the Central Government on such appeal shall be final and shall not be questioned before any Court.

(3) Notwithstanding anything contained in sub-section (2A), in the case of any insurer having his principal place of business or domicile outside India, the Authority, shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

(4) The Authority shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be, -

(*a*) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or *(aa)* if the insurer fails, at any time, to comply the provisions of Sec. 64VA as to the excess of the value of his assets over the amount of his liabilities; or

(*b*) if the insurer is in liquidation or is adjudged an insolvent, or

(*c*) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(*d*) if the whole of the deposit made in respect of insurance business has been returned to the insurer under Sec. 9, or

(*e*) if, in the case of an insurer specified in sub-clause (*c*)of clause (*9*) of section 2, the standing contract referred to in that sub-clause is cancelled or is suspended and continues to be suspended for a period of six months, or

(ee) if the Central Government so directs under sub- section (4) of Sec. 33] and the Authority may cancel the registration of an insurer-

(*f*) if the insurer makes default in complying with, or acts in contravention of any requirement of this Act or of any rule or any regulation or order made or, any direction issued there under, or

(*g*) if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or

(*h*) if the insurer carries on any business other than insurance business or any prescribed business, or

(*i*) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority of India Act, 1999, or

(*j*) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 (1 of 1956), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the General Insurance Business (Nationalization) Act, 1972 (57 of 1972), or the Foreign Exchange Regulation Act, 1973 (46 of 1973).

(5) When the Authority withholds or cancels any registration under sub-section (3) or clause (a), clause *(aa),* clause (*e*), clause *(ee),* clause (*f*), clause (*g*) or clause (*h*) of sub-section (4), he shall give notice in writing to the insurer of his decision, and the decision shall take affect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority cancels any registration under clause *(b*), clause *(c)* or clause (*d*) of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

(5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place.

(5C) Where a registration is cancelled under clause*(a), clause (aa), clause (e),* clause (*f*), clause (g) or clause (*h*) or clause (*i*) or clause (*j)* of sub-section (4), the Authority may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or Section 98, or complies with the provisions of Section 64VA as to the excess of the value of his assets over the amount of his liabilities or has his standing contract restored or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (g) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority of India Act, 1999 or of any rule or any regulation, or order made there under or any direction issued under those Acts that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.

(5D) Where lithe registration of an insurance company is cancelled under sub-section (4), the Authority may, after expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under sub-section (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of Sec. 58, as the case may be.

(5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(6) [***]

(7) The Authority may, on payment of the prescribed fee, not exceeding five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary.

Renewal of registration

3A. (1) An insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of March, after the commencement of the Insurance Regulatory and Development Authority of India Act, 1999.

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Authority before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section

(3) by evidence of payment of the fee as determined by the regulations made by the Authority which may vary according to the total gross premium written direct in India, during the year preceding the year in which the application is required to be made under this section, by the insurer in the class of insurance business to which the registration relates but shall not—

(*i*) exceed one-fourth of one per cent. of such premium income or rupees five crores, whichever is less;

(ii) be less, in any case, than five hundred rupees for each class of insurance business:

Provided that in the case of an insurer carrying on solely re-insurance business, the provisions of this sub-section shall apply with the modification that instead of the total gross premium written direct in India, the total premiums in respect of facultative re-insurances accepted by him in India shall be-taken into account.

(3)The fee as determined by the regulations made by the Authority for the renewal of a registration for any year shall, be paid into the Reserve Bank of India, or where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If an insurer fails to apply for renewal of registration before the date specified in sub-section (2) the Authority may, so long as an application to the Court under sub-section (5-D) of section 3 has not been made, accept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty, not exceeding the fee as determined by the regulations made by the Authority, and payable by him, as the Authority may require:

Provided that an appeal shall lie to the Central Government from an order passed by the Authority imposing a penalty on the insurer

(5) The Authority shall, on fulfilment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration.

Certification of soundness of terms of life insurance business

(3B) If, when considering an application for registration under section 3 or at any other time, it appears to the Authority that the assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance business are in any respect not workable or sound, he may require that a statement thereof shall be submitted to an actuary appointed by the insurer for the purpose and approved by the Authority, and may by order in writing further require the insurer to make within such time as may be specified in the order such modifications in the said rates, advantages, terms, or conditions, as the case may be, as the said actuary may report to be necessary to enable him to certify that the said rates, advantages, terms and conditions are workable and sound.

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (IRDA)

After 1991 due to liberalization in the economic policy, many private players started their business in India which has brought with it their own evil of unhealthy competition. Hence a Malhotra committee was formed to effectively regulate insurance companies. Following the recommendations of the Malhotra Committee, in 1999 the Insurance Regulatory and Development Authority (IRDA) was constituted to regulate and develop the insurance industry and was incorporated in April 2000. Objectives of the IRDA include promoting competition, to enhance customer satisfaction with increased consumer choice and lower premiums while ensuring the financial security of the insurance market.

Section 4 of the IRDAI Act 1999 specifies the authority's composition. It is a ten-member body consisting of a chairman, five full-time and four part-time members appointed by the government of India. At present (1 Sept, 2018), the authority is chaired by Dr. Subhash C. Khuntia and its full-time members are Mrs T.L. Alamelu, K. Ganesh, Pournima Gupte, Praveen Kutumbe and Sujay Banarji.

Functions of IRDA

The functions of the IRDAI are defined in Section 14 of the IRDAI Act, 1999 and include:

1. Issuing, renewing, modifying, withdrawing, suspending or cancelling registrations
2. Protecting policyholder interests
3. Specifying qualifications, the code of conduct and training for intermediaries and agents
4. Specifying the code of conduct for surveyors and loss assessors
5. Promoting efficiency in the conduct of insurance businesses
6. Promoting and regulating professional organisations connected with the insurance and re-insurance industry
7. Levying fees and other charges
8. Inspecting and investigating insurers, intermediaries and other relevant organisations
9. Regulating rates, advantages, terms and conditions which may be offered by insurers not covered by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938)
10. Specifying how books should be kept
11. Regulating company investment of funds
12. Regulating a margin of solvency
13. Adjudicating disputes between insurers and intermediaries or insurance intermediaries
14. Supervising the Tariff Advisory Committee
15. Specifying the percentage of premium income to finance schemes for promoting and regulating professional organisations
16. Specifying the percentage of life and general-insurance business undertaken in the rural or social sector
17. Specifying the form and the manner in which books of accounts shall be maintained, and statement of accounts shall be rendered by insurers and other insurer intermediaries.

COUR COURSE-III: OPTIONALTIONAL -II: INSURNCE LAW

Objectives:

The insurance idea is an old-institution of transactional trade. Even from olden days merchants who made great adventures gave money by way of consideration, to other persons who made assurance, against loss of their goods, merchandise ships and things adventured. The rates of money consideration were mutually agreed upon. Such an arrangement enabled other merchants more willingly and more freely to embark upon further trading adventures. The operational framework of insurance idea is provided by the general principles of contract. The insurance policy, being a contract, is subject to all the judicial interpretative techniques of rules of interpretation as propounded by the judiciary. Besides, the insurance idea has a compensatory justice component. This course is designed to acquaint the students with the conceptual and operational parameters, of insurance law.

Course contents:

UNIT – I

Introduction: Nature- Definition- History of Insurance- History and development of Insurance in India- Insurance Act, 1938- (main sections) Insurance Regulatory Authority Act, 1999: Its role and functions.

UNIT – II

Contract of Insurance: Classification of contract of Insurance Nature of various Insurance Contracts- Parties there to- Principles of good faith – non disclosure – Misrepresentation in Insurance Contract- Insurable Interest- Premium: Definition- method of payment, days of grace, forfeiture, return of premium, Mortality; The risk – Meaning and scope of risk, Causa Proxima, Assignment of the subject matter.

UNIT – III

Life Insurance: Nature and scope of Life Insurance- Kinds of Life Insurance.

The policy and formation of a life insurance contract Event insured against Life insurance contract- Circumstance affecting the risk- Amount recoverable under the Life Policy- Persons entitles to payment- Settlement of claim and payment of money- Life Insurance Act, 1956Insurance against third party rights- General Insurance Act, 1972- The Motor Vehicles Act, 1988 – Sec. (140-176), in India. Nature and scope- Absolute or no-fault liabilities, Third party or compulsory insurance of motors vehicles- Claims Tribunal- Public Liability Insurance –Legal aspects of Motor Insurance –Claims – Own Damages Claims – Third Party Liability Claims.

UNIT – IV

Fire Insurance: Nature and scope of Fire Insurance –Basic Principles – Conditions & Warranties – Right & Duties of Parties – Claims – Some Legal Aspects. Introduction to Agriculture Insurance – History of Crop Insurance in India – Crop Insurance Underwriting, Claims, Problems associated with Crop Insurance – Cattle Insurance in India.

UNIT – V

Marine Insurance: Nature and Scope- Classification of Marine policies- Insurable interest- Insurable values- Marine insurance and policy- Conditions and express warranties Voyage deviation- Perils of sea- Loss- Kinds of Loss- The Marine Insurance Act, 1963 (Ss 1 to 91).

Prescribed Books:

K. S. N. Murthy and K. V. S. Sharma - Modern Law of Insurance

M. H. Srinivasan - Principles of Insurance Law.

Reference Books:

E. R.Hardy Ivamy - General Principles of Insurance Law,

relevant Chapters.

Insurance Act, 1938.

The Marine Insurance Act, 1963.

General Insurance (Business) (Nationalization) Act, 1972.

The Life Insurance Corporation Act, 1956.

Motor Vehicle Act, 1988.

CONCEPT, NATURE AND SCOPE OF INSURANCE

Insurance is of primary importance both in the national economy and international trade. Insurance premium cash-flows generate funds for investment in the economy. The development of the insurance sector depends on the general level of economic development and prospects for the immediate future.

Generally, there is a positive correlation between the economic development of a country and the amount which people spend on insurance; contractual, financial and legal aspects of insurance.

Insurance is a contractual relation between insurer and the assured through which the former undertakes to indemnify the loss caused to the latter due to an uncertain risk involved or to pay a certain sum of money in the event of an incident happening or not happening, against a consideration called as premium.

Everything in this universe is subject to accident, destruction and will perish. A businessman used this idea of risk as the substance of his business. He undertakes the burden of risk against a consideration by a probability study and affixation of an adequate consideration. He therefore earns profit on the trade of risk whereas the insured is entitled to receive the indemnification or a fixed sum on the happening of the uncertain event causing loss. Hence, the contract of insurance then is described as a mechanism of risk distribution and sharing.

SOME IMPORTANT DEFINITIONS

The aim of insurance is to protect the owner from a variety of risks which he anticipates. Fundamental function of Insurance is to

'Shift the loss suffered by a sole individual to a willing and capable professional risk-bearers in consideration of a comparatively small contribution called premium'

Economist say

'It is a process whereby the risk of financial loss arising from death or disability of a person or damage, deterioration, destruction or loss of property owing to perils of which they are exposed, is assumed by another'

*According to **Maclean***

'Insurance is a method of spreading over a large number of persons a possible financial loss too serious to be conveniently borne by an individual'

In the words of **Riegel & Miller**

'It serves social purpose; it is a social device whereby uncertain risks of individuals may be combined in a group and thus made more certain; small periodic contribution by the individuals providing a fund out of which those who suffer losses may be reimbursed'

Hardy Ivamy writes in his work - "*General Principles of insurance Law*" that,

'*A contract of insurance is a contract whereby one person called the 'insurer', undertakes in return for the agreed consideration called the 'premium' to pay to another person, called the 'insured' a sum of money or its equivalent on the happening of a specified event'.*

In ***Prudential Insurance Company v. Inland Revenue Commissioner**,* Channel J. said

'*There must be either some uncertainty whether the event will ever happen or not, or if the event is one which must happen at some time or another, there must be uncertainty as to the time at which it will happen'.*

Generally, an insurance agreement to be a valid contract must be

i. A contract between an 'insurer' and the 'insured';

ii. The contract is based on the loss due to happening or not happening of a future incident;

iii. A consideration in the form of payment of an amount by the insured and

iv. The insurer promises to make good the loss in so far money can do it, in case the loss occurs on the happening of the contingency.

Thus, one can observe that in a contract of insurance, one can insure ship or house but cannot ensure that the ship shall not be lost or the house shall not be burnt, but what one can insure is that a sum of money shall be paid on the happening of a certain event. Thus, the subject matter of insurance is the compensation in the form of money to be paid to the assured on happening of a risk.

Objectives of insurance

Insurance serves two-fold purpose

1. Immediate – short ranged & proximate purpose Loss/risk/damage spread over large number of risk bearers and the immediate beneficiary is the insured.
2. Far-sighted – long-range & remote purpose, where it accelerates economic growth of nation through investment by Insurance Companies the in development of commerce & industry of the nation.

HISTORY

In India insurance was mentioned in the writings of Manu (Manusmrithi), Yagnavalkya (Dharmasastra) and Kautilya (Arthashastra), which examined the pooling of resources for redistribution after fire, floods, epidemics and famine. The life-insurance business began in 1818 with the establishment of the Oriental Life Insurance Company in Calcutta; the company failed in 1834. In 1829, Madras Equitable began conducting life-insurance business in the Madras Presidency. The British Insurance Act was enacted in 1870, and Bombay Mutual (1871), Oriental (1874) and Empire of India (1897) were founded in the Bombay Presidency. The era was dominated by British companies.

In 1914, the government of India began publishing insurance-company returns. The Indian Life Assurance Companies Act, 1912 was the first statute regulating life insurance. In 1928 the Indian Insurance Companies Act was enacted to enable the government to collect statistical information about life and non-life-insurance business conducted in India by Indian and foreign insurers, including Provident Insurance Societies. In 1938 the legislation was consolidated and amended by the Insurance Act, 1938, with comprehensive provisions to control the activities of insurers.

The Insurance Amendment Act of 1950 abolished principal agencies, but the level of competition was high and there were allegations of unfair trade practices. The Government of India decided to nationalize the insurance industry.

An ordinance was issued on 19 January 1956, nationalizing the life-insurance sector, and the Life Insurance Corporation was established that year. The LIC absorbed 154 Indian and 16 non-Indian insurers and 75 Provident Societies. The LIC had a monopoly until the late 1990s, when the insurance industry was reopened to the private sector.

General insurance in India began during the Industrial Revolution in the West and the growth of sea-faring commerce during the 17th century. It arrived as a legacy of British occupation, with its roots in the 1850 establishment of the Triton Insurance Company in Calcutta. In 1907 the Indian Mercantile Insurance was established, the first company to underwrite all classes of general insurance. In 1957 the General Insurance Council (a wing of the Insurance Association of India) was formed, framing a code of conduct for fairness and sound business practice.

Eleven years later, the Insurance Act was amended to regulate investments and set minimum solvency margins and the Tariff Advisory Committee was established. In 1972, with the passage of the General Insurance Business (Nationalization) Act, the insurance industry was nationalized on 1 January 1973. One hundred seven insurers were amalgamated and grouped into four companies: National Insurance Company, New India Assurance Company, Oriental Insurance Company and United India Insurance Company. The General Insurance Corporation of India was incorporated in 1971, effective from 1 January 1973.

The re-opening of the insurance sector began during the early 1990s. In 1993, the government set up a committee chaired by former Reserve Bank of India governor R. N. Malhotra to propose recommendations for insurance reform complementing those initiated in the financial sector. The committee submitted its report in 1994, recommending that the private sector be permitted to enter the insurance industry. Foreign companies should enter by floating Indian companies, preferably as joint ventures with Indian partners.

Following the recommendations of the Malhotra Committee, in 1999 the Insurance Regulatory and Development Authority (IRDA) was constituted to regulate and develop the insurance industry and was incorporated in April 2000. Objectives of the IRDA include promoting competition, to enhance customer satisfaction with increased consumer choice and lower premiums while ensuring the financial security of the insurance market.

The IRDA opened up the market in August 2000 with an invitation for registration applications; foreign companies were allowed ownership up to 26 percent. The authority, with the power to frame regulations under Section 114A of the Insurance Act, 1938, has framed regulations ranging from company registrations to the protection of interests of policy-holders, since 2000.

