Introduction to Marine Insurance

MEANING OF MARINE INSURANCE

- A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the insured, in the manner and to the extent thereby agreed, against transit losses, that is to say losses incidental to transit.
- A contract of marine insurance may by its express terms or by usage of trade be extended to protect the insured against losses on inland waters or any land risk which may be incidental to any sea voyage.

INSURANCE-LIKE-PRACTICES:

- ***Bottomry and respondentia bonds*:**
  - Bottomry is loan to owner of the vessel to finance a venture, for which the vessel is pledged.
  - The understanding is that the loan is not repaid if the vessel did not survive the voyage. It is a kind of insurance in reverse.
  - A premium or interest is added to the amount to be repaid.
  - In Bottomry bond -vessel was pledged except the cargo.
  - In respondentia bond the cargo is pledged and insured.
- **General Average Contributions:**
  - This practice means owner of goods or property deliberately damaged or sacrificed in a successful attempt to save a marine venture receives compensation from all interested parties for the loss suffered.

LLOYDS OF LONDON

- The market began in Edward Lloyd's coffeehouse around 1688 in Tower Street, London. His establishment was a popular place for sailors, merchants, and shipowners and Lloyd catered to them with reliable shipping news.
- In 169, the coffee shop relocated to Lombard Street.
- This arrangement carried on long after Lloyd's death in 1713 until 1774 when the participating members of the insurance arrangement formed a committee and moved to the Royal Exchange as The Society of Lloyd's.

THE SLIP:

- The **Lloyd’** broker will prepare slip on request to place an insurance at Lloyd’s. It is literally a slip of paper containing brief details of the risk to be placed.
- He will then approach underwriters who specialize in that class of business, with a view to obtaining one of them as a leader or leading underwriter.
- The underwriter by quoting an appropriate rate of premium and accepting a certain percentage of proportion of the risk, by singing his name, or initials, below the details of the risk, indicating the rate and his proportion. Thus, the term ‘underwriter’ came into usage.
- A slip is used by custom in all marine insurance contracts, whether at Lloyd’s or elsewhere. It is the proof of documentation of contract with all implied terms.

THE TITANIC : A BRITISH LUXURY OCEAN LINER

- Lloyd paid **one million dollars** in claims on the sinking of the Titanic in 1912.
- The Titanic is a British ocean liner, which was believed to have hit an iceberg on 15th April 1912 off Newfoundland on her maiden voyage and sank to a depth of about 4000 meters resulting in death of more than 1500 people.

Perils of Sea

PERILS

- Accidental fire on sea, by negligence or by lightening etc
- Pirates and thieves, hijacking airplane from over ship is piracy, assailing thieves, theft by violence or with threat of violence is also covered.
- Jettisons: voluntary sacrifice of property to preserve remainder

PERILS

- Enemies: hostile acts, subjects of enemy country
- Barratry: fraudulent acts of master or crew members against owner. Running away with ship, setting fire, sinking, abandoning
- Rule 11 of 1963Act: "Every wrongful act willfully committed by the master or crew to the prejudice of the owner or as the case may be, the charterer'.

All risk mentioned in the contract

- Other exceptions and exclusions,
- Can be applied to 'all other perils, losses and misfortunes' the rule of reason.
- 1963 Act Perils of Seas refer to accidents or casualties of the sea. **Does not include ordinary action of winds and waves**.

Risks: Ship wreck

- Ship wreck: Ship striking against rock
- Stranding: out of voyage, stuck up in shallow regions or sands, or injured.
- Collision: If collision by negligence, liable under court decree, is not peril of sea.
- To avoid it collision clause or running down clause is introduced where underwriter pays $3/4^{th}$ of loss.

Additional perils

- Contract may contain coverage against other perils also.
- **Inchmaree clause**: losses due to negligence or accident outside scope of perils of sea are generally not covered, if agreed to cover it is called inchmaree clause.
- **Sue and labour clause**: Assures contribute according to rate and quantity of sum insured.

Marine Insurance Act

Object of Marine Insurance

- The **main objective of a marine insurance policy is to protect the finances and assets of an individual while they are commuting or transporting via the sea routes.**

- It basically offers **protection against business damages sustained during water transportation** operations.

- Although policies differ, four common types exist: hull, freight, freight revenue and negligence. Insured can choose all four forms, or choose an alternative.

Marine Insurance defined

- **Section 3**: 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.

- Even the **losses incidental to marine adventure**.

Mixed sea and Land risks

- Section 4(1) A contract of marine insurance may, by its express terms, or by usage of trade, or 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.

- Section 4(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 policy in the form of marine policy……

Other risks

- Explanation to Section 4: '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**.

- Section 5: subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

Marine Insurance Act

- 1906 UK
- Marine Insurance Act 1963 identical to MI Act of UK 1906.
- As London was center for marine activity, their principles were practiced by others also. They became International Insurance practices, codified into MI Act

Subject Matter

- Insurable property exposed to marine peril
- Earnings endangered by marine perils
- Any liability to a third party
- Eg: ship, goods, movables
- Ship insurance is called hull insurance
- (Ship includes hull materials outfit, stores and provisions for the officers and crew, machinery, boilers, coals, engine stores..etc)

What is insured?

- Vessels (hull), loss, damage, detention, delay, stranding etc
- Cargo loaded in vessel
- Freight paid or received by assured
- Other merchandize, which is in transit on water or land or on both, transactions incidental to marine adventure
- Third party liability

INSURED

- Insurance includes all perils, risks to money, documents, securities, other valuable goods in ship
- Cost of insurance, freight charges etc
- Building of ship, launching of ship, transport of stores concerned
- What is really insured against is **‘actual risk’.** Goods may be somewhere safe, recovery may cost more.

