

Chapter 258.  
***Marine Insurance Act (Adopted).***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 258.

***Marine Insurance Act (Adopted).***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Marine Insurance Act (Adopted),***

Being an Act relating to marine insurance, adopted by Section Sch. 2.6 (*adoption of pre-Independence laws*) of, and Part 1 of Schedule 5 to, the *Constitution*.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears—

“**action**” includes counter-claim and set-off;

“**contract of marine insurance**” means a contract by which the insurer undertakes to indemnify the insured, in the manner and to the extent agreed by the contract, against marine losses;

“**floating policy**” has the meaning given to it by Section 31;

“**freight**” includes—

(a) the profit derivable by a ship-owner from the employment of his ship to carry his own goods or movables; and

(b) freight payable by a third party,

but does not include passage money;

“**general average act**” has the meaning given to it by Section 70;

“**general average contribution**” means a contribution by virtue of Section 70(3);

“**general average loss**” has the meaning given to it by Section 70(1);

“**insurable interest**” means an insurable interest within the meaning of Division II.2;

“**insurable property**” means property referred to in Section 5(2)(a);

**“insurable value”**, in relation to a marine policy or the subject-matter of a marine policy, means—

- (a) in the case of insurance on a ship—the sum of—
  - (i) the value, as at the commencement of the risk, of—
    - (A) the ship and her outfit; and
    - (B) provisions and stores for the crew; and
    - (C) money advanced for seamen’s wages; and
    - (D) any other disbursements incurred to make the ship fit for the voyage or adventure contemplated by the policy; and
  - (ii) the charges of insurances on the whole; and
- (b) in the case of insurance on a steamship—in addition to the insurable value calculated in accordance with Paragraph (a), the value, as at the commencement of the risk, of any of her machinery, boilers, coal and engine stores owned by the assured; and
- (c) in the case of insurance on a ship engaged in a special trade—in addition to the insurable value calculated in accordance with Paragraph (a) (and, if appropriate, Paragraph (b)), the value, as at the commencement of the risk, of the ordinary fittings needed for the trade; and
- (d) in the case of insurance on freight, whether paid in advance or otherwise—the total of—
  - (i) the gross amount of the freight at the risk of the assured; and
  - (ii) the charges of insurance; and
- (e) in the case of insurance on goods or merchandise—the total of—
  - (i) the prime cost of the goods or merchandise assured; and
  - (ii) the expenses of and incidental to shipping; and
  - (iii) the charges of insurance on the whole; and
- (f) in the case of insurance on any other subject-matter—the total of—
  - (i) the amount at the risk of the assured when the policy attaches; and
  - (ii) the charges of insurance;

**“marine adventure”** includes the particular meaning given to that expression by Section 5(2);

**“marine loss”** means a loss incidental to marine insurance;



**“maritime perils”** means the perils consequent on, or incidental to, the navigation of the sea, namely:–

- (a) perils of the sea; and
- (b) fire; and
- (c) war perils; and
- (d) pirates, rovers and thieves; and
- (e) captures and seizures; and
- (f) restraints and detainments by other governments; and
- (g) jettisons; and
- (h) barratry,  
and any other perils–
- (i) of the like kind; or
- (j) designated by the policy;

**“measure of indemnity”**, in relation to a marine policy, means the amount that the assured can recover in respect of a loss on a policy by which he is insured–

- (a) in the case of an unvalued policy–to the full extent of the insurable value; or
- (b) in the case of a valued property–to the full extent of the value fixed by the policy;

**“movables”**, in relation to insurance on a ship, means any movable tangible property, other than the ship, including money, valuable securities and other documents;

**“partial loss”** means a loss that is a Partial loss within the meaning of Division V.1;

**“particular average loss”** means a loss that is a particular average loss within the meaning of Part V.;

**“particular charges”** means expenses that are particular charges within the meaning of Section 68(2);

**“policy”** means a marine policy;

**“promissory warranty”** means a warranty by which the assured–

- (a) undertakes that–
  - (i) some particular thing will or will not be done; or
  - (ii) some condition will be fulfilled; or
- (b) affirms or negatives the existence of a particular state of facts;

**“salvage charges”** means the charges recoverable under maritime law by a salvor independently of contract, but does not include the expenses of services in the nature of salvage rendered by—

- (a) the assured or his agents; or
- (b) any person employed for hire by them;

**“time policy”** means a marine policy under which the subject-matter is insured for a definite period of time;

**“total loss”** means a total loss within the meaning of Division V.1;

**“unvalued policy”** has the meaning given to it by Section 30;

**“valued policy”** has the meaning given to it by Section 29(1);

**“voyage policy”** means a marine policy under which the subject-matter is insured—

- (a) “at and from”; or
- (b) from one place to another place or other places.