In December 2000, the subsidiaries of the General Insurance Corporation of India were restructured as independent companies and the GIC was converted into a national re-insurer. Parliament passed a bill de-linking the four subsidiaries from the GIC in July 2002. There are 28 general insurance companies, including the Export Credit Guarantee Corporation of India and the Agriculture Insurance Corporation of India, and 24 life-insurance companies operating in the country. With banking services, insurance services add about seven percent to India's GDP.

In 2013 the IRDAI attempted to raise the foreign direct investment (FDI) limit in the insurance sector to 49 percent from its current 26 percent. The FDI limit in the insurance sector was raised to 100 percent according to the budget 2019.

History of insurance in India can be studies in the following 5 important stages

1. Period of Mushroom growth (1900-1912) – during this period there was a mushroom growth of Indian companies and this was mainly due to the swadeshi movement which prompted the boycott of British goods, British institutions and everything British. The indiscriminate mushroom growth of insurance companies led to the appearance of some evil which had to be checked by passing Indian Life Assurance Act, 1912. For the first time publishing of returns of life insurance began from 1914.

2. Period of struggle & steady growth (1913-1938) – the period between two world wars. The indigenous companies had to pass through tough time. Sudden growth of companies due to impetus given by swadeshi movement brough with it evil of accumulation of wealth and inexperience in business. This has led to economic slump, business had to struggle for its growth. Many small offices had to be wound up and few that survived had to face the competition of many flourishing foreign offices.

   Government was compelled to protect the interest of Indian insurance business and hence in 1934 Sri SC Sen was appointed as special officer to investigate and report on reform of insurance law in India. In 1936 a committee under chairmanship of Sri NN Sircar was appointed to examine the report of special officer, which led to the passing of Insurance Act, 1938 which provides for uniform control by government over all insurers. Foreign offices discontinued their business in India.

3. Period of stability & Consolidation (1938-1950) – being free from foreign competition Indian offices gained stability. After second world war swadeshi movement gained strength and national spirit increased. Large amounts of capital were available with them for investment in the developing industries. In 1945 Cowasji Jehangir committee condemned the malinvestment by insurance companies, this led to regulation of investment and Insurance Act 1938 had to be amended several times. Partition of the country had made situation worse. Sri SR Ranganathan committee reviewed the entire insurance law and based on this report amendment of 1950 was carried out which made far reaching changes to make insurance institutions more useful for the country's economic growth.

4. Period of Boom & Nationalization (1950- up to date) – by Five-Year Plans India has grown from agrarian society to industrialised society. Confidence in domestic companies increased. All this contributed to a boom in insurance business. Huge amount of capital was available with insurers and government found in handy to utilise these funds for its developmental plans and also to ensure the investing public, a better security. Later in 1956 Life Insurance Act, 1956 was passed nationalising life insurance business in India. Further in 1972 the General insurance was nationalised by passing of General Insurance (Emergency Provisions) Act, 1972. General insurance corporation was formed with four subsidiaries.

5. Era of Privatization (1991 onwards) – insurance sector open to private entities on the recommendations of Malhotra Committee. Both public and private companies played important role simultaneously. Growth of more private entities has led to the passing of Insurance Regulatory and Development Authority Act, 1999 to control and regulate insurance sector in India.

Registration of Insurance Companies

Insurance Act 1938 provides under sec 3 that no person shall start a new business on any branch of the insurance business, after the commencement of IRDA Act, 1999, unless he has obtained a certificate of registration.

Procedure for registration

An incorporated company must be registered under IRDA. Sec 3 of the IRDA Act provides for filing application for registration.

Important provisions of Insurance Act 1938

Prohibition of transaction of insurance business by certain persons, -

2C. (1) Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950 (47 of 1950), begin to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall after the expiry of one year from such commencement, continue to carry on any such business unless he is-

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country outside India not being of the nature of a private company:

Provided that the Central Government may, by notification in the official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of Section 2 or for the purpose of carrying on any general insurance business:

Provided further that in the case of an insurer carrying on any general insurance business no such notification shall be issued having effect for more than three years at any one time:

Provided also that no insurer other than an Indian insurance company shall begin to carry on any class of insurance business in India under this Act on or after the commencement of the Insurance Regulatory and Development Authority of India Act, 1999.

(2) Every notification issued under subsection (1) shall be laid before Parliament as soon as may be after it is issued.

(3) Notwithstanding anything contained in sub-section (1), an insurance co-operative society may carry on any class of insurance business in India under this Act on or after the commencement of the Insurance (Amendment) Act, 2002.

Registration

3. (1) No person shall, after commencement of this Act, being to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Authority a certificate of registration for the particular class of insurance business:

Provided that in case of an insurer who was carrying on any class of insurance business in India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this sub-clause shall not operate to invalidate any contract of insurance entered into by him if before such date as may be fixed in this behalf by the Central Government by notification in the official Gazette, he has obtained that certificate:

Provided further that a person or insurer, as the case may be, carrying on any class of insurance business in India, on or before the commencement of the Insurance Regulatory and Development Authority of India Act, 1999, for which no registration certificate was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he had made an application for such registration within the said period of three months, till the disposal of such application:

Provided also that any certificate of registration, obtained immediately before the commencement of the Insurance Regulatory and Development Authority of India Act, 1999, shall be deemed to have been obtained from the Authority in accordance with the provisions of this Act

(2) Every application for registration shall be made in such manner as may be determined by the regulations made by the Authority and shall be accompanied by-

(a) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913 (7 of 1913), or under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866); or under any Act repealed thereby, or, in the case of any other insurer specified in sub-clause (*a*) *(ii)* or sub-clause (*b*) of clause (*9*) of section 2, a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside India, the document specified in Clause (a) of Section 63;

(b) the name, address and the occupation, if any, of the directors where insurer is a company incorporated under the Indian Companies Act, 1913 (7 of 1913), or under the Indian

Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1866 (10 of 1866), or under any Act repealed thereby, and in the case of an insurer specified in sub-clause (*a*) (*ii*) of clause (9) of section 2 the names and addresses of the proprietors and of the manager in India, and in any other case the full address of the principal office of the insurer in India, and the names of the directors and the manager at such office and the name and address of someone or more persons resident in India, authorized to accept any notice required to be served on the insurer;

(c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited;

(d) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorized in that behalf that the provisions of those sections as to paid-up equity capital or working capital have been complied with;

(e) in the case of an insurer having his principal place of business or domicile outside India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws or practice of that country upon Indian nationals as a condition of carrying on insurance business in that country;

(f) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound:

Provided that in the case of marine accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only insofar as the prospectus, forms and statements may be available; and

(g) the receipt showing payment of fee as may be determined by the regulations which shall not exceed fifty thousand rupees for each class of business as may be specified by the regulations made by the Authority;

(h) such other documents as may be specified by the regulations made by the Authority.

(2A) If, on receipt of an application for registration and after making such inquiry as he deems fit, the Controller is satisfied that—

(*a*) the financial condition and the general character of management of the applicant are sound;

(*b*) the volume of business likely to be available to, and the capital structure and earning prospects of, the applicant will be adequate;

(*c*) the interest of the general public will be served if the certificate of registration is granted to the applicant in respect of the class or classes of insurance business specified in the application; and

(*d*) the applicant has complied with the provisions of Sections 2-C, 5, 31A and 32 and has fulfilled all the requirements of this section applicable to him, the Authority may register the applicant as an insurer and grant him a certificate of registration.

(2AA) The Authority shall give preference to register the applicant and grant him a certificate of registration if such applicant agrees, in the form and manner as may be specified by the regulations made by the Authority, to carry on the life insurance business or general insurance business for providing health cover to individuals or group of individuals.

(2B) Where the Authority refuses registration; he shall record the reasons for such decision and shall furnish a copy thereof to the applicant.

(2C) Any person aggrieved by the decision of the Authority refusing registration may, within thirty days from the date on which a copy of the decision is received by him, appeal to the Central Government.

(2D) The decision of the Central Government on such appeal shall be final and shall not be questioned before any Court.

(3) Notwithstanding anything contained in sub-section (2A), in the case of any insurer having his principal place of business or domicile outside India, the Authority, shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 62 is not satisfied.

(4) The Authority shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be, -

(*a*) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or *(aa)* if the insurer fails, at any time, to comply the provisions of Sec. 64VA as to the excess of the value of his assets over the amount of his liabilities; or

(*b*) if the insurer is in liquidation or is adjudged an insolvent, or

(*c*) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(*d*) if the whole of the deposit made in respect of insurance business has been returned to the insurer under Sec. 9, or

(*e*) if, in the case of an insurer specified in sub-clause (*c*)of clause (*9*) of section 2, the standing contract referred to in that sub-clause is cancelled or is suspended and continues to be suspended for a period of six months, or

(ee) if the Central Government so directs under sub- section (4) of Sec. 33] and the Authority may cancel the registration of an insurer-

(*f*) if the insurer makes default in complying with, or acts in contravention of any requirement of this Act or of any rule or any regulation or order made or, any direction issued there under, or

(*g*) if the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or

(*h*) if the insurer carries on any business other than insurance business or any prescribed business, or

(*i*) if the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority of India Act, 1999, or

(*j*) if the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 1956 (1 of 1956), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the General Insurance Business (Nationalization) Act, 1972 (57 of 1972), or the Foreign Exchange Regulation Act, 1973 (46 of 1973).

(5) When the Authority withholds or cancels any registration under sub-section (3) or clause (a), clause *(aa),* clause (*e*), clause *(ee),* clause (*f*), clause (*g*) or clause (*h*) of sub-section (4), he shall give notice in writing to the insurer of his decision, and the decision shall take affect on such date as he may specify in that behalf in the notice, such date not being less than one month nor more than two months from the date of the receipt of the notice in the ordinary course of transmission.

(5A) When the Authority cancels any registration under clause *(b*), clause *(c)* or clause (*d*) of sub-section (4) the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer.

(5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place.

(5C) Where a registration is cancelled under clause*(a), clause (aa), clause (e),* clause (*f*), clause (g) or clause (*h*) or clause (*i*) or clause (*j)* of sub-section (4), the Authority may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or Section 98, or complies with the provisions of Section 64VA as to the excess of the value of his assets over the amount of his liabilities or has his standing contract restored or has had an application under sub-section (4) of section 3A accepted, or satisfies the Authority that no claim upon him such as is referred to in clause (g) of sub-section (4) remains unpaid or that he has complied with any requirement of this Act or the Insurance Regulatory and Development Authority of India Act, 1999 or of any rule or any regulation, or order made there under or any direction issued under those Acts that he has ceased to carry on any business other than insurance business or any prescribed business, as the case may be, and complies with any directions which may be given to him by the Authority.

(5D) Where lithe registration of an insurance company is cancelled under sub-section (4), the Authority may, after expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company has been revived under sub-section (5C) or an application for winding up the company has been already presented to the Court. The Court may proceed as if an application under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of Sec. 58, as the case may be.

(5E) The Authority may, by order, suspend or cancel any registration in such manner as may be determined by the regulations made by it:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(6) [***]

(7) The Authority may, on payment of the prescribed fee, not exceeding five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary.

Renewal of registration

3A. (1) An insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of March, after the commencement of the Insurance Regulatory and Development Authority of India Act, 1999.

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Authority before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section

(3) by evidence of payment of the fee as determined by the regulations made by the Authority which may vary according to the total gross premium written direct in India, during the year preceding the year in which the application is required to be made under this section, by the insurer in the class of insurance business to which the registration relates but shall not—

(*i*) exceed one-fourth of one per cent. of such premium income or rupees five crores, whichever is less;

(ii) be less, in any case, than five hundred rupees for each class of insurance business:

Provided that in the case of an insurer carrying on solely re-insurance business, the provisions of this sub-section shall apply with the modification that instead of the total gross premium written direct in India, the total premiums in respect of facultative re-insurances accepted by him in India shall be-taken into account.

(3)The fee as determined by the regulations made by the Authority for the renewal of a registration for any year shall, be paid into the Reserve Bank of India, or where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration.

(4) If an insurer fails to apply for renewal of registration before the date specified in sub-section (2) the Authority may, so long as an application to the Court under sub-section (5-D) of section 3 has not been made, accept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty, not exceeding the fee as determined by the regulations made by the Authority, and payable by him, as the Authority may require:

Provided that an appeal shall lie to the Central Government from an order passed by the Authority imposing a penalty on the insurer

(5) The Authority shall, on fulfilment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration.

Certification of soundness of terms of life insurance business

(3B) If, when considering an application for registration under section 3 or at any other time, it appears to the Authority that the assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance business are in any respect not workable or sound, he may require that a statement thereof shall be submitted to an actuary appointed by the insurer for the purpose and approved by the Authority, and may by order in writing further require the insurer to make within such time as may be specified in the order such modifications in the said rates, advantages, terms, or conditions, as the case may be, as the said actuary may report to be necessary to enable him to certify that the said rates, advantages, terms and conditions are workable and sound.

INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY (IRDA)

After 1991 due to liberalization in the economic policy, many private players started their business in India which has brought with it their own evil of unhealthy competition. Hence a Malhotra committee was formed to effectively regulate insurance companies. Following the recommendations of the Malhotra Committee, in 1999 the Insurance Regulatory and Development Authority (IRDA) was constituted to regulate and develop the insurance industry and was incorporated in April 2000. Objectives of the IRDA include promoting competition, to enhance customer satisfaction with increased consumer choice and lower premiums while ensuring the financial security of the insurance market.

Section 4 of the IRDAI Act 1999 specifies the authority's composition. It is a ten-member body consisting of a chairman, five full-time and four part-time members appointed by the government of India. At present (1 Sept, 2018), the authority is chaired by Dr. Subhash C. Khuntia and its full-time members are Mrs T.L. Alamelu, K. Ganesh, Pournima Gupte, Praveen Kutumbe and Sujay Banarji.

Functions of IRDA

The functions of the IRDAI are defined in Section 14 of the IRDAI Act, 1999 and include:

1. Issuing, renewing, modifying, withdrawing, suspending or cancelling registrations
2. Protecting policyholder interests
3. Specifying qualifications, the code of conduct and training for intermediaries and agents
4. Specifying the code of conduct for surveyors and loss assessors
5. Promoting efficiency in the conduct of insurance businesses
6. Promoting and regulating professional organisations connected with the insurance and re-insurance industry
7. Levying fees and other charges
8. Inspecting and investigating insurers, intermediaries and other relevant organisations
9. Regulating rates, advantages, terms and conditions which may be offered by insurers not covered by the Tariff Advisory Committee under section 64U of the Insurance Act, 1938 (4 of 1938)
10. Specifying how books should be kept
11. Regulating company investment of funds
12. Regulating a margin of solvency
13. Adjudicating disputes between insurers and intermediaries or insurance intermediaries
14. Supervising the Tariff Advisory Committee
15. Specifying the percentage of premium income to finance schemes for promoting and regulating professional organisations
16. Specifying the percentage of life and general-insurance business undertaken in the rural or social sector
17. Specifying the form and the manner in which books of accounts shall be maintained, and statement of accounts shall be rendered by insurers and other insurer intermediaries.

NATURE OF INSURANCE

Insurance means the act of securing the payment of a sum of money in the event of loss or damage to property, life, a person etc., by regular payment of premiums. Insurance is a method of spreading over a large number of persons, a possible financial risk too serious to be conveniently sustained by an individual.

The aim of all types of insurances is to protect the owner from a variety of risks which he anticipates. The happening of the specified event must involve some loss to the insured or at least should expose him to adversity which is, in the law of insurance, called commonly the 'risk'.

The nature of insurance depends on the nature of the risk required to be protected. An insurance contract makes available the risk coverage to the insured. The buyer of insurance pays a fixed premium in exchange for a promise of compensation in the event of some specified loss. Insurance is bought because it gives peace of mind to the holders. This comfort stage is important in personal and business life.

Though the most important purpose of insurance is to provide risk coverage, when the contract period extends over a long time, as in the case of life insurance, premium payments comprise of two components – one for buying risk coverage and the other towards savings. The joining together of risk coverage and savings is peculiar with the life insurance and is more common in developing countries like India.

In the industrially superior countries, the short duration life insurance contracts without a savings component are equally popular. In the developing economies because of the savings component and the long nature of the contract, life insurance has become an important instrument of activating the long-funds. The savings component puts the life insurance in straight competition with other financial institutions and savings instruments.

