WEST BENGAL NATIONAL UNIVERSITY OF

JUDICIAL SCIENCE

INSURANCE PROJECT ON
MARINE
INSURANCE

SUBMITTED BY

RASHMI PODDAR

ID- PGDBL151616

MARINE INSURANCE

1.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 insurance 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.

Lawful marine adventure.-

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

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.

Insured Risks: Perils Of The Sea

An insurer underwrites or subscribe to a risk in return for the payment of 'premium' by the assured (ibid., sections 23, 33, 54 and 86). The premium is considered compensation for running risks of the insured property and is normally retained whether or not the insured property is lost or not. The size of the premium depends upon the insurer's estimation of degree of the risk that the insured property will incur a loss and on amount of indemnity he will have to pay. Generally, the insurers spread their potential liabilities in a relatively small amount over a number of risks in order to benefit from the probability that only a limited percentage will experience losses by 'law of averages.'

The word "risk" being in this context to refer to the risk of loss occurring in connection with insured property, and the risk of loss can include not only actual property in return for the payment of premium by the assured losses but also financial losses, such as those resulting from the loss of freight, passage money, commission or profit as well as certain types of liabilities incurred to third parties (ibid., sections 2[d]{ii}.)

The specification of insurance contract usually stipulates certain limitations as to the type of occurrences that may cause losses for which the insurer will pay indemnity. [4] Such occurrences are called "insured risks" or "insured perils". The term "perils of the sea" refers only to accidents or causalities of the sea, and does not include the ordinary action of the winds and waves. Besides, maritime perils include, fire, war perils, pirates, seizures and jettison, etc. A marine insurance policy may specify that only certain maritime risks, or “perils of the sea”, are covered.

2. Types of Marine Insurance

Some of the important types of marine insurance are as follows:

- Hull Insurance
- Cargo Insurance
- Freight Insurance
- Liability Insurance

A) Marine Hull Insurance

This pertains to insurance of ocean going steamers and other vessels. “Hull” refers to the body or frame of the ship. Hull insurance provides the cover for the hull and machinery as well as in respect of materials and outfit and stores and provisions for the officers and crew. In addition cover for liabilities is included. It is effected generally by the owner of the ship.

Hull policy consists of basic policy attached to Institute Clauses, which are drafted by the Institute of London Underwriters. The Institute Time Clause (Hull) Cover embraces:

(i) the coverage of maritime perils namely fire, collision, stranding etc.; (ii) the coverage of additional perils such as latent defect in machinery, accidents in loading / discharging cargo, (iii) the Running Down Clause embodied in the hull insurance provide cover for damage caused to another ship in collision as a consequence of negligent navigation; (iv) it may also cover vessels in course of construction, which are taken by the ship builders. Coverage starts from keel [5] laying and until delivery of the ship to the owners.

B) Marine Cargo Insurance

Cargo insurance covers the cargo or goods contained in the ship and the personal belongings of the crew and passengers. It provides cover for various transit perils in respect of goods and or merchandise in transit from one place to another by sea, air, road or registered post. Transit or marine risks or perils are covered under marine insurance. Marine insurance plays a pivotal role in import, export and internal trade. Trade involves movement of goods from one place to another place. Goods while in transit are liable to be lost or damaged through one or other of various perils from the time it leaves the warehouse of the supplier till it is received at the final warehouse of the consignee. Goods while in transit are generally exposed to any one of the following perils leading to total loss or damage. The loss or damage suffered due to these perils is to be transferred to the insurer in lieu of the premium, as these are included in the Marine cover.

C) Freight Insurance

Freight insurance provides protection against the loss of freight. In many cases, the owner of goods is bound to pay freight, under the terms of the contract, only when the goods are safely delivered at the port of destination. If the ship is lost on the way or the cargo is damaged or stolen, the shipping company loses the freight. Freight insurance is taken to guard against such risk.

D) Liability Insurance

Liability insurance is one in which the insurer undertakes to indemnify against the loss which the insured may suffer on account of liability to a third party caused by collision of the ship and other similar hazard

3. Marine Insurance Policy

A marine insurance policy is a document which embodies all the particulars and the terms and conditions for the construction of the policy. 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 section 25 of the Marine Insurance Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards. The policy must be signed by or on behalf of the insurer. It must contain the following: (ibid. Sections 24, 25, 26 and e Schedule for a Form of Policy)

- the name of the assured;
- the subject-matter insured and the risk insured against;
- the voyage, or period of time, or both, as the case may be, covered by the insurance;
- the sum or sums insured;
- the name or names of the insurer or insurers.