(2) Where in this Act a reference is made to reasonable time, reasonable premiums or reasonable diligence, the question, what is reasonable, is a question of fact.

## **2. APPLICATION.**

This Act does not apply to contracts of marine insurance made before Independence Day.

## **3. SAVING OF COMMON LAW RULES.**

Except so far as they are inconsistent with the express provisions of this Act, the rules of the common law of England (including the law merchant) apply to contracts of marine insurance.

**PART II. – MARINE INSURANCE.**

***Division 1.***

***Limits of Marine Insurance.***

**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 that may be incidental to any sea voyage.

(2) Where—

- (a) a ship in course of building; or
- (b) the launching of a ship; or
- (c) any adventure analogous to a marine adventure,

is covered by a policy in the form of a marine policy, this Act, so far as it is applicable, applies to it.

(3) Subject to this section, this Act does not alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance.

**5. INSURANCE OF MARINE ADVENTURES.**

(1) Subject to this Act, any lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular, there is a marine adventure where—

- (a) any ship, goods or other movables are exposed to maritime perils; or
- (b) the earning or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advance, loan or disbursements, is endangered by the exposure of insurable property to maritime perils; or
- (c) any liability to a third party may be incurred by the owner of, or any other person interested in or responsible for, insurable property, by reason of maritime perils.

***Division 2.***

***Insurable Interests.***

**6. GAMING OR WAGERING CONTRACTS.**

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

(2) A contract of marine insurance shall be deemed to be a gaming or wagering contract—

- (a) where—

- (i) the assured has no insurable interest; and
  - (ii) the contract is entered into with no expectation of acquiring such an interest; or
- (b) subject to Subsection (3), where the policy is made—
- (i) “interest or no interest”; or
  - (ii) “without further proof of interest than the policy itself”; or
  - (iii) “without benefit of salvage to the insurer”,
- or subject to any other like term.

(3) Where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

## **7. INSURABLE INTERESTS.**

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

(2) In particular, a person is interested in a marine adventure if he stands in a legal or equitable relation to—

- (a) the adventure; or
- (b) any insurable property at risk in it,

in consequence of which he may—

- (c) benefit by the safety or due arrival of insurable property; or
- (d) be prejudiced by—
  - (i) its loss; or
  - (ii) damage to it; or
  - (iii) the detention of it; or
- (e) incur liability in respect of it.

## **8. TIME OF ATTACHMENT OF INTEREST.**

(1) Subject to Subsection (2), 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.

(2) Where the subject-matter insured is insured “lost or not lost”, the assured may recover even if he has not 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.

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

**9. DEFEASIBLE OR CONTINGENT INTERESTS.**

(1) A defeasible interest or a contingent interest is insurable.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election—

(a) have rejected the goods; or

(b) have treated them as at the seller's risk,

by reason of the latter's delay in making delivery or otherwise.

**10. PARTIAL INTERESTS.**

A partial interest of any nature is insurable.

**11. RE-INSURANCE.**

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

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

**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 a 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, so far as the freight is not repayable in case of loss.

**15. CHARGES OF INSURANCE.**

The assured has an insurable interest in the charges of any insurance that he effects.

**16. QUANTUM OF INTEREST.**

(1) Where the subject-matter insured is mortgaged—

(a) the mortgagor has an insurable interest in its full value; and

(b) 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 of, 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 its full value, notwithstanding that a third person has agreed, or is liable, to indemnify him in case of loss.

## **17. ASSIGNMENT OF INTERESTS.**

(1) Subject to Subsection (2), where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not by doing so transfer to the assignee his rights under the contract of insurance, unless there is an express or implied agreement with the assignee to that effect.

(2) Subsection (1) does not affect a transmission of an interest by operation of law.

### ***Division 3.***

#### ***Disclosure and Representations.***

## **18. REQUIREMENT OF GOOD FAITH.**

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

## **19. DISCLOSURE BY ASSURED.**

(1) In this section, “**circumstance**” includes a communication made to, or information received by, the assured.

(2) Subject to this section—

(a) the assured shall disclose to the insurer, before the contract is concluded, every material circumstance that is known to the assured; and

(b) the assured shall be deemed to know every circumstance that, in the ordinary course of business, ought to be known to him.