In many developed countries, citizens are to a certain extent protected by social security schemes provided by the government. These schemes offer financial aid to citizens who are eligible on grounds of unemployment, old age, sickness, disability, etc. The social security scenario in India is quite different, having traditionally been the responsibility of the family or community. However, with industrialization, urbanization, breakup of the joint family system and weakening of family bondage, it has become necessary to provide social security arrangements that are institutionalized and regulated by the state rather than the society.

The issues relating to social security are listed in the 'Directive Principles of State Policy' of the Constitution of India. While the subject of 'social security insurance', 'employment and unemployment' form Item 23 of the Concurrent List, and the subject of 'the welfare of labour including conditions of work', 'provident fund', 'employee's liability', 'workmen's compensation', 'invalidity and old age pension' and 'maternity benefits' form Item 24, also of the Concurrent List.

During the initial years of development and planning, it was believed that with the process of development, a greater number of workers would join the organized sector and eventually get covered by formal social security arrangements. However, the actual experience has proved otherwise. There is now almost a stagnation of employment in the organized sector with increase in the inflow of workers into the informal sector. The unorganized workforce is characterized by scattered and fragmented areas of employment, seasonality, lack of job security and low legislative protection. Currently, out of an estimated workforce of nearly 400 million, only less than 10 percent have the benefits of formal social security protection. Although the government has a few centrally funded social assistance programmes like National Old Age Schemes and National Family Benefit Schemes, the number of people covered as well as the benefits is very meagre. Furthermore, in a country like India, where there is no provision for unemployment benefits, the concept of insurance becomes extremely important.

Legal nature of insurance contract

The concept of insurance as an effective mechanism for risk transference was first introduced in the marine trade. Later on, the utility of the concept was realized in its expansion to the non-marine types like life and fire insurance. Almost until the middle of the nineteenth century these were the three types which obtained prominence in insurance law. The applicability of the principle of insurance has been found to be wider and today, besides the various types like motor, accident and fidelity insurance, its scope is extended to crop and cattle insurance. Insurance has become the usual mode of ensuring security against future contingencies and it plays a significant role in the social and commercial life of all modern communities.

The law of insurance forms part of the general law of contract and whatever type of contract of insurance may be, it always represents the agreement between the assured and the insurer. The essential ingredients of a contract under law, for example, offer and acceptance,

consideration, capacity of the parties, mutuality of understanding and legality of object are of equal application to a
contract of insurance. But there is the existence of a separate set of principles distinctly applicable to a contract of insurance that furnishes the correct appraisal of the nature of insurance contract.

Basic principles of insurance

Though insurance has been differentiated into marine, fire, life etc., there are certain general principles applicable to all forms of insurance. These general principles serve as a guide to the sound interpretation of the purpose of the insurance contracts in their diversified forms. The principles of indemnity, insurable interest, *uberrima fides* (utmost good faith) and the existence of risk are some of the principles having common application. Following are the some of the important principles of insurance:

(a) Existence of risk:

It is vital to every contract of insurance that the subject matter should be exposed to the contingency of loss or risk. Risk involves the happening of an uncertain event adverse to the interest of the assured. In marine insurance the ship or cargo is exposed to the loss by perils of the sea. In fire insurance the risk is in the destruction of property by fire. In life insurance, the risk is in the death of the assured, though a certainty, but uncertain as to the time of its happening. In an abstract sense, risk may be defined as the chance of loss. It can either be an uncertainty as to the outcome of some event or events, or loss as the result of at least one possible outcome. In any case, the promise of the insurer is to save the assured against the uncertain consequences.

(b) Principle of indemnity:

Insurance is essentially a contract of indemnity. All the claims of the assured will be adjusted only with reference to the actual loss sustained by him. Thus, it is implied in every contract of insurance that the assured in case of a loss against which the policy has the actual loss, is to prevent fraud on the part of the assured. It checks the temptation to gain by unfair means and the wilful causing of loss. However, the factual basis for the application of the principle of indemnity is not the prevention of crime or consideration of public policy but it derives from the inherent nature of the bargain.

In assessing the amount payable on a contract of insurance, the principle of indemnity is a guiding principle. It is common that insurers limit their liability to a particular amount of money known as the 'sum assured.' In case of loss, the 'sum assured' is all that the assured is entitled to even if the value of the premium paid is less than it. But in all other cases, except in the valued policies (in Marine Insurance) the insurer is liable to indemnify only to the tune of the actual loss, even though the 'sum assured' is a higher amount. In 'valued policies,' the parties agree that the value of the subject-matter shall be agreed. The object of the valued policies is to avoid dispute after the loss occurs as to the quantum of the assured's interest.

In contracts of life insurance, personal accident and sickness insurances and in some forms of emergency insurance, the loss is frequently measured in monetary terms. They are to be distinguished from contracts of indemnity like marine and fire insurance. It is now well established that life insurance in no way resembles a contract of indemnity. Not seldom the contract of life insurance is considered as an arrangement for profitable investment. It is because the assured by paying the premiums increases the habit of saving, the cumulative sum which he can recover after the expiry of the fixed period.

Life insurance may properly be considered as an investment of money because it enables to secure an ultimate fund to those persons who have no greater opportunity of making savings or which left to themselves, they would have found it beyond their means. Yet, the objective of a contract of life insurance is mainly to provide compensation for the risk of death happening at an uncertain time. Though, it is considered as a sort of investment, it holds good in some cases, it is departing from the essential feature of insurance security against risk. It is, therefore, observed that a life policy is not a contract of indemnity.

Generally; a contract of indemnity is entered into for the sole purpose of making good a loss incurred. The value of a life, however, is incapable of estimation and except, in a limited sense, cannot be "made good" by insurance. The important distinction which thus arises between life insurance and the other forms of insurance is that the principle of "subrogation," under which the insurer (i.e., the company) takes the right of recovery against the third party causing the loss, has no application to life insurance.

(c) Difference between the contract of insurance and wager agreement:

The basic principle of indemnity on which the greater part of the law of insurance is based, *prima facie*, negatives any treatment of insurance on par with wagering contracts. The wagering contracts are those, wherein "two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that the other shall pay and hand over to him, a sum of money".

Again, the difference between a wagering agreement and a contract depends upon whether the person making it has or has not an interest in the subject matter of the contract. That means, "if the event happens the party will gain an advantage, if it is frustrated he will suffer a loss". Probably, the common feature of the two types of agreement – the element of uncertainty, gave rise to the misconception of insurance in terms of gamble.

According to Sir William Anson, the Father of the "Law of Contract" -

'Insurance was placed on a different ground from a pure wager merely because it is permitted by law. Insurance was regarded as no better than a wagering contract despite the presence of insurable interest. But this view has been modified by him later on and now he affirms insurance is described as having only a 'superficial resemblance' to a wager. Though the distinction is subtle, it is the intention of the parties rather than the form of the contract that distinguishes insurance from wager'.

A wagering contract is made normally with a view to secure profit. The probability of the happening of an event is completely irrelevant to the interests of the parties except for the chance of gain. A wager is concerned with the happening of an event *per se* and the consequential determination of the conflicting interests. The purpose is to win or lose in lieu of the mere probability of an event. In insurance, the interest of the assured in the subject matter of risk known as the insurable interest and is of the utmost importance in the insurance contract.

Aleatory contract

Contract of insurance is described as aleatory contract. It is speculative to such an extent that the parties may not know whether the event insured against will occur or not, thus involving a case of mutual risk. The insurer in turn, for a comparatively small sum in the form of a premium undertakes to compensate against a heavy loss. But such undertakings will normally be with reference to actuarial practice and therefore insurance always stands apart from a mere speculative venture.

The insurance can only be with reference to a previously existing risk and unlike a wager does not create risk with its inception. In the case of insurance, the individual subjected to the risk before negotiations, obtains security and to that extent there will be a shifting of risk rather than creation of it. Therefore, it can be said that the insurance accomplishes the reverse of a wagering contract.

At one time the life insurance was considered to be immoral, as “gambling in human life”. This idea arose because policies were taken where no insurable interest existed and where the insurance was affected solely for speculative purposes. Life insurance, however, is now chiefly used and properly regarded as an economic and social necessity and when properly understood cannot be considered as a “wager”, even though a large financial gain may result from the early death of an insured.

On the other hand, a wagering contract is one where profit is sought to be made through chance, while the true object of life insurance is rather the opposite, the avoidance of loss arising through chance. A life insurance policy therefore is not a wagering contract, which would be unenforceable on grounds of public policy. The life insurance was regarded is a contract of indemnity similar to the other contracts of insurance even during 1854.

Therefore, following are the points of difference between the life insurance and other forms of insurance –

1. Most of the contracts of insurance are frequently annual contracts and the insurers have the option to refuse renewal at the end of each and any period of insurance. In some cases, the insurer reserves the right to terminate the insurance anytime on a proportionate return of premium in respect of the unexpired period of the risk. Life assurance contracts are, in the main, long-term contracts and in the absence of any fault or any flaw the insurer has no option to cancel the insurance.
2. The risk insured against under a fire, accident or marine insurance contract may or may not occur but the event insured against under life assurance contract is bound to happen.
3. The general contract of insurance continues to be a contract of indemnity, but life insurance is considered as an assurance contract.

(d) Principle of Insurable Interest:

The test for a valid insurance contract is the existence of the insurable interest. The ‘insurable interest’ is nothing but an interest of such a nature that the occurrence of the event insured against would cause financial loss to the insured and such an interest which can be or is protected by a contract of Insurance. This interest is considered as a form of property in the contemplation of law.

The insurable interest should exist at the time of happening of an event in the general insurance contracts, but is not necessarily so in the case of the life insurance contracts. This is because the former is a contract of indemnity and the latter is a contract of assurance. Taking an example of fire insurance, it is clear that an insured person suffers no loss under a policy, if at the time of loss or damage to the property; he has no interest in it either as full or partial owner.

According to McGillivray

If the assured has no interest at the time the event happens it is clear that he cannot recover anything, because he suffers no loss, and therefore has no claim to an indemnity. Similarly, if he has an interest which is limited to something less than the full value of the subject-matter, he suffers no greater loss than the value of his interest at the time of the loss, and therefore, his claim to an indemnity cannot exceed the value of his interest.

In this context of insurable interest, life insurance stands on different ground. No value can be assigned to human life in the same way as is done in respect of tangible property. But all the same, it is possible to measure the extent of loss that would be caused by the failure of a particular life. An insurable interest of some kind is necessary to every contract of insurance of whatever kind and any insurance made without such interest is illegal and void. The guiding factor in this regard is that an insurable interest is a reasonable expectation of financial benefit from the continued life of the subject or an expectation of loss if the subject dies. For instance, a parent has a clear insurable interest in the life of a minor child, since he is entitled to the services and earnings of that child. The concept of insurable interest primarily appears to be an invention of the courts. It may be necessary for the assured to show interest but common law contains no general prohibition of contracts in which no insurable interest exists. It was perhaps introduced to curb insurances by way of wager, and obtained statutory recognition.

The presence of insurable interest is insisted for two reasons: -

(1) An assured cannot be taken to have suffered any damage, if he has no interest in the property insured at the time of loss.

(2) Secondly, if the interest of the assured is limited to something less than the full value of the subject matter, no greater damage than his interest in the subject matter will result.

In both the cases, the interest in the subject-matter is required by the terms of the contract itself, since the promise of the insurer will be only to compensate the actual loss. To have insurable interest, it is essential that there should be some contractual or proprietary right, whether legal or equitable so long as it is enforceable in the courts. Accordingly, the main principles determining the existence of insurable interest are (a) the interest must be enforceable at law (b) the continued existence of the interest will be beneficial to the assured. Strict legal or pecuniary interest is not necessary.

Under the contract of life insurance, the assured has insurable interest in his own life to an unlimited extent. But, where a person takes insurance on the life of another, the criteria applied in assessing the insurable interest is of great importance. It is not the legal or beneficial interest, as in the case of marine and fire insurance, but the person insuring the life of the other must stand in such relationship as will justify a reasonable expectation of advantage or benefit from the continuance of the life of the person on whom the insurance is affected. The test applicable is whether there was actual dependence of the person affecting the insurance, whose life is insured, or he had an expectancy of some advantage from the continued existence of the person insured. The effect of the requirement of insurable interest in all contracts of insurance seems to be two-fold. Its absence makes a contract of insurance equivalent to a wager. Also, the principle of indemnity cannot be applied unless there be some interest in the subject-matter, because, the actual loss alone will be indemnified. Thus, it became a preventive of wagering policies and also limited the amount recoverable to the loss sustained by the assured.

(e) Principle of utmost good faith:

In the case of ordinary commercial transaction, the legal maxim "*Caveat Emptor*" (let the purchaser beware) prevails. In the absence of an enquiry the other party to the contract is under no obligation voluntarily to furnish detailed information regarding the subject matter of the contract. It is, however, understood that one party to the contract should not be misled by the other by any false declaration. All the same, it is open to both the parties to the contract to satisfy them and each party is entitled to make the best bargain that he can make.

As a contrast to such commercial contracts the insurance contract is dominated by the legal maxim "*the utmost good faith*". The observance of *the utmost good faith* by the parties is vital to a contract of insurance. Insurance is also called as an *uberrima fide* contract because the parties are required to confirm to a higher degree of good faith than in the general law of contract. Good faith and honesty though principles of equity and justice are equally applicable to every agreement, yet in contracts other than insurance, the parties are free to settle their own terms. In a contract of sale of goods, "*Caveat Emptor"* is the principle and the sellers are under no obligation to make known to the purchaser all the facts that might affect his decision. But in insurance there is something more than an obligation to treat the insurer honestly and frankly. An insurance being a device of risk transference stands on a separate basis. The non-disclosure of a material fact by the assured whether fraudulent or innocent, has the same effect of avoiding the contract. A stringent duty is imposed on the assured to provide all the material facts that might influence the decision of the insurer. The fact that the assured believed as a reasonable man certain information as immaterial to the purpose does not provide a defence. The materiality of a particular fact will be considered independently of the belief of the assured. This fundamental principle applies to all branches of insurance. It may be summarized from one of the several judgments pronounced, it is the duty of the assured to disclose all material facts within their knowledge. In cases of life insurance, certain specific questions are proposed as the points affecting in general to all mankind. But there may be circumstances also affecting particular individuals, which are not likely to be known to the insurer, and which had they been known, would no doubt, have been made subject to specific enquiries.

The onus of good faith lies equally on both the parties to the contract, but in the nature of things the assured has to pay more particular attention to the observance of the principles. The selection of a life for insurance by the company depends to a large extent on the information supplied by the proposer. As the company solicits proposals from the general public whose members are total strangers to the company, there is an urgent need for disclosing all material facts within the knowledge of the proposer to enable the company to come to a decision. The proposer has within his knowledge all the facts, which are material to the risk. The proposer is morally and legally bound to disclose all matters, which in point of fact are material to the contract.

The question as to which information is material to the contract is wide one. In case of a dispute, a court or a committee of arbitrators may decide it. But this cannot certainly be left to the opinion of the proposer. 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. This definition has been embodied in the Marine Insurance Act, 1906 and is equally applicable to the life insurance. Nevertheless, the proposer is excused from explicitly disclosing certain facts. These are:

(1) What the insurer already knows?

(2) What the insurer ought to know?

(3) What the insurer waives being informed of? and

(4) Features, which lessen the risk?

Thus, in an insurance contract each party acts on the good faith of the other. If the proposer conceals or misrepresents material facts, the contract is vitiated. Deliberate concealment or misrepresentation amounts to fraud, and the policy is legally void. The innocent misstatement or misrepresentation renders the policy voidable at the option of the insurer up to two years. In practice, however, policies are usually allowed to continue, subject to adjustment, if the company is satisfied that there was no intention on the part of the assured to defraud it. As stated before, full disclosure of the material information having a bearing on the risk is necessary on the part of the proposer. This is due to the principle of *uberrima fides* that governs the insurance business. The statements made by the proposer in the proposal and his statement before a medical examiner is, in legal language, either representations or warranties.

A warranty in insurance is a statement or condition incorporated in the contract relating to the risk, which the applicant presents as true and upon which it is presumed that the insurer relied in issuing the contract. Marine insurance, the first branch of insurance to develop commercially, evolved the doctrine of warranty. The Marine Insurance Act, 1906 (England), gives the following definition of a warranty

'A warranty is a statement 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 fact. This Act states further that a warranty as above defined is a condition which must be exactly complied with, whether it be material to the risk or not'.