In India, the practice is to issue 'cover notes' which are similar to slips. As the practice is not to stamp a 'cover note' it is admissible only to prove the agreement. It cannot be used for any purpose except to compel the delivery of a policy in accordance with its terms.

Assignment Of Policy

A marine insurance policy is assignable either before or after the loss, unless it contains terms expressly prohibiting assignment(ibid., Section 52[1]). A policy on goods is generally freely assignable.

Merchandise like tea, jute and wheat etc., change hands before they reach their destination and policies on them must be freely transferable. Both policies on ship or on freight are subject to restrictions on assignment.

An assignment by the insured of his interest in the subject-matter insured does not transfer his rights in the policy of insurance thereon to the assignee, unless there is an express or implied agreement to that effect. But a transmission of interest in the subject –matter insured by operation of law- such as by death or insolvency- will operate as a transfer of the policy also(ibid., Section 17).

An assured who has assigned or lost his interest in the insured property cannot subsequently assign the policy of insurance thereon. Unless before or at the time of assigning the property, he has expressly or impliedly agreed to assign the policy. However, he can always assign the policy after loss(ibid., Section 53). The marine policy may be assigned by endorsements on the policy itself or in any other customary manner. On the assignment of the beneficial interest in the policy, the assignee is entitled to sue thereon in his name.

4. Types Of Marine Policies

I) Voyage Policy

When a marine insurance policy embodies the contract to insure the subject-matter at and from, or from one place to another or others, the policy is called a “voyage policy” (ibid., Section 27[1]). In a voyage policy, the subject matter is insured for a particular voyage irrespective of the time involved in it. In this case the risk attaches only when the ship starts on the voyage.

Ii) Time Policy

Time policy is an insurance policy embodying a contract in which the subject matter is insured for a definite period of time(ibid., Section 27[1]). The ship may pursue any course it likes, the policy would cover all the risks from perils of the sea for the stated period of time. A time policy cannot be for a period exceeding one year because it will be invalid, but it may contain a ‘continuation clause’(ibid., Section 27[2]). The ‘continuation clause’ means that if the voyage is not completed within the specified period, the risk shall be covered until the voyage is completed, or till the arrival of the ship at the port of call.

Iii) Mixed Policy

Mixed insurance policy is a combination of voyage and time policies and covers the risk during particular voyage for a specified period of time. A contract for both voyage and time may be included in the same policy(ibid., Section 27[1]).

Iv) Valued Policy

A marine insurance policy may be either valued or unvalued(ibid., Section 29[1]). A valued policy is a policy which specifies the agreed value of the subject-matter insured between the insurer and the insured and it is specified in the policy itself(ibid., Section 29[2]). 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(ibid., Section 29[3]). However, unless expressly stated, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss(ibid., Section 29[4]).

V) Open Or Un-Valued Policy

An unvalued marine insurance policy is a policy which does not specify the value of the subject-matter insured(ibid., Section 30). Subject to the limit of the sum assured, it leaves the value of the loss to be subsequently ascertained, in the manner explained in the policy itself(ibid., Section 30). It means that the method of ascertaining the value of the loss has been agreed upon between the insured and insurer beforehand in case of an unvalued policy.

Vi) Floating Policy

A floating policy is a policy which describes the insurance contract in general terms, and leaves the name or names of the ship or ships and other particulars to be defined by subsequent declaration(ibid., Section 31[1]). The subsequent declaration or declarations may be made by endorsement on the policy, or in other customary manner(ibid., Section 31[2]). 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. An omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith(ibid., Section 31[3]). If a declaration of value is not made until after notice of loss or arrival, the policy is generally treated as an unvalued policy as regards the subject-matter of that declaration(ibid., Section 31[4]).

5.PRINCIPLES OF MARINE INSURANCE

a. Principle Of Utmost Good Faith

A contract of marine insurance is a contract uberrimea fidei i.e. a contract of utmost good faith(ibid., Section 19). This is a fundamental principle of insurance law. There is no difference between a contract of insurance and any other contract, except that in a contract of insurance, there is a requirement of utmost good faith (See, General Assurance Society Ltd. v. Chandumull Jain, AIR 1966 SC 1644). According to section 19, a contract of marine insurance is a contract based upon utmost good faith and if the utmost good faith be not observed by either party, the contract may be avoided by the other party. Under section 20, 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(ibid., Section 20). Under Section 21, the agent must disclose to the insurer every material circumstance which is known to him, and an agent to insure is deemed to know every circumstance where insurance is effected for the assured by an agent(ibid., Section 21). Very importantly, the duty of disclosure continues to apply even after the conclusion of the contract.

b. Principle Of Insurable Interest

The principle of insurable interest states that the insured must be in a position to lose financially if a loss occurs. In a contract of marine insurance, 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(ibid., Section 8[1]). A contract of marine insurance is deemed to be a wagering contract, where the assured has not an insurable interest, and the contract is entered into with no expectation of acquiring such an interest(ibid., Section 6[2]{a}).