(3) If the assured fails to make disclosure as required by Subsection (2) the insurer may avoid the contract.

(4) A circumstance is material if it would influence the judgement of a prudent insurer—

(a) in fixing the premium; or

(b) in determining whether he will take the risk.

(5) In the absence of inquiry, the following circumstances need not be disclosed:—

- (a) any circumstance that diminishes the risk;
- (b) any circumstance that is known or presumed to be known to the insurer;
- (c) any circumstance as to which information is waived by the insurer;
- (d) any circumstance that it is superfluous to disclose by reason of any express or implied warranty.

(6) For the purposes of Subsection (5)(b), the insurer shall be presumed to know—

- (a) matters of common notoriety or knowledge; and
- (b) matters that an insurer, in the ordinary course of his business as such, ought to know.

(7) Whether or not any circumstance that is not disclosed is material is a question of fact.

## **20. DISCLOSURE BY AGENT EFFECTING INSURANCE.**

(1) Subject to the provisions of Section 19 as to circumstances that need not be disclosed, where an insurance is effected for the assured by an agent the agent shall disclose to the insurer every material circumstance—

- (a) that is known to him; and
- (b) that the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent.

(2) For the purposes of Subsection (1)(a), an agent to insure shall be deemed to know every circumstance that in the ordinary course of business ought to be known by, or to have been communicated to, him.

## **21. 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, shall be true, and if any such representation is untrue the insurer may avoid the contract.

(2) A representation is material if it would influence the judgement of a prudent insurer—

- (a) in fixing the premium; or
- (b) in determining whether or not he will take the risk.

(3) A representation may be 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 is substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be thought material by a prudent insurer.

(5) A representation as to a matter of expectation or belief is true if it is made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether or not a particular representation is material is a question of fact.

## **22. CONCLUSION OF CONTRACT.**

(1) A contract of marine insurance shall be deemed to be concluded when the proposal of the assured is accepted by the insurer, whether or not the policy is then issued.

(2) For the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract.

### ***Division 4.***

#### ***The Policy.***

## **23. EMBODIMENT OF CONTRACT IN POLICY.**

(1) Subject to any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Act.

(2) The policy may be executed and issued either at the time when the contract is concluded or afterwards.

## **24. CONTENTS OF POLICY.**

A marine policy shall specify—

- (a) the name of the assured, or of a person who effects the insurance on his behalf; and
- (b) the subject-matter insured and the risk insured against; and
- (c) the voyage or period of time (or both), as the case may be, covered by the insurance; and
- (d) the sum or sums insured; and
- (e) the name or names of the insurers.

## **25. SIGNATURE OF INSURER.**

(1) Subject to Subsection (2), a marine policy shall be signed by or on behalf of the insurer.

(2) In the case of a corporation the corporate seal may be sufficient, but this section does not require the subscription of a corporation to be under seal.



(3) Where a policy is subscribed by or on behalf of two or more insurers, unless the contrary is expressed each subscription constitutes a distinct contract with the assured.

**26. VOYAGE AND TIME POLICIES.**

(1) A marine policy may be both a voyage policy and a time policy.

(2) Subject to Subsection (3), a time policy that is made for any time exceeding 12 months is invalid.

(3) A time policy may contain an agreement to the effect that, in the event of—

(a) the ship being at sea; or

(b) the voyage being otherwise not completed,

on the expiration of the policy, the subject-matter of the insurance shall be held covered—

(c) until the arrival of the ship at her destination; or

(d) for a reasonable time afterwards, not exceeding 30 days,

and the policy is not invalid on the ground only that by reason of the agreement it may become available for a period exceeding 12 months.

**27. DESIGNATION OF SUBJECT-MATTER.**

(1) The subject-matter insured shall 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.

**28. VALUED AND UNVALUED POLICIES.**

A marine policy may be either a valued policy or an unvalued policy.

**29. VALUED POLICIES.**

(1) A valued policy is a marine policy that specifies the agreed value of the subject-matter insured.

(2) Subject to 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-matter intended to be insured, whether the loss be total or partial.

(3) 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 POLICIES.**

An unvalued policy is a policy that 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.

### **31. FLOATING POLICIES.**

(1) A floating policy is a marine policy that—

(a) describes the insurance in general terms; and

(b) leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration may be made by endorsement on the policy, or in any other customary manner.