The other replies given by the proposer, which are not intended to have the force of warranty, are known as representations. In life insurance, there is a recital clause by which the answers given in the proposal and the replies made to the medical examiner are made as the basis of the contract and thereby given the effect of warranty. The present tendency of the offices is to treat the replies as representation. Any misstatements are, therefore, judged from this approach and if the company thinks that the misstatement is material, that is, the knowledge of the correct statement would have influenced the decision of the company adversely; the insurer can seek to avoid the policy on the ground of non-disclosure or misstatement and must also offer to return the premiums. The courts also do not favour any unfair rigidity in the interpretation of answers to the questions in the proposal form. Even then it is always desirable on the part of the proposer to warrant the answers to the best of his knowledge and belief. This materially safeguards his interests.

FUNCTIONS OF INSURANCE:

The various functions of insurance like risk sharing, life insurance and annuities relief for members of society, sharing burden of state to provide relief to destitute and aged citizens, making available finance for social investment etc. The fundamental function of insurance is to shift the loss suffered by a sole individual to a willing and capable professional risk-bearer in consideration of a comparatively small contribution called premium. In this process the professional risk-bearer *i.e.* the insurer collects some small rate of contribution from a large number of people and if there is any unfortunate person among them, the risk-bearer *i.e.* the insurer relieves the sufferer from the effects of the loss by paying the insurance money. Thus, it serves the social purpose and it is "a social device whereby uncertain risks of individuals may be combined in a group and thus, made more certain; small periodic contribution of the individuals providing a fund out of which those who suffer losses may be reimbursed". The insurers collect the contributions of numerous policyholders and those funds are invested in organized commerce and industry. They help the running of giant industries and mobilize the capital formation.

In simple terms, "insurance is a protection against financial loss taking place on the happening of an unexpected event". All the individuals have assets tangible i.e. the house, car, factory etc. or intangible like voice of a singer, leg of a footballer, the hand of an author etc. All these can be insured because they run the risk of becoming non-functional either through a disaster or an accident.

The functions of Insurance can be bifurcated as below:

1. Primary Functions,
2. Secondary Functions and
3. Other Functions

The primary functions of insurance include –

(a) Provide protection - The primary function of insurance is to offer protection against future risk, accidents and uncertainty. Insurance is actually a shield against economic loss, by sharing the risk with others.

(b) Collective risk - Insurance is a device to contribute to the financial loss of a few among many. Insurance is a mean by which little losses are shared among larger number of people. All the insured share the premiums towards a fund and out of which the persons exposed to a particular risk is paid.

(c) Evaluation of risk - Insurance concludes the probable volume of risk by evaluating various factors that give rise to risk. Risk is the origin for determining the premium rate also.

(d) Provide assurance - Insurance is a device, which helps to modify from uncertainty to certainty. Insurance is a mechanism whereby uncertain risks may be made more certain.

The secondary functions of insurance include: -

i. Avoidance of losses - Insurance alarms individuals and businessmen to adopt suitable device to prevent unfortunate consequences of risk by observing safety instructions; installation of automatic sparkler or alarm systems, etc. prevention of losses causes smaller payment to the assured by the insurer and this will encourage for more savings by way of premium. The condensed rate of premiums motivate for more business and better protection to the insured.

ii. Small capital to cover larger risks - Insurance relieves the businessmen from security investments, by paying small amount of premium against superior risks and uncertainty.

iii. Encourage towards the development of larger industries - Insurance provides development opportunity to those larger industries having additional risks in their setting up. Even the financial institutions may be prepared to give credit to ailing industrial units which have insured their assets including plant and machinery.

The other functions of insurance include: -

1. Way of savings and investment - Insurance serves as savings and investment, insurance is a compulsory way of savings and it limits the unnecessary expenses by the insured. For the reason of availing income-tax exemptions also people invest in insurance.

2. Source of earning foreign exchange - Insurance is a worldwide business. The country can earn foreign exchange by way of issue of marine insurance policies and various other ways.

3. Risk-Free trade - Insurance promotes exports insurance, which makes the foreign trade risk-free with the assistance of different types of policies under marine insurance cover.

TYPES OF INSURANCE:

As Insurance has become one of the most socially desirable and commercially acceptable tertiary industries in the world, the types of insurance are wide, both in private and public. The cover of insurance which varies from corpus and properties, living and non-livings, chattels and all belongings, movable and immovable extending to even various limbs of the body. It can be broadly divided into Three types viz.,

(a) Life insurance;

(b) General insurance; and

(c) Re-insurance.

Prospects of insurance business:

The insurance sector has a huge potential not only because incomes are increasing and assets are expanding but also because the increasing instability in the system. In a sense, we are living in an extra risky world. Trade is becoming more and more global. Technologies are changing and getting replaced at a faster rate. In this more uncertain world, for which enough evidence is available in the recent period, insurance have an imperative role to play in reducing the risk burden that the individuals and businesses have to bear. The approach to insurance should be in tune with the changing times.

The aim of the insurance sector in India is to extend the insurance coverage over a larger section of the population and a wider segment of activities. The three guiding principles of the industry must be to charge premium not higher than what is acceptable by strict actuarial considerations, to invest the funds for obtaining maximum yield for the policy holders consistent with the safety of capital and to render efficient and prompt service to policy holders. With a creative corporate planning and an abiding commitment to improved service, the mission of widening the network of insurance can be achieved.

There is a probability of a shoot in employment opportunities. A number of web-sites are coming up on insurance, a few financial magazines exclusively devoted to insurance and also a few training institutes are being set up. Many of the universities and management institutes have already started or are contemplating new courses in insurance. Life insurance has today become a mainstream of any market economy since it offers plenty of scope for collecting large sums of money for long periods of time. A well-regulated life insurance industry which moves with the times by offering its customers specially made products to satisfy their financial needs is, therefore, essential to progress towards an unstressed future. Thus, one can understand the term ‘insurance’ better from its legal nature, principles and functions as discussed above and is the base for all the types of insurances.

Life insurance

Life insurance is a contract with between an individual and an insurance company, in which the insurance company provides financial security in return for regular payments (known as premiums) to the insurance company. In case of the policyholder’s death or if the policy matures, the insurance company shall pay a lumpsum to the individual after a period of time or to their family, on basis of the contract. Typically, this type of policy is chosen based on your needs and goals.

Benefits of Life insurance

Insurance can prove advantageous in meeting several financial goals of the individual and his family. Here are some of the important ones:

1. Financial cover against loss of life, which makes sure your family can support itself in your absence
2. Child’s education
3. Child’s marriage
4. Buying a house
5. Pension or regular income post-retirement
6. Post-retirement income for NRIs

These are just some of financial goals you can achieve with the help of life insurance. More importantly, life insurance plans are flexible. This means although you won’t find an insurance plan dedicated to buying a house, you can buy an endowment plan (traditional or market-linked) with the aim of paying for a house at a future date.

Nature and scope of Life Insurance

There is no statutory definition of life insurance. However, it is defined as a ‘Contract in which the insurer, in consideration of a certain premium, either in a lump sum or in any other periodical payments, in return agrees to pay to the assured, or to the person for whose benefit the policy is taken, a stated sum of money on the happening of a particular event contingent on duration of human life’

In Dalby v. The Indian & London Assurance Co the essential features Life Insurance have been stressed upon. Accordingly, it is

- It is a contract relating to human life

- There need not be an express provision that the payment is due on the death of the person
- The contract provides for payment of lump sum money
- The amount is paid at the expiration of a certain period or on the death of the person

Objectives or advantages of life insurance

Life Insurance has both Short-Range & Long-Range advantages. In short range it benefits the insured primarily as it

- Encourages thrift i.e. the habit of saving
- Forms capital- by saving money it becomes a capital for future investment
- Relieves of worries as insured will have sufficient money with him
- Medical examination is done while taking policy
- Look after family members - during old age family members can be looked after as the assured will have sufficient savings
- Also raise loan – based on the amount deposited with insurer through premium

As a long-range advantage it leads to

- Promotion of industry – as the huge amount collected by insurance companies will be used to promote industries by government
- Leads to country's economy- when industry prospers it automatically leads to the development of the country's economy

Difference b/w Life Ins & other Insurances

Primary distinction between the two is the subject-matter of insurance. In case of Life Insurance, the subject matter is the human life which has no economic value. It is only a juridical valuation & hence it is invaluable in terms of money. Further, the event insured is the life or death which is certain.

In Fire & Marine insurances the subject-matter has an economic value. The event insured against may not happen at all.

In life insurance as held by Lord Mansfield in Godsall vs. Boldcro that 'Life Ins is also contract of indemnity'. Later in Dalby Vs The Indian & London Assurance Co, it was criticised and held that it is not a contract of indemnity in the strict sense. As human life cannot be estimated. It is incapable of exact estimation (i.e. loss by death).

A person takes policy for a value that is as per his capacity to pay premium. It is a contract with reference to one's own life hence not an indemnity contract. But if policy is taken on other's life it becomes an indemnity contract. For e.g. creditor can take policy on the life of debtor for recovery of his loan amount.

In case of life insurance, the sum assured becomes payable in full without proof of loss. It is not strictly an indemnity contract. The event insured is the death, which is certain and bound to happen sooner or later, but there is an uncertainty as regards time of it's happening.

Insurable Interest is required only at the time of commencement of the contract, as the life of person is incapable of valuation in terms of money. There is no question of over valuation. It ranges to whole life of assured as it is a long-term contract. Premium may be paid at regular intervals as agreed by the parties.

Amount of damage depends on actual loss suffered by the assured. In case of a strict contract of indemnity he cannot recover more than the actual loss. But here since the life cannot be valued, it is not a contract of indemnity in the strict sense. Further the event insured may not happen at all in other kinds of insurances.

Insurable interest in case of Fire & Marine insurances should be there even during loss, as it is capable of valuation. In case of gross over valuation the policy becomes void as it would become a wagering agreement.

Insurances other than life would be for a short term, usually for an year or couple of years and the same can be renewed just like a railway ticket which could be extended or renewed by payment of extra premium.

Event insured against in Life insurance

The event which is insured in case of life insurance is the 'Death'. Death may be due to

- Natural reasons;
- Disease;
- Accident; or
- Criminal act of III party

Technically if the provisions of sec 10 of Indian Contract Act are complied it would be a good contract and hence becomes enforceable. But if death occurs by willful misconduct for e.g. after the commencement of insurance if the assured is killed, it may be avoided.

In Liberty National Life Insurance Co vs. Weldon, a nurse took life policy on her niece (of 2yrs old). She administered arsenic in the drink to be given to the child. Child died, when she claimed compensation the court has imposed damages on insurance co for issuing policy without insurable interest.

It is based on a principle that 'No man shall be allowed to take advantage of his own wrong'. In case of wilful and wrongful acts of assured 'Implied Term Theory' is applied and consequently the insurance company is absolved from the liability.

If the death took place by suicide, it is called as *Felo de se* – (felon of himself). All deaths except by (i) Violation of a criminal law by assured himself and (ii) Suicide would be covered by the policy. Further *Felo de se, when sane or insane* may be considered by the court. Hence, life policies on this ground are classified into 2 types viz., if the death is an act of self-destruction; and if it is due to suicide committed within 2 year from the commencement of the policy there would be exemption from liability.

Borradaile vs. Hunter it was held that '*If assured should die by his or her own hands or by hands of justice or inconsequence of duel, the policy should void'*. If a man is thrown himself into a river and consequently is drowned it was held to be an act of self-destruction.

Circumstances affecting the Risk

The different circumstances which would affect the risk involved in life insurance would be:

- Age
- Family history
- Personal heath
- Moral history – Habits of life, past & present
- Occupation
- Geographical position

Amounts Recoverable under

Upon the death or efflux of time the amount under life insurance may be recovered. This amount includes the amount insured by the assured, which would be payable on happening of event or completion of period. Further it also includes the 'Bonus', if declared, by the insurance company; share of profits, if it be a participation policy; the 'Surrender value' of the policy when declared by the insurer, which is an amount payable on lapses of policy due to non-payment of premium or where assured surrenders policy.

The Surrender Value is the value which is the amount payable to you should you decide to discontinue the policy and encash the same from LIC. Surrender value is payable only after three full years premiums are paid to LIC.

Persons entitled to payment

The following person are entitled to the payment of insurance amount on the happening of an event agreed upon viz.,

- Nominees
- The assured himself
- Executors & Administrators
- Assignees
- Payees

Sec 39 Nomination by policy-holder

(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death:

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer

(3) The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (3 of 1874) applies or has at any time applied:

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946, in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy.

Types of Life Insurance

Broadly, there are five basic types of life insurance plans:

1. **Term insurance**

Term plans are the most basic form of life insurance. They provide life cover with no savings / profits component. They are the most affordable form of life insurance as premiums are cheaper compared to other life insurance plans.

2. **Endowment plans**

Endowment plans differ from term plans in one important aspect i.e. maturity benefit. Unlike term plans which pay out the sum assured, along with profits, only in case of an eventuality over the policy term, endowment plans pay out the sum assured under both scenarios – death and survival.

3. **Unit linked insurance plans (ULIP)**

ULIPs are a variant of the traditional endowment plan. They pay out the sum assured (or the investment portfolio if it's higher) on death/maturity. Since ULIPs invest in stock markets they are well-suited for individuals with appetite for risk.

4. Whole life policy

A whole life insurance plan covers a policyholder over his life. The main feature of a whole life policy is that the validity of the policy is not defined so the individual enjoys the life cover throughout his life.

5. Money back policy

This is a variant of the endowment plan. A money back policy gives periodic payments over the policy term. To that end, a portion of the sum assured is paid out at regular intervals. If the policy holder survives the term, he gets the balance sum assured.

Although, it is not possible to attach a rupee value to human life, it is nonetheless important for you to estimate the value of your life in terms of what it will take for your family members to be financially independent in your absence. In insurance parlance this is the sum assured and the financial estimate of the value of your life is called Human Life Value or HLV.

Calculating the HLV involves two steps:

The fundamental method of calculating the human life value involves two steps:

1. Add up all expenses like household expenses, lifestyle expenses among others
2. Calculate future liabilities (like outstanding loans) that your family members will have to pay off in the event of your death.

Once you add the two figures, you get your human life value, which in effect is the sum assured for your life insurance policy.

Benefits of Buying Life Insurance?

Life insurance offers three major benefits, namely protection, long-term savings, and investment. Here is an insight into each of these advantages.

1.Protection

Life is unpredictable and full of uncertainties. The risk of an untoward incident such as death cannot be eliminated. In such a situation, your family will have to face financial constraints caused by the loss of your regular income. Investing in a life insurance plan provides the safety net during such times. Your insurance provider is liable to pay the beneficiary or nominee the pre-determined death benefit, thus keeping your family protected even in your absence.

2.Long-term savings

It is important to consider life insurance if you are seeking to make long-term savings. Such a product helps you to save systematically and build a corpus for your future. The accumulated amount may be used for multiple purposes, such as purchasing a new home, funding your child's future education or meeting his marriage expenses, among many others. What's more, life insurance plans also offer regular pay-outs in the form of annuities, and is therefore, an excellent method to meet your retirement goals.

3.Investment

Unit-Linked Investment Plans (ULIPs) offered by life insurance providers are primarily investment instruments. This market-linked product acts as a tool to create wealth. ULIPs offer significant returns on the premiums paid towards the insurance policy. Most life insurance plans provide considerable returns during maturity, thus making it an attractive investment vehicle.

Besides the major aforementioned advantages, life insurance plans offer a host of other benefits. You may claim tax deductions under Section 10, 80C, and 80CCC of the Income Tax Act, 1961 on the premium paid towards your insurance policy. You may also borrow a loan against your insurance plan in case of a financial crunch.

Buying life insurance plan is a necessity. While many invest in such a plan, not all are aware of the numerous benefits it offers. Life insurance plans help your family tide over difficult times and provide them with financial support in your absence. Besides, availing of an insurance policy inculcates the habit of disciplined savings, thereby enabling you to build a good corpus.

No fault liability

Section 140 in The Motor Vehicles Act, 1988

140. Liability to pay compensation in certain cases on the principle of no fault.—

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force: Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.