Insurable Interest

Marine Insurance

Wagering

- Section 6(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 in this Act, and <u>the contract is entered into with no expectation of acquiring such an interest</u>; or
  - b) where the policy is made 'interest or no interest' or 'without further proof of interest other 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. (Exception to Section 6)

Insurable interest

- Section 7(1) Subject to provisions of this Act, every person has an insurable interest who is interested in **marine adventure.**
- 1. Physical object exposed to marine peril
- 2. Assured must have legally recognized relationship with object

  (benefit by preservation or prejudiced by its loss or damage)

Interest in Marine Adventure

- *Section 7 (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'*

When interest must attach

- Section 8(1): The assured must be interested in the subject matter **insured at the time of the loss, though he needs 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.

No interest, no policy

- Section 8(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.

Defeasible or Contingent

- Section 9(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.

Examples

- Section 10: A partial interest of any nature is insurable.
- Section 11(1): the insurer under a contract of marine insurance has an insurable interest in respect of such reinsurance.
- (2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

Insurable interests

- Section 12: The Lender of money on bottomry or respondentia has an insurable interest in respect of the loan.
- Section 13: The Master or any member crew of a ship has an insurable interest in respect of his wages.

Advance Freight

- Section 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.

- Section 15: Charges of Insurance: The assured has an insurable interest in the charges of any insurance which he may effect.

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.

Quantum of Interest

- Section 16 (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).

S 17. Assignment of interest

- S 17. 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.

S 18. 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:

Contract of Insurance

Marine Insurance

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**.

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**.

Time Policy

- Insured for a definite period of time.
- **Continuation clause**: if ship starts on last day of period insured, it will continue for a reasonable time till safe arrival at destination port.
- Suitable for hull insurance by owners.

Voyage policy

- Insured risks at a particular voyage from port of departure to port of destination.
- Goods are insured at and from….to….
- Goods are insured from…to…
- Suitable for cargo policy
- Mixed policy: both time and voyage policy

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.

Subject Matter

- (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.

Value fixed

- (3) 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.**

Valued policy

- Value agreed upon is taken as basis of indemnity.
- Insured value is not necessarily actual value of the cargo. Eg actual value of goods insured may be Rs. 1 lakh, policy may be taken only for Rs 50,000.
- Invoice price of goods, freight, shipping charges, insurance etc, a fixed percentage of margin to cover anticipated profits and other incidental chages.

S 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….

Unvalued policy

- Value of subject matter not agreed upon.
- Left to be decided later on
- It does not include anticipated profit margin etc
- Generally all policies are valued policies
- Floating policy- open policy or declaration policy. Mentions amount only other particulars are added later.

S 31 Floating policy

- 31(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.

BLOCK POLICIES

- A single policy to cover all risks including incidental risks, such as inland risks (rail-road transport) transmission by ship, is called block policy.

- Goods may be covered from point of origin to point of consumption under block policy.

- Gold or cotton may be covered under block policy, from warehouse to destination

Named policy

- Floating policy with the specified interest.
- In floating policy name is not mentioned, to be declared at the time of shipment
- For example policy may specify 1000 bales of cotton per SS Viswa from Bombay to Port Louis.
- **Single Vessel** policy -owner insuring his single ship separately or, **Fleet** Policy- insuring fleet of ships

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-
-

No to excess amount

- (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;

POLICY AMOUNT PAID – ACTUAL VALUE

- (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;
-

Holding Excess, in trust

- (d) where the assured received 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.

Clauses of contract

- Insurance contract incorporate clauses:
- Voyage- specifying the course of voyage- ship must follow it.
- At and from clause
- Warehouse to warehouse clause
- Assignment clauses

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.
-

Effect of delay

- (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 excuse, 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.

Deviation

- (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 designed by the policy, but the usual and customary course is departed from.

Deviation

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

Change and deviation

- Time when determination to change becomes manifest, it is 'change'
- Policy becomes void the moment change of voyage is contemplated.
- Deviation must become a fact before validity of policy is questioned. Underwriter is discharged from the moment of deviation. Mere intention to deviate will not discharge insurer.
- Deviation did not increase risk- irrelevant.

Several Ports of Discharge

- S 49. (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.

Ports of discharge

- (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 despatch, 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

Excuses

- (d) where reasonably necessary for the safety of the ship or subject-matter insured; or
- (e) for the purpose of saving human life or aiding a ship in distress where human life may be in danger; or
- (f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

Excuses

- (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 despatch.

Touch and stay

- Contract may have a term saying that the ship may touch and stay at particular ports during the voyage.
- If not specified they must be casual places on the route. If not it amounts to deviation.

Inchmaree clause

- Engine in inchmaree ship was to pump water to boiler. Check valve was closed with salt either because of negligence or accident. Water was forced into air chamber where pump was broken and there was a huge loss. Claim was rejected as it was not covered by ‘all other perils, losses and misfortunes’. HoL agreed with rejection. Then inchmaree clause is developed to cover inherent risks also.

Sue and Labour clause

- This clause entitles assured to take all necessary steps for the preservation of the subject matter insured in case of accident, casualty or danger.

Sue and labour clause

- ‘and in case of any loss or misfortune it shall be lawful to the assureds, 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 take charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein insured”.

F C S

- Free of Capture and Seizure clause: insurer excludes his liability for risk of capture, seizure, and detention in times of war without additional premium for war risks
- AAR Against All Risks
- RDC running down clause: undertakes risk of vessel found to be guilty for collision with other ship.
- FSR & CC (Free of Strikes Riots and Civil Commotion clause)