(3) Unless the policy otherwise provides, the declaration shall be made in the order of despatch or shipment.

(4) A declaration relating to goods shall comprise all consignments within the terms of the policy, and the value of the goods or other property shall be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, if the omission or declaration was made in good faith.

(5) Unless the policy provides otherwise, where a declaration of value is not made until after notice of loss or arrival the policy shall be treated as an unvalued policy as regards the subject-matter of the declaration.

### **32. FORM OF MARINE POLICIES.**

(1) A marine policy may be in the form in Schedule 1.

(2) Subject to this Act, and unless the context of the policy requires otherwise, the rules set out in Schedule 2 apply in the construction of a marine policy in the form in Schedule 1 or in any like form.

### **33. PREMIUMS LEFT TO BE ARRANGED.**

(1) Where—

(a) an insurance is effected at a premium to be arranged; and

(b) no such arrangement is made,

a reasonable premium is payable.

(2) Where—

- (a) an insurance is effected on the terms that an additional premium is to be arranged in a given event; and
  - (b) the event happens but no arrangement is made,
- a reasonable additionable premium is payable.

***Division 5.***

***Double Insurance.***

**34. DOUBLE INSURANCE.**

- (1) Where—
  - (a) two or more policies are effected by or on behalf of the assured on the same adventure and interest, or any part of it; and
  - (b) 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) unless the policy provides otherwise, the assured may claim payment from the insurers in such order as he thinks proper, but is not entitled to receive any sum in excess of the indemnity allowed by this Act; and
  - (b) where the policy under which the assured claims is a valid policy, he shall 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; and
  - (c) where the policy under which the assured claims is an unvalued policy, he shall give credit, as against the full insurable value, for any sum received by him under any other policy; and
  - (d) where the assured receives any sum in excess of the indemnity allowed by this Act, he shall be deemed to hold the sum in trust for the insurers, according to their rights of contribution among themselves.

***Division 6.***

***Warranties.***

**35. INTERPRETATION OF DIVISION 6.**

In this Division, “warranty” means a promissory warranty.

**36. NATURE OF WARRANTY.**

- (1) A warranty may be express or implied.
- (2) A warranty is a condition that shall be exactly complied with, whether it be material to the risk or not.

**37. EFFECT OF NON-COMPLIANCE.**

If a warranty is not complied with as provided for by Section 36(2), 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.

**38. EXCUSE FOR BREACH OF WARRANTY.**

(1) Non-compliance with a warranty is excused when—

- (a) by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract; or
- (b) compliance with the warranty is made unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach was remedied, and the warranty complied with, before loss.

(3) A breach of warranty may be waived by the insurer.

**39. 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 shall—

- (a) be included in, or written on, the policy; or
- (b) be contained in a document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it is inconsistent with such a warranty.

**40. WARRANTY OF NEUTRALITY.**

(1) Where insurable property, whether a ship or goods, is expressly warranted “neutral”, there is an implied condition that—

- (a) the property will have a neutral character at the commencement of the risk; and
- (b) so far as the assured can control the matter, its neutral character will 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 will be properly documented, that is to say that—

- (a) she will carry the necessary papers to establish her neutrality; and
- (b) she will not falsify or suppress her papers, or use simulated papers.

(3) If any loss occurs through breach of the condition referred to in Subsection (2), the insurer may avoid the contract.

**41. IMPLIED WARRANTY OF NATIONALITY.**

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

**42. 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 is safe at any time during that day.

**43. WARRANTY OF SEAWORTHINESS OF SHIP.**

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

(2) Where the policy attaches while the ship is in port, there is an implied warranty that she will, 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 that 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 will be seaworthy in respect of the preparation or equipment for the purposes of that stage.

(4) In a time policy there is no implied warranty that the ship will 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.

(5) A ship shall be deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

**44. IMPLIED WARRANTIES IN POLICIES ON MOVABLES.**

(1) In a marine policy on goods or other movables, 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 not only is seaworthy as a ship, but also is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

**45. 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 will be carried out in a lawful manner.

**Division 7.**  
**The Voyage.**

**46. 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—

- (a) it is not necessary that the ship should be at that place when the contract is concluded; and
- (b) there is an implied condition that—
  - (i) the adventure will be commenced within a reasonable time; and
  - (ii) if the adventure is not so commenced the insurer may avoid the contract.

(2) The condition implied by Subsection (1)(b) may be negated by showing that—

- (a) the delay was caused by circumstances known to the insurer before the contract was concluded; or
- (b) the insurer waived the condition.