Public Liability Insurance: Coverage, Claim & Exclusions

Many a times, it is possible for your business to cause unexpected and unintentional damage to third parties. For example, you have placed a sign-board on the highway about your business, and it suddenly drops over the walking man on the road, leading to his injury or death. Such a liability which does not directly involve you is covered under a special kind of insurance called public liability insurance.

What is Public Liability Insurance?

Any business which has to deal with public, clients, employees or agents is recommended to take public liability insurance. If your business operations lead to financial or legal liabilities on you by the third party, you must consider taking appropriate public liability insurance to stay away from problems related to such unfortunate events.

The Public Liability Insurance Act 1991, provides for mandatory Public Liability Insurance. Under the Act, companies need to take for installing, handling any hazardous substance notified under the Environment Protection Act.

The growth of hazardous industries, processes and operations in India has been accompanied by growing risks of accidents, not only to the workmen of such undertakings, but also members of the public in the vicinity.

Therefore, under Public Liability Insurance Act 1991, every owner, before starting to handle any hazardous substance, have to take out one or more policies covering liabilities for providing immediate relief on a specified scale to any person suffering injury or damage to property, in the event of death, to the legal heirs of the deceased.

The Public Liability Insurance Act, 1991, has been enacted for providing immediate relief to the persons affected by accidents, occurring while handling any hazardous substance and for other incidental and connected matters.

Types of Public Liability Insurance

In India, Public Liability Insurance is classified into three major types:

1. Public Liability Insurance (Industrial Risks): This is meant for manufacturing units and warehouses.

2. Public Liability Insurance (Non-Industrial Risks): This is meant for any non-manufacturing units like hospitals, retail outlets, schools, IT Companies, BPOs, clubs, etc.
3. Public Liability Insurance under the Public Liability Act: The Environment Protection Act 1986 and the Public Liability Insurance Act 1991 make it mandatory for the business dealing in a hazardous environment to take suitable insurance.

What all Public Liability Insurance Covers. Coverage, Claim & Exclusions

In general, any unexpected event arising out of your business operations that may be posing problems in your business will be covered by this insurance. However, you have to specify the nature of the event and limit of financial compensation based on the risks perceived. The claims related to public liability are less predictable and may arise out of any unfortunate events, many a times not directly linked to the business operations. Most common coverages are:

- Claims arising out of the accident, injury or damage on your business premises or arising out of events in connections with your business
- The Act of God events
- Legal liability
- Transportation hazards
- Pollution and contamination

How Public Liability Insurance functions?

Public liability insurance is not a must for most of the business operations. However, it is legally compulsory only for businesses that operate in a hazardous environment or are exposed to similar business operations. However, if your business has to deal with members of the public, several clients, agents and customers, it is recommended to insure yourself to protect yourself from any unexpected claims due to unfortunate event. Let us understand how it works:

- Evaluate the risks associated with your business and the kind of loss you would face because of these risks
- Compare and check different companies and policies before finalising a plan
- Approach the insurance provider you have decided and then go ahead with the required documentation work
- In case of a need of any claim, inform the company immediately

- Submit the dully filled in claim form along with the required documents
- A surveyor from the company will assess the problem and then prepare the report accordingly
- If you are eligible for the claim, you will get it within the specified time frame else will be informed about the rejection
- In case you are not satisfied with the decision, you can approach a court of law

Eligibility Criteria

The insurance premium and the other details depend on the type of business and the associated risks. Let us understand who all are eligible for public liability insurance:

- Manufacturing units
- Other entities like IT companies, BPOs, hotels, schools, restaurants and clubs
- Units dealing with hazardous substances under Public Liability Act, 1991

Public Liability Insurance Claim Process

Once you have bought the public liability insurance policy, you should also understand the claim process, in case there arises the need to make a claim. Let us see how the claim is made:

- Evaluate and analyse the loss and damage you have encountered
- Inform the insurance company as soon as possible; this should be done in writing
- Collect the evidence and proof
- Apt medical certificates in case of injury or death
- Submit duly filled in claim form along with the required documents
- An assessor will evaluate the case and decide whether to accept or reject the claim
- In case you are not satisfied with the decision, you can approach the court

Documents Required for Claim Process

To get claims under public liability insurance, following documents are needed to make the claims:

- Duly filled in claim form along with the required documents
- Medical certificates in case of injury or death
- Copies of evidence and proof

Cases Where you Can’t Claim Public Liability Insurance (Exclusions)

Though the public liability insurance covers most of the cases, there are certain situations not covered under this insurance. These are also called exclusions. Some of these cases are:

- Lapse in performing legal or contractual liability
- Intentional non-compliance of safety or legal provision
- Loss of goodwill, mental loss or damage, libel, slander, false arrest, defamation and other similar cases

Companies Offering Public Liability Insurance in India

India is a developing country with industries under various sectors that would need public liability insurance because of associated risks involved. Some of the companies providing public liability insurance in India are:

- TATA AIG
- HDFC Ergo
- United India Insurance
- Bajaj Allianz

Important Aspects

Before purchasing a public liability insurance policy, you should be aware of all the aspects related to the insurance in order to get the best deal.

- The limit of indemnity defines the sum insured in public liability insurance. It is specified as Any One Accident (AOA) and Any One Year (AOY) limit. The applicant has to choose the ratio of AOA to AOY from any of the following choices: 1:1, 1:2, 1:3, 1:4.
- The AOA limit is assessed with the nature of business operations and worst possible loss in the premises. The AOY limit is generally determined as three times the AOA limit.

Advantages of Buying Public Liability Insurance

Looking at various levels of risks involved with various kinds of business, it makes sense to purchase a public liability insurance. Some of the advantages of this insurance are:

- It will cover for any kind of accident the public faces because of your business
- It will cover any damage to public property caused due to your business
- It will let you continue with your work without any hindrance in spite of liability issues
- It will help get coverage for legal fees, in case you need to go to the court for some liability case

For more comprehensive protection Public Liability Policy can be extended to cover legal expenses arising out of

- Sudden and Accidental Pollution,
- Act of God Perils,
- Transportation,
- Carriage of treated effluents etc.

- Coverage for defense cost incurred with prior consent
- Benefit of Retroactive Date.

Key Exclusions

- War
- Deliberate, willful or intentional non-compliance of any statutory provision.
- Ionizing radiations
- Arising out of fines, penalties, punitive and/or exemplary damages

Application for Relief:

Under the Public Liability Insurance Act an application for relief made by the applicant to the Collector within 5 years of the accident, after giving notice to the owner and the insurer and giving the parties an opportunity of being heard, shall make the award determining the amount of relief payable. The victim will however be free to approach the Court for higher compensation.

Establishment of Relief Fund:

Section 7A of the Public Liability Insurance Act, empowers the Central Government to establish Environment Relief Fund, by notification in the official Gazette, towards the utility of paying relief under an award made by the collector under Section 7 of this Act.

Power to Call for Information, Entry and Inspection:

Public Liability Insurance Act deals with the powers to call for information, entry, inspection, search and seizure. The owner of hazardous installation becomes obligated to submit to a person authorized by the Central Government such information the inspector reasonably needs for the purpose of ascertaining, any requirements, rule or directions made under this Act, require compilation.

Power to give directions:

Section 12, of the Public Liability Insurance Act 1991 empowers the Central Government to issue directions in writing to any owner, officer, or agency. The directions also include the prohibition or regulation of handling hazardous substances. Moreover, it also can control the supply or stoppage of electricity.

Offences and Penalties:

The Public Liability Insurance Act 1991 provides for the penalties of non-compliance:

Non-compliance of not taking an insurance policy.

Furthermore, failure to comply with any direction issued with regard to prohibition or regulation of the handling of any hazardous substance or stoppage of supply of electricity, water etc.

Punishable with an imprisonment for a minimum period of one year and six months but which may extend to six years, or with fine, which shall not be less than one lakh rupees or with both.

Bare text of the Act

THE PUBLIC LIABILITY INSURANCE ACT, 1991

ARRANGEMENT OF SECTIONS

THE PUBLIC LIABILITY INSURANCE ACT, 1991

ACT NO. 6 OF1991

[22*nd January*, 1991.]

An Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-first Year of The Republic of India as follows: —

1. Short title and commencement. — (*1*) This Act may be called the Public Liability Insurance Act, 1991.

(*2*) It shall come into force on such date as the Central Government may, by notification, appoint.

2. Definitions. —In this Act, unless the context otherwise requires, —

[(*a*) "accident" means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure to death of, or injury to, any person or damage to any property but does not include an accident by reason only of war or radio-activity;

(*b*) "Collector" means the Collector having jurisdiction over the area in which the accident occurs;

(*c*) "handling", in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

(*d*) "hazardous substance" means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986 (29 of 1986), and exceeding such quantity as may be specified, by notification, by the Central Government;

(*e*) "insurance" means insurance against liability under sub-section (*1*) of section 3;

(*f*) "notification" means a notification published in the official Gazette;

[(*g*) "owner" means a person who owns, or has control over handling, any hazardous substance at the time of accident and includes, —

(*i*) in the case of firm, any of its partners;

(*ii*) in the case of an association, any of its members; and

(*iii*) in the case of a company, any of its directors, managers, secretaries or other officers who is directly in charge of, and is responsible to, the company for the conduct of the business of the company;

(*h*) "prescribed" means prescribed by rules made under this Act;

(*ha*) “Relief Fund” means the Environmental Relief Fund established under section 7A;

(*i*) “rules” means rules made under this Act;

(*j*) “vehicle” means any mode of surface transport other than railways.

3. Liability to give relief in certain cases on principle of no fault. — (*1*) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage.

(*2*) In any claim for relief under sub-section (*1*) (hereinafter referred to in this Act as claim for relief), the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Explanation. —For the purposes of this section, —

(*i*) “workman” has the meaning assigned to it in the Workmen’s Compensation Act, 1923 (8 of 1923);

(*ii*) “injury” includes permanent total or permanent partial disability or sickness resulting out of an accident.

4. Duty of owner to take out insurance policies. — (_1_**)** Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (*1*) of section 3:

Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.

(*2*) Every owner shall get the insurance policy, referred to in sub-section (*1*), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued.

(*2A*) No insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid-up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than the amount, not exceeding fifty crore rupees, as may be prescribed.

Explanation. — For the purposes of this sub-section, “paid-up capital” means, in the case of an owner not being a company, the market value of all assets and stocks of the undertaking on the date of contract of insurance.

(*2B*) The liability of the insurer under one assurance policy shall not exceed the amount specified in the terms of the contract of insurance in that insurance policy.

(*2C*) Every owner shall also, together with the amount of premium, pay to the insurer, for being credited to the Relief Fund established under section 7A, such further amount, not exceeding the sum equivalent to the amount of premium, as may be prescribed.

(*2D*) The insurer shall remit to the authority specified in sub-section (*3*) of section 7A the amount received from the owner under sub-section (*2C*) for being credited to the Relief Fund in such manner and within such period as may be prescribed and where the insurer fails to so remit the amount, it shall be recoverable from insurer as arrears of land revenue or of public demand.

(*3*) The Central Government may, by notification, exempt from the operation of sub-section (*1*) any owner, namely: —

(*a*) the Central Government;

(*b*) any State Government;

(*c*) any corporation owned or controlled by the Central Government or a State Government; or

(*d*) any local authority:

Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under sub-section (*1*) of section 3.

5. Verification and publication of accident by Collector.—Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting applications under sub-section (*1*) of section 6.

6. Application for claim for relief. — (*1*) An application for claim for relief may be made—

(*a*) by the person who has sustained the injury;

(*b*) by the owner of the property to which the damage has been caused;

(*c*) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(*d*) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(*2*) Every application under sub-section (*1*) shall be made to the Collector and shall be in such form, contain such particulars and shall be accompanied by such documents as may be prescribed.

(*3*) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.

7. Award of relief. — (*1*) On receipt of an application under sub-section (*1*) of section 6, the Collector shall, after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid.

(*2*) The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

[(*3*) When an award is made under this section, —

(*a*) the insurer, who is required to pay any amount in terms of such award and to the extent specified in sub-section (*2B*) of section 4, shall, within a period of thirty days of the date of announcement of the award, deposit that amount in such manner as the Collector may direct;

(*b*) the Collector shall arrange to pay from the Relief Fund, in terms of such award and in accordance with the scheme made under section 7A, to the person or persons referred to in sub-section (*1*) such amount as may be specified in that scheme;

(*c*) the owner shall, within such period, deposit such amount in such manner as the Collector may direct.

(*4*) In holding any inquiry under sub-section (*1*), the Collector may, subject to any rules made in this behalf, follow such summary procedure as he thinks fit.

(*5*) The Collector shall have all the powers of Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure,1973 (2 of 1974).

(*6*) Where the insurer or the owner against whom the award is made under sub-section (*1*) fails to deposit the amount of such award within the period specified under sub-section (*3*), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand.

(*7*) A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within three months of the receipt of the application for relief under sub-section (*1*) of section 6.

(*8*) Where an owner is likely to remove or dispose of his property with the object of evading payment by him of any amount of award, the Collector may, in accordance with the provisions of rules 1 to 4 of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), grant a temporary injunction to restrain such act.

7A. Establishment of Environmental Relief Fund. — (*1*) The Central Government may, by notification, establish a fund to be known as the Environmental Relief Fund.

(*2*) The Relief Fund shall be utilised for paying, in accordance with the provisions of this Act and the scheme made under sub-section (*3*), relief under the award made by the Collector under section 7.

(*3*) The Central Government may, by notification, make a scheme specifying the authority in which the Relief Fund shall vest, the manner in which the Relief Fund shall be administered, the form and the manner in which money shall be drawn from the Relief Fund and for all other matters connected with or incidental to the administration of the Relief Fund and the payment of relief therefrom.

8. Provisions as to other right to claim compensation for death, etc.—(*1*) The right to claim relief under sub-section (*1*) of section 3 in respect of death of, or injury to, any person or damage to any property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.

(*2*) Notwithstanding anything contained in sub-section (*1*), where in respect of death of, or injury to, any person or damage to any property, the owner, liable to give claim for relief, is also liable to pay compensation under any other law, the amount of such compensation shall be reduced by the amount of relief paid under this Act.

9. Power to call for information.—Any person authorised by the Central Government may, for the purposes of ascertaining whether any requirements of this Act or of any rule or of any direction given under this Act have been compiled with, require any owner to submit to that person such information as that person may reasonably think necessary.

10. Power of entry and inspection.—Any person, authorised by the Central Government in this behalf, shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provisions of this Act or of any rule or of any direction given under this Act is being or has been compiled with and such owner is bound to render all assistance to such person.

11. Power of search and seizure.—(*1*) If a person, authorised by the Central Government in this behalf, has reason to believe that handling of any hazardous substance is taking place in any place, premises or vehicle, in contravention of sub-section (*1*) of section 4, he may enter into and search such place, premises or vehicle for such handling of hazardous substance.

(*2*) Where, as a result of any search under sub-section (*1*) any handling of hazardous substance has been found in relation to which contravention of sub-section (*1*) of section 4 has taken place, he may seize such hazardous substance and other things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act:

Provided that where it is not practicable to seize any such substance or thing, he may serve on the owner an order that the owner shall not remove, part with, or otherwise deal with, the hazardous substance and such other things except with the previous permission of that person.

(*3*) He may, if he has reason to believe that it is expedient so to do to prevent an accident, dispose of the hazardous substance seized under sub-section (*2*) immediately in such manner as he may deem fit.

(*4*) All expenses incurred by him in the disposal of hazardous substances under sub-section (*3*) shall be recoverable from the owner as arrears of land revenue or of public demand.

12. Power to give directions.—Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in exercise of its powers and performance of its functions under this Act, issue such directions in writing as it may deem fit for the purposes of this Act to any owner or any person, officer, authority or agency and such owner, person, officer, authority or agency shall be bound to comply with such directions.

Explanation. — For the removal of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(*a*) prohibition or regulation of the handling of any hazardous substance; or

(*b*) stoppage or regulation of the supply of electricity, water or any other service.

13. Power to make application to Courts for restraining owner from handling hazardous substances.—(*1*) If the Central Government or any person authorised by that Government in this behalf has reason to believe that any owner has been handling any hazardous substance in contravention of any of the provisions of this Act, that Government or, as the case may be, that person may make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate first class for restraining such owner from such handling.

(*2*) On receipt of the application under sub-section (*1*), the Court may make such order as it deems fit.