According to the Marine Insurance Act, every person has an insurable interest who is interested in a marine adventure(ibid., Section 7[1]). 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(ibid., Section 7[2]). The following persons are deemed to have insurable interest:

The owner of the ship has an insurable interest in the ship.

The owner of the cargo has insurable interest in the cargo.

A creditor who has advanced money on the security of the ship or cargo has insurable interest to the extent of his loan.

The master and crew of the ship have insurable interest in respect of their wages.

If the subject matter of insurance is mortgaged, the mortgagor has insurable interest in the full value thereof, and the mortgagee has insurable interest in respect of any sum due to him.

A trustee holding any property in trust has insurable interest in such property.

In case of advance freight the person advancing the freight has an insurable interest in so far as such freight is repayable in case of loss.

The insured has an insurable interest in the charges of any insurance policy which he may take.

c. Principle Of Indemnity

Most kinds of insurance policies other than life and personal accident insurance are contracts of indemnity whereby the insurer undertakes to indemnify the insured for the actual loss suffered by him as a result of the occurring of the event insured against. A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured to the extent agreed upon(ibid., Section 75).

Although the insured is to be placed in the same position as if the loss has not occurred, the amount of indemnity may be limited by certain conditions as follows:

Injury or loss sustained by the insured has to be proved.

The indemnity is limited to the amount specified in the policy.

The insured is indemnified only for the proximate causes.

The market value of the property determines the amount of indemnity.

d. Principle Of Subrogation

The principle of subrogation is a corollary of the principle of indemnity. Subrogation means substitution of the insurer in place of the insured for the purpose of claiming indemnity from a third person for loss covered by insurance. The insurer is therefore entitled to recover from a negligent third party any loss payments made to the insured(ibid., Section 79[1]).

In the marine policy, the insurer must have paid the claim before they are entitled to rights of subrogation (ibid. Section 79[2]). Whether the loss paid is total or partial insurers subrogated to all the rights and remedies of the insured. However, the insurer can retain only up to the amount they have indemnified the insured under subrogation.

Such rights and remedies include right of recovery from third parties. In the event of loss of goods at the destination, the sum insured which is the agreed value will be paid. In case the goods are damaged during transit, the amount payable is arrived as a proportion of the sum insured according to the percentage of depreciation, suffered by the goods as certified by surveyors.

CONCLUSION

Marine insurance is a mechanism that helps to mitigate the risks of financial loss to the property such as ship, goods or other movables, in

maritime transport, on the payment of premium by the assured to the insurer. Insurer provides risk cover to the ship-owners or the cargo-owners against loss or damage that the ship or cargo may suffer in transit due to accidents and mishaps in the nature of a financial indemnity. The insurance company undertakes to make good the loss to the maximum value as agreed with the insured perils or risks. Loss is payable only when it has been proximately caused by the insured peril. The marine insurance is governed by the national legal regimes. In India, Marine Insurance Act, 1963, regulates various aspects of marine insurance.

However, the fact that divergent national legal regimes exist, in the conduct of marine insurance business, has certain consequences for the parties to contract, particularly the assured, who will have difficulty in understanding the coverage of foreign insurance market. Without the uniformity in the national marine insurance legal regimes, the international conduct of marine insurance, particularly from the assureds' perspective, would be severely impeded. Hence, given the international character of marine insurance, there is a need for harmonization of the legal regimes governing the rights and obligation of the parties to the insurance contract involving international transport and trade.

BIBLIOGRAPHY

- Wikipedia
- http.//howtoexportimport.com/TYPES OF MARINE INSURANCE-POLICIES-486asppx
- mgif.maharashtra.gov.in/SITE/PDF/products/Marine Insurance.pdf
- http://www.marine.insight.com/marine/different/types-of-marine insurance-marine insurance policies
- www.admiraltylaw.com/USB/20 LAW332/marine-insurance-outline pdf