**47. ALTERATION OF PORT OF DEPARTURE.**

Where—

- (a) the place of departure is specified by the policy; and
- (b) instead of sailing from that place the ship sails from any other place,

the risk does not attach.

**48. ALTERATION OF DESTINATION.**

Where—

- (a) the destination is specified by the policy; and
- (b) instead of sailing for that destination the ship sails for any other destination,

the risk does not attach.

**49. CHANGE OF VOYAGE.**

(1) There is a change of voyage where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy.

(2) Unless the policy otherwise provides, where there is a change of voyage the insurer is discharged from liability as from the time when the determination to change it is manifested.

(3) For the purposes of Subsection (2), it is immaterial that the ship had not in fact left the course of voyage contemplated by the policy when the loss occurred.

**50. DEVIATION.**

(1) There is a deviation from the voyage contemplated by the policy—

- (a) where the course of the voyage is specifically designated by the policy— that course is departed from; or
- (b) where the course of the voyage is not specifically designated by the policy—the usual and customary course is departed from; or
- (c) as provided for by Section 51(3).

(2) Where a ship deviates without lawful excuse from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship regained her route before any loss occurred.

(3) The intention to deviate is immaterial, and only a deviation in fact discharges the insurer from his liability under the contract.

**51. 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 shall proceed to them, or to such of them as she goes to, in the order designated by the policy.

(2) Where the policy is to “ports of discharge”, within a given area, that are not named, the ship shall, in the absence of any usage or sufficient cause to the contrary, proceed to them, or to such of them as she goes to, in their geographical order.

(3) If in a case to which Subsection (1) or (2) applies the ship does not comply with that subsection, there is a deviation for the purposes of Section 50.

**52. DELAY IN VOYAGE.**

In the case of a voyage policy—

- (a) the adventure insured shall be prosecuted throughout its course with reasonable despatch; and
- (b) if, without lawful excuse, the adventure is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable.

**53. EXCUSES FOR DEVIATION OR DELAY.**

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

- (a) where it is authorized by a special term in the policy; or

- (b) where it is caused by circumstances beyond the control of the master and his employer; or
- (c) where it is reasonably necessary in order to comply with an express or implied warranty; or
- (d) where it is reasonably necessary for the safety of the ship or subject-matter insured; or
- (e) where it is for the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or
- (f) where it is reasonably necessary for the purpose of obtaining medical or surgical aid for a person on board the ship; or
- (g) where it is caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship shall resume her course, and prosecute her voyage, with reasonable despatch.



**PART III. – ASSIGNMENT OF POLICIES.**

**54. ASSIGNMENT OF POLICY.**

(1) Subject to Section 55, a marine policy is assignable unless it contains terms expressly prohibiting assignment, and may be assigned before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in the policy–

- (a) the assignee of the policy is entitled to sue on it in his own name; and
- (b) the defendant is entitled to make any defence arising out of the contract that he would have been entitled to make if the action had been brought in the name of the person by whom or on whose behalf the policy was effected.

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

**55. ASSIGNMENT BY ASSURED WHO HAS NO INTEREST.**

(1) Subject to Subsection (2), where the insured–

- (a) has parted with or lost his interest in the subject-matter insured; and
- (b) has not, before or at the time of doing so, expressly or impliedly agreed to assign the policy,

a subsequent assignment of the policy is inoperative.

(2) Subsection (1) does not affect the assignment of a policy after loss.

**PART IV. – PREMIUMS.****56. WHEN PREMIUM PAYABLE.**

Unless otherwise agreed–

- (a) the duty of the assured or his agent to pay the premium; and
- (b) 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 a marine policy until payment or tender of the premium.

**57. POLICY EFFECTED THROUGH BROKER.**

(1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker–

- (a) the broker is directly responsible to the insurer for the premium; and
- (b) the insurer is directly responsible to the assured for the amount that is payable in respect of–
  - (i) losses; or
  - (ii) returnable premium.

(2) Unless otherwise agreed, the broker has–

- (a) as against the assured–a lien on the policy for the amount of the premium and his charges in respect of effecting the policy; and
- (b) where he dealt with the person who employs him as a principal–a lien on the policy in respect of any balance on any insurance account that is due to him from that person, unless when the debt was incurred he had reason to believe that the person was only an agent.

**58. EFFECT OF RECEIPT ON POLICY.**

Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, the acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and the broker.