(*3*) Where under sub-section (*2*), the Court makes an order restraining any owner from handling hazardous substance, it may, in that order—

(*a*) direct such owner to desist from such handling;

(*b*) authorise the Central Government or, as the case may be, the person referred to in sub-section (*1*), if the direction under clause (*a*) is not complied with by the owner to whom such direction is issued, to implement the direction in such manner as may be specified by the Court.

(*4*) All expenses incurred by the Central Government, or as the case may be, the person in implementing the directions of Court under clause (*b*) of sub-section (*3*), shall be recoverable from the owner as arrears of land revenue or of public demand.

14. Penalty for contravention of sub-section (*1*) or sub-section (*2*) of section 4 or failure to comply with directions under section 12.—(*1*) Whoever contravenes any of the provisions of subsection (*1*) or sub-section (*2*) or sub-section (*2A*) or sub-section (*2C*) of section 4 or fails to comply with any direction issued under section 12, he shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both.

(*2*) Whoever, having already been convicted of an offence under sub-section (*1*), is convicted for the second offence or any offence subsequent to the second offence, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees.

(*3*) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence under this Act unless such person is under eighteen years of age.

15. Penalty for failure to comply with direction under section 9 or order under section 11 or obstructing any person in discharge of his functions under section 10 or 11.— If any owner fails to comply with direction issued under section 9 or fails to comply with order issued under sub-section (*2*) of section 11, or obstructs any person in discharge of his functions under section 10 or sub-section (*1*) or sub-section (*3*) of section 11, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to ten thousand rupees, or with both.

16. Offences by companies. — (*1*) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals;

(*b)* "director," in relation to a firm, means a partner in the firm.

17. Offences by Government Departments. — Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

18. Cognizance of offences. — No court shall take cognizance of any offence under this Act except on a complaint made by—

(*a*) the Central Government or any authority or officer authorised in this behalf by that Government; or

(*b*) any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

19. Power to delegate.—The Central Government may, by notification, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power under section 23) as it may deem necessary or expedient to any person (including any officer, authority or other agency).

20. Protection of action taken in good faith. — No suit, prosecution or other legal proceeding shall lie against the Government or the person, officer, authority or other agency in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

21. Advisory Committee. — (*1*) The Central Government may, from time to time, constitute an Advisory Committee on the matters relating to the insurance policy under this Act.

(*2*) The Advisory Committee shall consist of—

(*a*) three officers representing the Central Government;

(*b*) two persons representing the insurers;

(*c*) two persons representing the owners; and

(*d*) two persons from amongst the experts of insurance or hazardous substances. to be appointed by the Central Government.

(*3*) The Chairman of the Advisory Committee shall be one of the members representing the Central Government, nominated in this behalf by that Government.

22. Effect of other laws. — The provisions of this Act and any rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

23. Power to make rules. — (*1*) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

[(*a*) the maximum amount for which an insurance policy may be taken out by an owner under sub-section (*2A*) of section 4;

(*aa*) the amount required to be paid by every owner for being credited to the Relief Fund under sub-section (*2C*) of section 4;

(*ab*) the manner in which and the period within which the amount received from the owner is required to be remitted by the insurer under sub-section (*2D*) of section 4];

[(*ac*)] establishment and maintenance of fund under sub-section (*3*) of section 4;

(*b*) the form of application and the particulars to be given therein and the documents to accompany such application under sub-section (*2*) of section 6;

(*c*) the procedure for holding an inquiry under sub-section (*4*) of section 7;

(*d*) the purposes for which the Collector shall have powers of a Civil Court under sub-section (*5*) of section 7;

(*e*) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (*b*) of section 18;

(*f*) any other matter which is required to be, or may be, prescribed.

(*3*) Every [rule or scheme] made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the [rule or scheme] or both Houses agree that the rule or scheme should not be made, the [rule or scheme] shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme.

THE SCHEDULE

[*See* section 3(*1*)]

(*i*) Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case.

(*ii*) For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500.

(*iii*) For permanent total or permanent partial disability or other injury or sickness, the relief will be

(*a*) reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case and

(*b*) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000.

(*iv*) For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months: provided the victim has been hospitalised for a period exceeding 3 days and is above 16 years of age.

(*v*) Up to Rs. 6,000 depending on the actual damage, for any damage to private property.

Cattle Insurance: Coverage, Claim & Exclusions

Cattle are considered one of the most valued possessions of the rural community. Marginal, small and medium farmers earn considerable portion of their income from cattle rearing. Since the livelihood of farmers depend so much on them, it becomes important to get cattle insurance for comprehensive coverage against cattle loss. Cattle insurance is another endeavour of the Government of India to protect the agro-based economy of the country.

What is Cattle Insurance?

Cattle insurance protects Indian rural people from financial loss incurred due to the death of their cattle. The cost of cattle is high and their loss can force farmers to get into a debt cycle. With cattle insurance, farmers will get comprehensive protection against the cattle loss.

Types of Cattle Insurance

There are two types of risks which are insured under this policy:

1. **Death of cattle**: It covers loss of life due to accident or injury and disease occurred due to surgical infection

2. **Permanent Disability cover**: It covers the risk of permanent and complete disability

What Cattle Insurance Covers?

Besides death or disability caused by fire, road accidents, drowning, electrocution, snake bites or poisoning, cattle insurance offers coverage for other issues as well. They include:

- Death due to natural calamities like storms and earthquakes
- Death due to disease, infection or calving during surgical operations
- Permanent disability, for milch cows this refers to incapacity to conceive and yield milk. For bulls, this refers to incapacity to breed

How Cattle Insurance Functions?

Cattle insurance is an important aspect for livestock management in rural area. Let us understand how this insurance works.

- First step is to identify the cattle and determine the price of the cattle before finalizsng the sum assured. This assessment is jointly carried out by the beneficiary and an authorised veterinary doctor
- Beneficiary needs to pay the premium amount on monthly or yearly basis, according to the policy
- In case of death or disability of the cattle, the beneficiary immediately informs the bank about the mishap
- All the required documents need to be submitted to the insurance company
- Insurance company representative will validate all the documents and settle the claim

Eligibility Criteria

Cattle Insurance Policy covers people who have:

- Cows, bullocks or buffaloes of either sex
- Cross-breed and exotic cattle owned by private owners, military dairy farms, co-operative dairies and corporate dairies
- Both schemed and non-schemed animals fall under this policy Schemed animals refer to cattle subsidised under National Livestock Development Board (NLDB) and State Livestock Development Board (SLDB)

The policy seekers need to ensure that at the time of buying insurance, the cattle should not be injured or suffering from some disease. The health condition needs to be certified by a veterinary surgeon. Animals under the following age group are eligible for the insurance cover.

Animal Type	Animal Age
Milch Cows	2 yrs/or age at 1st calving – 10 yrs
Milch Buffaloes	3 yrs/or age at 1st calving – 12 yrs
Stud Bulls	3 yrs – 8 yrs
Bullocks & Male Buffaloes	3 yrs – 12 yrs
Female Calves/ Heifers	From age of 4 months – 2 yrs/ 1st calving

	age, whichever is lower
Milch Cow's offspring	From age of 4 months – 2 yrs/ 1st calving age, whichever is lower
Milch Buffaloes offspring	Up to 3 yrs/1st calving age, whichever is lower

Documents Required for Claim Process

Following are the documents which should be submitted to get the claim amount:

- Proposal form
- Medical certificate from veterinary doctor
- Minimum 4 photographs of the insured animal
- Duly filled in claim form
- Receipt of payment while purchasing the animal
- Identification tag of the insured cattle

Claim Process

Following steps are followed to process cattle insurance claims:

- The owner should immediately intimate the insurer about the death/injury on the 24*7 toll free customer care number of the provider
- Get the death certificate or the certificate of disability from a veterinary practitioner
- The beneficiary should also submit the duly filled in claim form along with the death/disability certificate
- An authorised member from the insurance company will visit the site and verify the submitted details
- If the claim is found to be genuine, the amount is paid to the beneficiary, else it is rejected

Exclusions

Though the cattle insurance aims to cover most of the rural Indians who have cattle, the claim is non-payable under the following circumstances. Some of these cases of exclusions are:

- Theft or clandestine sale
- Shipment via airways or sea
- Terrorism, war, radioactivity and nuclear explosions
- Neglect, over-loading and treatment under unskilled doctors
- Using for other purpose than what has been mentioned in the claim proposal
- Not treating when sick or not taking any initiative to prevent the death
- Accidents or injury which occurred before the commencement of the policy
- Slaughtering without permission from the veterinary or government official

Time Taken to Settle Claims

According to IRDA regulation, a cattle insurance needs to be settled by the insurer within 30 days of claim submission. If further investigation is needed, the bank can take maximum six months to settle the claim.

Companies offering Cattle Insurance in India

Some of the insurance companies offering this plan in India are:

- HDFC Ergo
- Reliance General
- ICICI Lombard
- TATA AIG
- Oriental Insurance
- SBI General

Important Aspects

Also known as livestock insurance, this policy is available for almost all cattle owners of rural India. However, before buying an insurance, the below mentioned facts must be kept in mind:

- Cattle must be properly vaccinated and fed with nutritious food. If intentional carelessness is found as the cause of death or disability, the claim might get rejected
- To get the claim approval, the bank must be intimated immediately after the mishap
- Skilled and certified veterinary doctor should be engaged to treat the cattle; else the claim might get rejected

Advantages of Buying Cattle Insurance

Cattle insurance intends to benefit maximum number of people in rural India. The insurance policy provides coverage against the risks of death and permanent disability due to

- Famines
- Accidents
- Earthquakes
- Riots or strikes
- Surgical operations
- Fire, explosion, implosion and lightning
- Aircraft damage or missile testing activities
- Disease contracted and infection which was inflicted during the policy period
- Natural calamities like storms, tornado, typhoons, hurricane, inundation and floods

Agriculture insurance in India

Agriculture in India is highly susceptible to risks like droughts and floods. It is necessary to protect the farmers from natural calamities and ensure their credit eligibility for the next season. For this purpose, the Government of India introduced many agricultural schemes throughout the country.

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Pradhan Mantri Fasal Bima Yojana

The Pradhan Mantri Fasal Bima Yojana (Prime Minister's Crop Insurance Scheme) was launched by Prime Minister of India Narendra Modi on 13 February 2016. It envisages a uniform premium of only 2 per cent to be paid by farmers for Kharif crops, and 1.5 per cent for Rabi crops. The premium for annual commercial and horticultural crops will be 5 per cent.

Previous schemes

Farm Income Insurance Scheme

The Central Government formulated the Farm Income Insurance Scheme (FIIS) during 2003-04. The two critical components of a farmer's income are yield and price. FIIS targeted these two components through a single insurance policy so that the insured farmer could get a guaranteed income.

The scheme provided income protection to the farmers by insuring production and market risks. The insured farmers were ensured minimum guaranteed income (that is, average yield multiplied by the minimum support price). If the actual income was less than the guaranteed income, the insured would be compensated to the extent of the shortfall by the Agriculture Insurance Company of India. Initially, the scheme would cover only wheat and rice and would be compulsory for farmers availing crop loans. NAIS (explained in the section below) would be withdrawn for the crops covered under FIIS, but would continue to be applicable for other crops.

The FIIS was withdrawn in 2004. The recent attempt by the Gujarat government to reintroduce the Farm Income Insurance Scheme (FIIS) can reform agricultural insurance and prevent farm-level distress.

National Agriculture Insurance Scheme

The Government of India experimented with a comprehensive crop insurance scheme which failed. The Government then introduced in 1999-2000, a new scheme titled “National Agricultural Insurance Scheme” (NAIS) or “Rashtriya Krishi Bima Yojana” (RKBY). NAIS envisages coverage of all food crops (cereals and pulses), oilseeds, horticultural and commercial crops. It covers all farmers, both loanees and non-loanees, under the scheme.

The premium rates vary from 1.5 percent to 3.5 percent of sum assured for food crops. In the case of horticultural and commercial crops, actuarial rates are charged. Small and marginal farmers are entitled to a subsidy of 50 percent of the premium charged- the subsidy is shared equally between the Government of India and the States. The subsidy is to be phased out over a period of 5 years.

NAIS operates on the basis of

Area approach- defined areas for each notified crop for widespread calamities.

On individual basis- for localized calamities such as hailstorms, landslides, cyclones and floods.

Under the scheme, each state is required to reach the level Gram Panchayat as the unit of insurance in a maximum period of 3 years. Agriculture Insurance Corporation of India is implementing the scheme.

Fire insurance

Fires and other related perils, i.e. events which cause a financial loss, have become a common cause of losses in recent times. These perils cause unspeakable loss to property as well as goods. That is why having a fire insurance policy becomes important. The policy covers the financial loss that occurs to our assets when they are damaged due to fire or other covered perils. One can buy a fire insurance plan under the following circumstances –

- If you are an owner of goods and/or property
- If you are a pawnbroker or pawnee (pawnbroker – an individual who lends money to another based on any asset pawned by another; pawnee is an individual who lends money to another individual against an asset which is pawned)
- If you are a mortgagee (mortgagee is a financial institution which lends money based on the mortgage of an asset)
- If you are the assignee official receiver of assets where insolvency proceedings are involved
- If you are a warehouse owner and goods are stored in your warehouse for which you are responsible
- If you are an individual who has lawful possession of any goods or property

Coverage under fire insurance policies

Fire insurance plans not only cover losses suffered by fire but also losses suffered by other perils. The common perils which are covered under fire insurance policies include the following –

- Fire, explosion or implosion
- Lightning
- Damage due to an aircraft
- Strikes, riots or any other type of malicious acts which cause damage
- Storm, typhoon, flood and inundation which is collectively called STFI
- Impact damage which occurs on impact with road or rail vehicles, animals, etc.
- Subsidence, rockslides or landslides
- Overflowing or bursting of water tanks, pipes and other apparatus
- Missile testing operations and the damages caused thereof
- Water leakage from automatic sprinkler installations which causes damage
- Bush fire

What is not covered under fire insurance policies?

Despite covering a number of perils besides fire, fire insurance policies also have some common exclusions. These exclusions include the following –

- Losses by fire which was caused due to earthquakes
- Perils like war, invasion and the like
- Perils like martial law, insurrection or rebellion
- Underground fires and the losses that they cause
- The loss suffered when the insured property is burned on the directives of a public authority
- Theft related losses suffered during or after the fire
- Spontaneous combustion
- Losses faced because of nuclear perils
- Losses suffered because of pollution and/or contamination
- Any type of consequential losses

Some important definitions

Insurance Companies Act, 1958 of England defines fire insurance is “the issue of, or undertaking of liability under policy of Insurance against loss by or incidental to fire”.

Indian Insurance Act, 1938 defines “Fire insurance business as the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policy”.

According to Halsbury “It is a contract of insurance by which the insurer agrees for consideration to indemnify the assured up to a certain extent and subject to certain terms and conditions against loss or damage by fire which may happen to the property of the assured during specified period”.

Cotton L J., while deciding the case Castellian v. Perton has opined as regards fire insurance that it is “A contract whereby one person undertakes in return for agreed consideration to indemnify another person against loss or damage occasioned by fire up to the agreed amount”

The basic principles that govern Fire Insurance

(i) Utmost good faith

In insurance contracts, the legal doctrine of utmost good faith applies. The insured has the duty to disclose all material facts, which have a bearing on the insurance. A breach of this duty may make the contract void or voidable. The duty of disclosure continues throughout the policy period.

The fire proposal form also includes a declaration by the insured saying that the statements declared by him are true, and that they can form the basis of the insurance contract. This principle also expects the insured to act as if he is uninsured all the time, and take care and safeguard his assets from the perils. Following a loss, he is then expected to salvage as much of the property as possible.

Sections 19-21 of the Marine Insurance Act, 1963 deals with the concept of uberrima fides i.e. utmost good faith. These sections apply to all kinds of insurance policies with necessary changes.

Sec 19 - Insurance is *uberrimae fidei*.

A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

S 20 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 to 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 circumstance 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.

21. 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 comes to his knowledge too late to communicate it to the agent.

Effect of Non-Disclosure

If material particulars are not disclosed and the concerned person keeps quiet, whether mere silence amounts to fraud? Explanation appended to sec 17 of Indian Contract Act, provides that silence may amount to fraud where there is a duty to speak. If the person did not know about the fact that it is material then it may amount to misrepresentation. The contract becomes voidable. Hence the party defrauded may avoid the contract and claim compensation.