**PART V. – LOSS AND ABANDONMENT.**

***Division 1.***

***General.***

**59. INCLUDED AND EXCLUDED LOSSES.**

(1) Subject to this Act, and unless the marine policy provides otherwise, the insurer—

- (a) is liable for any loss proximately caused by a peril insured against; and
- (b) is not liable for any loss that is not proximately caused by a peril insured against.

(2) In particular—

- (a) the insurer—
  - (i) is not liable for any loss attributable to the wilful misconduct of the assured; and
  - (ii) unless the policy provides otherwise, 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; and
- (b) unless the policy provides otherwise, the insurer on a ship or goods is not liable for any loss proximately caused by delay, even though the delay is caused by a peril insured against; and
- (c) unless the policy provides otherwise, the insurer is not liable for—
  - (i) ordinary wear and tear, ordinary leakage and breakage, inherent vice or the nature of the subject-matter insured; or
  - (ii) any loss proximately caused by rats or vermin; or
  - (iii) any injury to machinery not proximately caused by maritime perils.

**60. EFFECT OF TRANSHIPMENT, ETC.**

Where, because of a peril insured against, the voyage is interrupted at an intermediate port or place under circumstances that, apart from any special stipulation in the contract of affreightment, would justify the master in landing and re-shipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues notwithstanding the landing or transshipment.

**61. PARTIAL AND TOTAL LOSS.**

- (1) A loss may be total or partial.
- (2) Any loss other than a total loss is a partial loss.

(3) A total loss may be an actual total loss, or a constructive total loss.

(4) 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.

(5) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy provides otherwise, recover for a partial loss.

(6) Where goods—

(a) reach their destination in specie; and

(b) by reason of obliteration of marks, or otherwise, are incapable of identification,

the loss (if any) is partial and not total.

## **62. ACTUAL TOTAL LOSS.**

(1) Where the subject-matter insured—

(a) is destroyed; or

(b) is so damaged as to cease to be a thing of the kind insured,

or where the assured is irretrievably deprived of it, there is an actual total loss.

(2) In case of an actual total loss, no notice of abandonment need be given.

## **63. MISSING SHIPS.**

Where—

(a) the ship concerned in the adventure is missing; and

(b) after the lapse of a reasonable time no news of her has been received,

an actual total loss may be presumed.

## **64. CONSTRUCTIVE TOTAL LOSS.**

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned—

(a) because its actual total loss appears to be unavoidable; or

(b) because it could not be preserved from actual total loss without an expenditure that would exceed its value when the expenditure had been incurred.

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

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

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

- (ii) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or
  - (b) 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; or
  - (c) 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.
- (3) In estimating for the purposes of Subsection (2)(b) the cost of repairs—
- (a) no deduction shall be made in respect of general average contributions to the repairs payable by other interests; and
  - (b) account shall be taken of—
    - (i) the expense of future salvage operations; and
    - (ii) any future general average contribution to which the ship would be liable if repaired.

**65. EFFECT OF CONSTRUCTIVE TOTAL LOSS.**

Where there is a constructive total loss, the assured may—

- (a) treat the loss as a partial loss; or
- (b) abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

**66. NOTICE OF ABANDONMENT.**

(1) Subject to this section, where the assured elects to abandon the subject-matter insured to the insurer, he shall give notice of abandonment.

(2) If the assured fails to give notice under Subsection (1), the loss can only be treated as a partial loss.

(3) Notice of abandonment—

- (a) may be given—
  - (i) in writing; or
  - (ii) by word of mouth; or
  - (iii) partly in writing and partly by word of mouth; and
- (b) may be given in any terms that indicate the intention of the assured to abandon his insured interest in the subject-matter insured to the insurer unconditionally.

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

(5) 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.

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

(7) Where notice of abandonment is accepted the abandonment is irrevocable.

(8) The acceptance of a notice of abandonment conclusively admits—

- (a) liability for the loss; and
- (b) the sufficiency of the notice.

(9) 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.

(10) Notice of abandonment may be waived by the insurer.

(11) Where an insurer has re-insured his risk, no notice of abandonment need be given by him.

## **67. EFFECT OF ABANDONMENT.**

(1) Where there is a valid abandonment, the insurer is entitled to take over—

- (a) the interest of the assured in whatever remains of the subject-matter insured; and
- (b) all proprietary rights incidental to it.

(2) On the abandonment of a ship, the insurer is entitled—

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

### ***Division 2.***

#### ***Partial Losses.***

## **68. PARTICULAR AVERAGE LOSS.**

(1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, that 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.

(3) Particular charges are not included in particular average.

**69. SALVAGE CHARGES, ETC.**

(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) Where expenses excepted from the definition “salvage charges” in Section 1 are properly incurred they may be recovered as particular charges or as a general average loss, according to the circumstances in which they were incurred.

**70. GENERAL AVERAGE LOSS.**

(1) A general average loss is a loss caused by or directly consequential on a general average act, and 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.

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure he may recover from the insurer in respect of the proportion of the last that falls on him.

(5) Subject to any express provision in the policy, in the case of a general average sacrifice the assured 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.

(6) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover the amount of it from the insurer.

(7) 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.

(8) Where the ship, freight and cargo, or any two of them, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions shall be determined as if they were owned by different persons.

**PART VI. – MEASURE OF INDEMNITY.*****Division 1.******Liability of insurer for Loss.*****71. EXTENT OF LIABILITY.**

Where there is a loss recoverable under a marine policy, the insurer, or each insurer if there is more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to—

- (a) in the case of a valued policy, the value fixed by the policy; or
- (b) in the case of an unvalued policy, the insurable value.

**72. TOTAL LOSS.**

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

- (a) in the case of a valued policy—the measure of indemnity is the sum fixed by the policy; and
- (b) in the case of an unvalued policy—the measure of indemnity is the insurable value of the subject-matter insured.

**73. PARTIAL LOSS OF SHIP.**

(1) Subject to any express provision in the policy, where a ship is damaged but is not totally lost the measure of indemnity is as follows:—

- (a) if 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;
- (b) subject to Subsection (2), if the ship has been only partially repaired, the assured is entitled—
  - (i) to the reasonable cost of the repairs, calculated in accordance with Paragraph (a); and
  - (ii) to be indemnified for the reasonable depreciation (if any) arising from the unrepaired damage;
- (c) if 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 the damage, calculated in accordance with Paragraph (a).

(2) The aggregate amount to which the insured is entitled under Subsection (1)(b) shall not exceed the cost of repairing the whole damage, calculated in accordance with Subsection (1)(a).



**74. 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—

- (a) in the case of a valued policy—the sum fixed by the policy; or
- (b) in the case of an unvalued policy—the insurable value,

as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

**75. PARTIAL LOSS OF GOODS, MERCHANDISE, ETC.**

(1) In this section—

“**gross proceeds**” means the actual price obtained at a sale where all charges on sale are met by the seller;

“**gross value**” means—

- (a) in the case of goods or merchandise customarily sold in bond—the bonded price; and
- (b) in any other case—
  - (i) the wholesale price; or
  - (ii) if there is no wholesale price—the estimated value,
 plus freight, landing charges and duty paid beforehand.

(2) Subject to any express provision in the policy, where there is a partial loss of goods, merchandise or other movables, the measure of indemnity is—

- (a) where part of the goods, merchandise or other movables insured by a valued policy is totally lost—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; and
- (b) where part of the goods, merchandise or other movables insured by an unvalued policy is totally lost—the insurable value of the part lost, ascertained as in the case of total loss; and
- (c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination—such proportion of—
  - (i) in the case of a valued policy—the sum fixed by the policy; or
  - (ii) in the case of an unvalued policy—the insurable value,
 as the difference between the gross sound value and the gross damaged value at the place of arrival bears to the gross sound value.

**76. APPORTIONMENT OF VALUATION.**

(1) Where different kinds of property are insured under a single valuation, the valuation shall be apportioned over the different kinds in proportion to their respective insurable values, as in the case of an unvalued policy.

(2) The insured value of any part of a kind of property referred to in Subsection (1) 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.

(3) Where—

(a) a valuation has to be apportioned; and

(b) particulars of the prime cost of each separate kind, 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 kinds, qualities or descriptions of goods.

**77. GENERAL AVERAGE CONTRIBUTION, ETC.**

(1) Subject to any express provision in the policy—

(a) if the subject-matter liable to contribution is insured for its full contributory value, and the assured has paid, or is liable for, any general average contribution—the measure of indemnity is the full amount of that contribution; and

(b) if the subject-matter is not insured for its full contributory value, or if only part of it is insured—the indemnity paid by the insurer shall be reduced in proportion to the under-insurance; and

(c) where there has been a particular average loss that constitutes a deduction from the contributory value, and for which the insurer is liable—the amount of the loss shall be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges, the extent of his liability shall be determined on the principles referred to in Subsection (1).