(ii) Insurable Interest

Insurable interest is not defined in any of the Acts dealing with insurance. It is 'an interest which can be or is protected by contract of insurance'. Some important definitions of insurable interest are:

Patterson defines it as 'A relation between the insured & the event insured against, such that the occurrence of the event will cause substantial loss or injury of some kind to the insured'.

In the words of **W.H. Rodda** 'It is an interest of such a nature that the occurrence of the event insured against would cause financial loss to the insured'

R. M. Ray defines that 'When the assured is so situated that the happening of the event on which the insurance money is to be payable would as an approximate result involve in the loss or diminution of any right recognised by law or in any legal liability there is an insurable interest to the extent of the loss or liability'.

The requirement of insurable interest gives legal validity to insurance contracts and distinguishes them from wagers. It may be defined as the legal right to insure, where the right arises out of a pecuniary relationship between the insured and the subject matter of insurance.

The destruction or damage to the latter involves the insured in financial loss. Absolute legal ownership is a clear example of insurable interest. For e.g, a bank or a financial institution which has advanced money on the security of a property, has insurable interest in that property.

Time and Duration of insurable interest

In Fire insurance policy, the insurable interest should exist at the time of taking the policy, throughout its currency period and also at the time of loss/claim. Fire insurance policies are personal contracts, so if the property is sold or transferred, the policy is not transferred automatically. In case of life insurance insurable interest has to be there at the time of commencement of the policy only. Further, in case of marine insurance it has to be there at the time of loss only.

Kinds of insurable interest

There are two types of insurable interests

(i) Contractual insurable interest (upon entering of contract the interest is created e.g. by mortgage of property the mortgagee in possession will have insurable interest) and

(ii) Statutory insurable interest wherein the statute requires the existence of it. For instance, interest required by statutes – viz.,

Life Assurance Act, 1774 - Gambling Act, 1845 – Marine Insurance Act, 1906 is Statutory Insurable interest.

(iii) Indemnity

The objective of the principle is to place the insured, as far as possible, in the same financial position after a loss, as that occupied by him, immediately before the loss.

In simple words, the principle of indemnity means the insured is indemnified only to the extent of his loss, no profit or undue benefit is extended. The indemnity is subject to the sum insured and other terms of the policy. The sum insured can be fixed on the basis of Reinstatement Value or Market Value. The term 'Market value' means, for insurance purposes, the present cost of construction of similar buildings, after deducting depreciation based on age, usage, maintenance etc.

Similarly, for plant and machinery, market value is arrived at by deducting suitable depreciation for age, usage, wear and tear etc, from the current replacement costs. In all the cases, depreciation refers to the actual intrinsic physical depreciation and not those used for accounting purposes.

(iv) Subrogation

The principal of subrogation is the corollary of the principle of indemnity. If the loss suffered by the insured can be recovered from third parties who are responsible for the loss, the insured's rights of recovery are transferred or subrogated to the insurers, when they indemnify the loss.

(v) Contribution

The principle of contribution, which is also a corollary of the principle of indemnity, provides that if the same property is insured under more than one policy, the insured can recover a rateable proportion of the loss under each policy. Under no circumstances can he recover more than his loss, and make a profit.

(vi) Proximate cause

A cause which immediately precedes and produces the effect, as distinguished from the remote, mediate, or predisposing cause. An act from which a loss or injury results as a natural, direct, uninterrupted consequence and without which the loss or injury would not have occurred.

It is the primary cause of a loss or injury. It is not necessarily the closest cause in time or space nor the first event that sets in motion a sequence of events leading to an injury.

Proximate cause produces particular, foreseeable consequences without the intervention of any independent or unforeseeable cause. It is the active, direct, and efficient cause of loss in insurance that sets in motion an unbroken chain of events which bring about damage, destruction, or injury without the intervention of a new and independent force. It is also called legal or direct cause.

Consequential loss by fire

- Kinds of Consequential loss by fire
    1. Loss of profit
    2. Standing charges
    3. Increased cost of working
    4. Increased cost of reinstatement
    5. Rent
    6. Salaries of servants
    7. Interest on loan and any general expenses

Types of fire insurance policies available in India

Different types of fire insurance plans are offered in India depending on the coverage need of different individuals. The policies can be for fixed assets like building, plant and property or for goods and stocks of the business. The commonly available types of fire insurance plans include the following –

For fixed assets

1. Replacement value policy

As the name suggests, this policy works on the concept of replacing the asset which is damaged due to a covered peril. The insurance company pays the replacement value of the asset which is damaged. The replacement value is calculated as the market value of the asset minus depreciation based on the asset's age. If the property is insured, the cost of construction of the property is covered under the policy. In the case of other assets, their replacement value is calculated and paid as a claim.

2. Reinstatement value policy

A reinstatement value policy is nothing but an added clause under the replacement value policy. As per this clause, the insurance company undertakes to replace the damaged property to its original condition which was prior to the loss. Reinstatement clause is applicable only for fixed assets like buildings. Other assets cannot be covered under this clause. Moreover, you get coverage on a reinstatement basis only if you choose the reinstatement clause in the fire insurance policy. If the clause is not selected, claims would be paid on a replacement value basis only.

For goods, stocks and other non-fixed assets

1. Floater policy

This policy is ideal for assets which are located at different locations. A single policy can be taken for all the assets and the assets would be covered on a floater basis. However, to avail coverage, every location and the value of the assets at each location would have to be specified.

2. Declaration policy

A declaration policy is suitable for assets whose value changes during the year, like stocks in a business. Under this policy, a provisional sum insured is taken and the premium is paid for the same. The sum insured would represent the maximum risk of the insurance company. Once a month completes, the highest value achieved by the fluctuating asset is recorded and declared. Thereafter, the average of the declared value is calculated and it becomes the actual sum insured of the policy. If the actual sum insured is lower than the provisional sum insured, you can claim a premium refund.

3. Floater declaration policy

This policy is the combination of floater policy and declaration policy. Assets stored at different locations whose values fluctuate over the year can be covered under a single policy through this cover.

4. Specific policy

This policy covers the loss up to a specific amount. The specific amount is the sum insured of the policy which is usually lower than the actual value of the asset.

5. Comprehensive policy

As the name suggests, a comprehensive policy has the widest scope of cover and covers the asset against the maximum number of perils.

6. Valued policy

Assets whose market value cannot be assessed can be insured under a valued policy. Under the policy, coverage is allowed for an agreed value of the asset which is the best estimate of the asset's market value.

7. Valuable policy

Under this plan, the sum insured is not decided at the time of buying the policy. The claim amount is calculated at the time of loss. To calculate the claim amount, the market value of the asset is taken into consideration.

8. Average policy

The average policy is a fire insurance policy which works on the principle of 'Average Clause'. An average clause is applicable if you avail a sum insured which is lower than the actual value of the good. In that case, when a claim is made, you don't get the full amount of claim. You get an average claim which is calculated in proportion to the sum insured that you have taken. For instance, suppose the value of an asset is INR 1 lakh and you avail a sum insured of INR 80,000. Since you have insured only 80% of the asset's value, you would get 80% claim settlement. So, if the claim is for INR 50,000, the insurance company would apply the average clause and pay a claim of only INR 40,000.

9. Consequential loss policy

This policy covers the loss of profit which you can suffer when fire disrupts your business.

Which type of fire insurance policy should you buy?

Given the different types of fire insurance plans which are available in the market, you must feel confused as to which policy you should buy. To clear this confusion, there are some factors which you should consider when choosing the right type of fire insurance plan. The factors which should determine your choice of the policy include the following –

1. The type of risk that is being covered

Choose a policy based on the type of risk that you face. If you have to insure assets at multiple locations, choose a floater policy. If the value of your assets cannot be accurately ascertained, a valued policy would make more sense. So, choose a policy based on the type of risk that you face

2. The nature of the asset which you want to insure

As stated earlier, different types of assets can be insured under different types of plans. For property and fixed assets, you can choose replacement value or reinstatement value policies while for other assets there are other policies. So, choose a policy suiting the asset which is to be insured.

3. Exposure risks

Assess the types of risks to which the asset is exposed and then choose the best policy.

4. Coverage duration

It is important to know the period for which you need to take the coverage before you select the most suitable fire insurance policy.

Documents required for claim registration in fire insurance

In case of a claim, you should submit the following documents for registering your claim with the insurance company –

1. Copy of the policy bond which should also include the schedule of benefits as well as any clauses which have been attached therein
2. The fire insurance claim form which should be completely filled and signed
3. Newspaper cutting where the instance of the fire has been reported (If available)
4. Previous claim records, if any
5. Photographs of the damages suffered
6. Police FIR
7. Report of the fire brigade
8. The forensic report, if available
9. Final investigation report

Once the claim is registered, the insurance company would get the claim surveyed and then the claim would be settled. Fire insurance is very important coverage for protection against the loss of assets. Losses cannot be avoided but you can insure against such losses if you are smart and buy the right type of fire insurance policy.

Coverage under Fire Insurance Policy

It covers all the losses arising out of the accidental fire, subject to terms and conditions of the fire policy which is limited by the policy value and not by the extent of damage sustained by the property owner. In general, the following losses are covered:

- Actual loss of goods due to fire
- Additional living expenses due to damage to personal property
- Loss to adjacent building or property due to fire in the insured building
- Compensation paid to fire fighters
- Fire triggered by electricity
- Overflowing of a water tank or pipes

Claim Process

If you happen to encounter an eventuality because of fire, you need to make claims under fire insurance. To avoid rejection and fasten the claim process, you should be clear of the procedure and the documents needed.

- Immediately inform the insurance provider either online or by calling on their 24/7 toll-free number
- Also, contact the fire brigade and the police
- Insurance company will appoint a surveyor for scrutiny of the situation
- Submit the duly filled in claim form and other proofs and photographs
- If approved, the claim can be settled from 15-30 days, as the time duration is different for the insurance companies

Exclusions in Fire Insurance Policy

Not all situations and cases are covered by fire insurance. Some situations are excluded.

- Fire caused by war, nuclear risks, riot or earthquake
- Planned or intentional fire by the enemy or public authority for whatsoever reasons
- Underground fire
- Loss because of theft during or after the fire

• Malicious or hostile, human-made causes of fire

This list does not include all the exclusions as they vary for different providers

Important Aspects

The concept of a fire insurance is based on three essential conditions which should be met before you can file a claim

• There must be an actual fire in the insured premises

• The fire must be accidental and beyond the reasonable control of the policyholder

• Loss or damage must be due to burning triggered by accidental fire. The damage by heat or fire, if not accidental, won’t be considered as loss due to fire. Hence, insurance is not applicable in such instances

Advantages of Buying Fire Insurance

Considering the amount that the insurance company can pay for the losses and save you from further problems, you should not ignore and underestimate fire insurance. Let us look at some of the advantages of buying this policy:

• Homeowners can get back the cost of damage to the structure of the house

• It also covers the cost of replacement of the items in the house, such as AC, television, computer, etc.

• In case of factory and office, the insurance can cover the cost of damaged stocks

• The insurance can cover the cost of repair of machines, if they are damaged.

Marine insurance

Marine insurance covers the loss or damage of ships, cargo, terminals, and any transport by which the property is transferred, acquired, or held between the points of origin and the final destination. Cargo insurance is the sub-branch of marine insurance, though Marine insurance also includes Onshore and Offshore exposed property, (container terminals, ports, oil platforms, pipelines), Hull, Marine Casualty, and Marine Liability. When goods are transported by mail or courier, shipping insurance is used instead.

History

Marine insurance was the earliest well-developed kind of insurance, with origins in the Greek and Roman marine loan. It was the oldest risk hedging instruments our ancestors used to mitigate risk in medieval times. Separate marine insurance contracts were developed in Genoa and other Italian cities in the fourteenth century and spread to northern Europe. Premiums varied with intuitive estimates of the variable risk from seasons and pirates. Modern marine insurance law originated in the *Lex mercatoria* (law merchant). In 1601, a specialized chamber of assurance separate from the other Courts was established in England. By the end of the seventeenth century, London's growing importance as a centre for trade was increasing demand for marine insurance. In the late 1680s, Edward Lloyd opened a coffee house on Tower Street in London. It soon became a popular haunt for ship owners, merchants, and ships' captains, and thereby a reliable source of the latest shipping news.

Lloyd's Coffee House was the first marine insurance market. It became the meeting place for parties in the shipping industry wishing to insure cargoes and ships, and those willing to underwrite such ventures. These informal beginnings led to the establishment of the insurance market, Lloyd's of London and several related shipping and insurance businesses. The participating members of the insurance arrangement eventually formed a committee and moved to the Royal Exchange on Cornhill as the Society of Lloyd's. The establishment of insurance companies, a developing infrastructure of specialists (such as shipbrokers, admiralty lawyers, bankers, surveyors, loss adjusters, general average adjusters etc), and the growth of the British Empire gave English law a prominence in this area which it largely maintains and forms the basis of almost all modern practice. Lord Mansfield, Lord Chief Justice in the mid-eighteenth century, began the merging of law merchant and common law principles. The growth of the London insurance market led to the standardization of policies and judicial precedent further developed marine insurance law. In 1906 the Marine Insurance Act codified the previous common law; it is both an extremely though and concise piece of work. Although the title of the Act refers to Marine Insurance, the general principles have been applied to all non-life insurance. In the 19th century, Lloyd's and the Institute of London Underwriters (a grouping of London company insurers) developed between them standardized clauses for the use of marine insurance, and these have been maintained since. These are known as the 'Institute Clauses' because the Institute covered the cost of their publication. Out of marine insurance, grew non-marine insurance and reinsurance. Marine insurance traditionally formed the majority of business underwritten at Lloyd's. Now a days, Marine insurance is often grouped with Aviation and Transit (cargo) risks, and in this form is known by the acronym 'MAT'.

It is common for marine insurance agencies to compete with the offerings provided by local insurers. These specialist agencies often fill market gaps by providing cover for hard-to-place or obscure marine insurance risks that would otherwise be difficult or impossible to find insurance cover for. These agencies can become quite large and eventually become market makers. They operate best when their day to day management is independent of the insurers who provide them with the capital to underwrite risks on their behalf.

Practice

The Marine Insurance Act includes, as a schedule, a standard policy (known as the "SG form"), which parties were at liberty to use if they wished. Because each term in the policy had been tested through at least two centuries of judicial precedent, the policy was extremely thorough. However, it was also expressed in rather archaic terms. In 1991, the London market produced a new standard policy wording known as the MAR 91 form using the Institute Clauses. The MAR form is simply a general statement of insurance; the Institute Clauses are used to set out the detail of the insurance cover. In practice, the policy document usually consists of the MAR form used as a cover, with the Clauses stapled to the inside. Typically, each clause will be stamped, with the stamp overlapping both onto the inside cover and to other clauses; this practice is used to avoid the substitution or removal of clauses. Because marine insurance is typically underwritten on a subscription basis, the MAR form begins: We, the Underwriters, agree to bind ourselves each for his own part and not one for another [...]. In legal terms, liability under the policy is several and not joint, i.e., the underwriters are all liable together, but only for their share or proportion of the risk. If one underwriter should default, the remainder are not liable to pick his share of the claim. Typically, marine insurance is split between the vessels and the cargo. Insurance of the vessels is generally known as "Hull and Machinery" (H&M). A more restricted form of cover is "Total Loss Only" (TLO), generally used as a reinsurance, which only covers the total loss of the vessel and not any partial loss. Cover may be on either a "voyage" or "time" basis. The "voyage" basis covers transit between the ports set out in the policy; the "time" basis covers a period, typically one year, and is more common.

Protection and indemnity

A marine policy typically covered only three-quarter of the insured's liabilities towards third parties (Institute Time Clauses Hulls 1.10.83). The typical liabilities arise in respect of collision with another ship, known as "running down" (collision with a fixed object is an "allision"), and wreck removal (a wreck may serve to block a harbour, for example). In the 19th century, shipowners banded together in mutual underwriting clubs known as Protection and Indemnity Clubs (P&I), to insure the remaining one-quarter liability amongst themselves. These Clubs are still in existence today and have become the model for other specialized and non-commercial marine and non-marine mutual, for example in relation to oil pollution and nuclear risks. Clubs work on the basis of agreeing to accept a shipowner as a member and levying an initial "call" (premium). With the fund accumulated, reinsurance will be purchased; however, if the loss experience is unfavourable one or more "supplementary calls" may be made. Clubs also typically try to build up reserves, but this puts them at odds with their mutual status. Because, liability regimes vary throughout the world, insurers are usually careful to limit or exclude American Jones Act liability.

Actual total loss and constructive total loss

These two terms are used to differentiate the degree of proof that a vessel or cargo has been lost. An actual total loss occurs when the damages or cost of repair clearly equal or exceed the value of the property. A constructive total loss is a situation in which the cost of repairs plus the cost of salvage equal or exceed the value. The use of these terms is contingent on there being property remaining to assess damages, which is not always possible in losses to ships at sea or in total theft situations. In this respect, marine insurance differs from non-marine insurance, with which the insured is required to prove his loss. Traditionally, in law, marine insurance was seen as an insurance of "the adventure", with insurers having a stake and an interest in the vessel and/or the cargo rather than simply an interest in the financial consequences of the subject-matter's survival.

The term "constructive total loss" was also used by the United States Navy during World War II to describe naval vessels that were damaged to such an extent that they were beyond economical repair. This was most often applied to destroyer-type ships in 1945, the last year of the war, many which were damaged by kamikazes. By this time enough ships were available for the war that some could be disposed of if severely damaged.

General averages

Average in marine insurance terms is "an equitable apportionment among all the interested parties of an such an expense or loss."

General average stands apart for marine insurance. In order for general average to be properly declared, 1) there must be an event which is beyond the shipowner's control, which imperils the entire adventure; 2) there must be a voluntary sacrifice, 3) there must be something saved. The voluntary sacrifice might be the jettison of certain cargo, the use of tugs, or salvors, or damage to the ship, be it, voluntary grounding, knowingly working the engines that will result in damages. General average requires all parties concerned in the maritime venture (hull/cargo/freight/bunkers) to contribute to make good the voluntary sacrifice. They share the expense in proportion to the 'value at risk" in the adventure. Particular average is the term applied to partial loss be it hull or cargo.

Average

Average is the situation in which the insured has under-insured, i.e., insured an item for less than it is worth. Average will apply to reduce the claim amount payable. An average adjuster is a marine claims specialist responsible for adjusting and providing the general average statement. An Average Adjuster in North America is a 'member of the association of Average Adjusters' To ensure the fairness of the adjustment a General Average adjuster is appointed by the shipowner and paid by the insurer.

Excess, deductible, retention, co-insurance, and franchise

An excess is the amount payable by the insured and is usually expressed as the first amount falling due, up to a ceiling, in the event of a loss. An excess may or may not be applied. It may be expressed in either monetary or percentage terms. An excess is typically used to discourage moral hazard and to remove small claims, which are disproportionately expensive to handle. The term "excess" signifies the "deductible" or "retention".

A co-insurance, which typically governs non-proportional treaty reinsurance, is an excess expressed as a proportion of a claim in percentage terms and applied to the entirety of a claim. Co-insurance is a penalty imposed on the insured by the insurance carrier for under reporting/declaring/insuring the value of tangible property or business income. The penalty is based on a percentage stated within the policy and the amount under reported. As an example: a vessel actually valued at $1,000,000 has an 80% co-insurance clause but is insured for only $750,000. Since its insured value is less than 80% of its actual value, when it suffers a loss, the insurance pay-out will be subject to the under-reporting penalty, the insured will receive 750000/1000000th (75%) of the claim made less the deductible.

Specialist policies

Various specialist policies exist, including:

- **Newbuilding risks**: This covers the risk of damage to the hull while it is under construction.
- **Open Cargo or Shipper's Interest Insurance**: This policy may be purchased by a carrier, freight broker, or shipper, as coverage for the shipper's goods. In the event of loss or damage, this type of insurance will pay for the true value of the shipment, rather than only the legal amount that the carrier is liable for.
- **Yacht Insurance**: Insurance of pleasure craft is generally known as "yacht insurance" and includes liability coverage. Smaller vessels such as yachts and fishing vessels are typically underwritten on a "binding authority" or "line slip" basis.
- **War risks**: General hull insurance does not cover the risks of a vessel sailing into a war zone. A typical example is the risk to a tanker sailing in the Persian Gulf during the Gulf War. If an attack is classified as a "riot" then it would be covered by war-risk insurers.
- **Increased Value (IV):** Increased Value cover protects the shipowner against any difference between the insured value of the vessel and the market value of the vessel.
- **Overdue insurance**: This is a form of insurance now largely obsolete due to advances in communications. It was an early form of reinsurance and was bought by an insurer when a ship was late at arriving at her destination port and there was a risk that she might have been lost (but, equally, might simply have been delayed). The overdue insurance of the Titanic was 4rv famously underwritten on the doorstep of Lloyd's.
- **Cargo insurance:** Cargo insurance is underwritten on the Institute Cargo Clauses, with coverage on an A, B, or C basis, A having the widest cover and C the most restricted. Valuable cargo is known as specie. Institute Clauses also exist for the insurance of specific types of cargo, such as frozen food, frozen meat, and particular commodities such as bulk oil, coal, and jute. Often these insurance conditions are developed for a specific group as is the case with the Institute Federation of Oils, Seeds and Fats Associations (FOFSA) Trades Clauses which have

been agreed with the Federation of Oils, Seeds and Fats Associations and Institute Commodity Trades Clauses which are used for the insurance of shipments of cocoa, coffee, cotton, fats and oils, hides and skins, metals, oil seeds, refined sugar, and tea and have been agreed with the Federation of Commodity Associations.

Warranties and conditions

A peculiarity of marine insurance, and insurance law generally, is the use of the terms condition and warranty. In English law, a condition typically describes a part of the contract that is fundamental to the performance of that contract, and, if breached, the non-breaching party is entitled not only to claim damages but to terminate the contract on the basis that it has been repudiated by the party in breach.

By contrast, a warranty is not fundamental to the performance of the contract and breach of a warranty, while giving rise to a claim for damages, does not entitle the non-breaching party to terminate the contract. The meaning of these terms is reversed in insurance law. Indeed, a warranty if not strictly complied with will automatically discharge the insurer from further liability under the contract of insurance. The assured has no defense to his breach, unless he can prove that the insurer, by his conduct, has waived his right to invoke the breach, possibility provided in section 34(3) of the Marine Insurance Act 1906 (MIA); (sec 36(3) Indian law). Furthermore, in the absence of express warranties the MIA will imply them, notably a warranty to provide a seaworthy vessel at the commencement of the voyage in a voyage policy (section 39(1); (sec 41(1) Indian law). and a warranty of legality of the insured voyage (section 41); (sec 43 Indian law).

Salvage and prizes

The term "salvage" refers to the practice of rendering aid to a vessel in distress. Apart from the consideration that the sea is traditionally "a place of safety", moreover sailors are honour-bound to render assistance as required, it is obviously in the interest of underwriters to encourage assistance to vessels in danger of being wrecked. A policy will usually include a "sue and labour" clause which will cover the reasonable costs incurred by a shipowner in his avoiding a greater loss.

At sea, a ship in distress will typically agree to "Lloyd's Open Form" with any potential salvor. The Lloyd's Open Form (LOF) is the standard contract, although other forms exist. The Lloyd's Open Form is headed "No cure — no pay"; the intention being that if the attempted salvage is unsuccessful, no award will be made. However, this principle has been weakened in recent years, and awards are now permitted in cases where, although the ship might have sunk, pollution has been avoided or mitigated.

In other circumstances the "salvor" may invoke the SCOPIC terms (most recent and commonly used rendition is SCOPIC 2000) in contrast to the LOF these terms mean that the salvor will be paid even if the salvage attempt is unsuccessful. The amount the salvor receives is limited to cover the costs of the salvage attempt and 25% above it. One of the main negative factors in invoking SCOPIC (on the salvor's behalf) is if the salvage attempt is successful the amount at which the salvor can claim under article 13 of LOF is discounted.

The Lloyd's Open Form, once agreed, allows salvage attempts to begin immediately. The extent of any award is determined later; although the standard wording refers to the Chairman of Lloyd's arbitrating any award, in practice the role of arbitrator is passed to specialist admiralty QCs. A ship captured in war is referred to as a prize, and the captors entitled to prize money. Again, this risk is covered by standard policies.

THE MARINE INSURANCE ACT, 1963

ARRANGEMENT OF SECTIONS

THE POLICY

DOUBLE INSURANCE

WARRANTIES, ETC.

THE VOYAGE

THE MARINE INSURANCE ACT, 1963

ACT NO. 11 OF 1963

[18*th April,* 1963.]

An Act to codify the law relating to marine insurance.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows: -

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

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

2. Definitions. — 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;

(*ii*) the earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loans, or disbursements is endangered 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 responsible for, insurable property by reason of maritime perils;

(*e*) "maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry and any other perils which are either of the like kind or may be designated by the policy;

(*f*) "movables" means any movable tangible property, other than the ship, and includes money, valuable securities and other documents;

(*g*) “policy” means a marine policy;

(*h*) “ship” includes every description of vessel used in navigation;

(*i*) “suit” includes counter-claim and set-off.

3. Marine insurance defined. — A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.

4. Mixed sea and land risks. — (*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 in course of building or the launch of a ship, or any adventure analogous 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 applicable, shall apply thereto, but except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

Explanation. — “An adventure analogous to a marine adventure” includes an adventure where any ship, goods or other movables are exposed to perils incidental to local or inland transit.

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.

INSURABLE INTEREST

6. Avoidance of wagering contracts. —

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

(*2*) A contract of marine insurance is deemed to be a 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.

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

(*2*) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

8. When interest must attach. — (*1*) The assured must be interested in the subject-matter insured at the time of the loss, though he need not be interested when the insurance is effected:

Provided that, where the subject-matter is insured "lost or not lost", the assured may recover although
he may not have acquired his interest until after the loss, unless at the time of effecting the contract of
insurance the assured was aware of the loss, and 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. 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.

10. Partial interest. — A partial interest of any nature is insurable.

11. Reinsurance. — (*1*) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it.

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

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

13. 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.

14. 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.

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*) 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.

17. Assignment of interest. — Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect. But the provisions of this section do not affect transmission of interest by operation of law.

INSURABLE VALUE

18. Measure of insurable value. — Subject to any express provision or valuation in the policy, the

insurable value of the subject-matter insured must be ascertained as follows: —

(*1*) In insurance on ship, the insurable value is the value, at the commencement of the risk, 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 the charges of insurance upon the whole. The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured; in the case of a ship driven by power other than steam includes also the machinery and fuels and engine stores, if owned by the assured; and in the case of a ship engaged in a special trade, includes also the ordinary fittings requisite for that trade.

(*2*) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance.

(*3*) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole.

(*4*) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

DISCLOSURE AND REPRESENTATIONS

19. Insurance is *uberrimae fidei.* — A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by either party, the contract may be avoided by the other party.

20. 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 to 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 circumstance 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.

21. 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 comes to his knowledge too late to communicate it to the agent.

22. 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 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.

23. 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, covering note or other customary memorandum of the contract, although it be unstamped.

THE POLICY

24. Contract must be embodied in policy. - A contract of marine insurance shall not be admitted 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.

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*) A marine policy must be signed by or on behalf of the insurer.

(*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.

27. Voyage and time policies.—(*1*) Where the contract is to insure the subject-matter at and from, or from one place to another or others, 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.

(*2*) A time policy which is made for any time exceeding twelve months is invalid.

28. Designation and 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.

29. 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.

30. 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 hereinbefore explained.

31. Floating policy by ship or ships. — (*1*) A floating policy is a policy which describes the insurance in general terms, and leaves the name or names of the ship or ships and other particulars to be defined by subsequent declaration.

(*2*) The subsequent declaration or declarations may be made by endorsement 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.

32. Construction of terms in policy. — (*1*) A policy may be in the form in the Schedule.

(*2*) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the Schedule shall be construed as having the scope and meaning assigned to them in the Schedule.

33. 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

34. 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, ETC.

35. 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.

36. 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.

37. 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 implied warranty, unless it be inconsistent therewith.

38. 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.

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 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.

42. No implied warranty that goods are seaworthy. — (*1*) In a policy on goods or other moveable there is no implied warranty that the goods or movables are seaworthy.

(*2*) In a voyage policy on goods or other movables 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 movables to the destination contemplated by the policy.

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.

THE VOYAGE

44. 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 negatived 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.

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. — 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.

47. 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.

48. Deviation. — (*1*) Where a ship, without lawful excused, deviates from the voyage contemplated by the policy, the insured 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.

49. 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.

50. Delay in voyage. —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.

51. Excuse for deviation or delay. — (*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 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

52. When and how policy is assignable. — (*1*) A marine policy may be transferred by assignment 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 suit had been brought in the name of the person by or on behalf of whom the policy was effected.

(*3*) A marine policy may be assigned by endorsement thereon or in other customary manner.

53. 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

54. 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.

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 a suit 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 transhipment, etc.—Where, by a peril insured against, the voyage is interrupted at intermediate port or place, under such circumstances as, a part from any special stipulation in the contract of a freightment, to justify the master in landing and reshipping the goods or other movables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

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 required; 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.

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.

(*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*) When an insurer has reinsured 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. Particularly 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 or 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 interest 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 interests 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;

(*4*) where the ship has not been repaired, and has been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable cost of repairing the damage, computed as above, but not exceeding the depreciation in value as ascertained by the sale.

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 movable, the measure of indemnity, subject to any express provision in the policy, is as follows:-

(*1*) where part of the goods, merchandise or other movable 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 movable 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 values 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; 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 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 PAYMENTS

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 a suit 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 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 inperilled 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 not 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 the rule does not apply to a policy effected by way of wagering;

(*d*) where the assured has a defeasible interest, which is terminated during the currency of the risk, the premium is not returnable;

(*e*) where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

(*f*) subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

SUPPLEMENTAL

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 negatived 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 (4 of 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.

92. [*Repeals.*] *Rep. by the Repealing and Amending Act,* 1974 (56 *of* 1978), *s.* 2 *and the First Schedule* (*w.e.f.* 20-12-1974).

SCHEDULE

FORM OF POLICY

(*See* section 24)

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 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 merchandises from the loading thereof aboard the said ship……………….upon the said ship, etc…………………………and so shall continue and endure, during her abode there, upon the said ship etc……………….And further, until the said ship, with all her ordnance, tackle, apparel, etc., and goods and merchandises whatsoever shall be arrived at……………….upon the said ship, etc., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, etc., in this voyage to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, etc., goods and merchandises, etc., for so much as concerned the assured by agreement between the assured and assurers in this policy, are and shall be…………….valued at…………….

Touching the adventures and perils which we the assurers are contended to bear, and do take upon us in this voyage; they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letter of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality so ever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards and recovery of the said goods and merchandises and ship, etc., or any part thereof, without prejudice to this Insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured.

And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And so

we, the assurers, are contended, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true

performance of the premises, confessing ourselves paid the consideration due into us for this assurance by

the assured, at and after the rate of………………

In witness whereof we, the assurers, have subscribed our names and sums assured in………......

MEMORANDUM N. B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average,

unless general or the ship be stranded, — sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five per cent. and all other goods, also the ship and freight, are warranted free from average, under three per cent. unless general, or the ship be stranded.

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. Lost and not lost. — 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. From. — Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.

3. At and from. — (*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 ship-owner, 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. From the loading thereof. — Where goods or other movables are insured "from the loading thereof", the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

5. Safely landed. — Where the risk on goods or other movables 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. Touch and stay.—In the absence of any further license 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. Perils of the seas. — 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. Pirates. — The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

9. Thieves. — 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. Restraint of Princes. — The term "arrests, etc., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11. Barratry. — The term "barratry" includes every wrongful act wilfully committed by the master of crew to the prejudice of the owner, or, as the case may be, the charterer.

12. All other perils. — The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

13. Average unless general. — The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges".

14. Stranded. — 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 standing takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15. Ship. — The term "ship" includes the hull, material 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 and also in the case of a ship driven by power other than steam, the machinery and fuels and engine stores, if owned by the assured.

16. Freight. — The term "freight" includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or movables as well as freight payable by a third party, but does not include passage money.

17. Goods. — The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.