**78. LIABILITIES TO THIRD PARTIES.**

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

**79. MEASURE OF INDEMNITY.**

(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the preceding provisions of this Act, the measure of indemnity shall

be ascertained, as nearly as may be, in accordance with those provisions so far as they are applicable to the particular case.

- (2) The provisions of this Act relating to the measure of indemnity do not—
  - (a) affect the rules relating to double insurance; or
  - (b) prohibit the insurer—
    - (i) from disproving interest wholly or in part; or
    - (ii) 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.

#### **80. 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 is apportionable.

(2) If the contract is apportionable, the assured may recover for a total loss of any apportionable part.

(3) Where the subject-matter insured is warranted free from particular average, wholly or under a certain percentage, the insurer is liable—

- (a) for salvage charges; and
- (b) for particular charges and other expenses properly incurred, in accordance with the “suing and labouring” clause, in order to avert a loss insured against.

(4) Unless the policy provides otherwise, 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.

(5) For the purpose of ascertaining whether the specified percentage has been reached—

- (a) regard shall be had only to the actual loss suffered by the subject-matter insured; and
- (b) particular charges and the expenses of and incidental to ascertaining and proving the loss shall be excluded.

#### **81. SUCCESSIVE LOSSES.**

(1) Unless the policy provides otherwise, and subject to this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Subject to Subsection (3), where, under the same policy, a partial loss that has not been repaired or otherwise made good is followed by a total loss, the assured can recover only in respect of the total loss.

(3) This section does not affect the liability of the insurer under the “suing and labouring” clause.

## **82. SUING AND LABOURING CLAUSE.**

(1) Where the policy contains a “suing and labouring” clause—

- (a) the engagement entered into by the clause shall be deemed to be supplementary to the contract of insurance; and
- (b) the assured may recover from the insurer any expenses properly incurred under the clause, notwithstanding that—
  - (i) the insurer has paid for a total loss; or
  - (ii) the subject-matter has been warranted free from particular average, wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges within the meaning of 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 to take such measures as are reasonable for the purpose of averting or minimizing a loss.

### ***Division 2.***

#### ***Rights of Insurer on Payment of Loss.***

## **83. RIGHT OF SUBROGATION.**

(1) Where the insurer pays for a total loss of the whole, or, in the case of goods, of any apportionable part, of the subject-matter insured—

- (a) he is entitled to take over the interest of the assured in whatever remains of the subject-matter so paid for; and
- (b) he is 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 preceding provisions of this Act, where the insurer pays for a partial loss—

- (a) he acquires no title to the subject-matter insured, or such part of it as remains; and
- (b) he is 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, so far as the assured has been indemnified in accordance with this Act, by the payment for the loss.

**84. OVER-INSURANCE.**

(1) Where the assured is over-insured by double insurance within the meaning of Section 34(1), 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 an insurer pays more than his proportion of the loss, he is entitled—

- (a) to maintain an action for contribution against the other insurers; and
- (b) to the same remedies as a surety who has paid more than his proportion of the debt.

**85. 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 shall be deemed to be his own insurer in respect of the uninsured balance.

**PART VII. – RETURN OF PREMIUM.****86. ENFORCEMENT OF RETURN.**

Where the premium, or a proportionate part of it, is declared by this Act to be returnable—

- (a) it may, if already paid, be recovered by the assured from the insurer; and
- (b) it may, if unpaid, be retained by the assured or his agent.

**87. RETURN BY AGREEMENT.**

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

**88. RETURN FOR FAILURE OF CONSIDERATION.**

(1) Where—

- (a) the consideration for the payment of the premium totally fails; and
- (b) there has been no fraud or illegality on the part of the assured or his agent,

the premium is returnable to the assured.

(2) Where—

- (a) the consideration for the payment of the premium is apportionable; and
- (b) there is a total failure of any apportionable part of it,

a proportionate part of the premium is, if there has been no fraud or illegality on the part of the assured or his agent, 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, subject to Subsection (4), returnable, if there has been no fraud or illegality on the part of the assured; and
- (b) subject to Paragraph (c), where the subject-matter insured, or a part of it, has never been imperilled—the premium, or a portionate part of it, as the case may be, is returnable; and
- (c) 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 that time, the insurer knew of the safe arrival; and

- (d) where the assured has no insurable interest throughout the currency of the risk—the premium is returnable, except in the case of a policy effected by way of gaming or wagering; and
- (e) where the assured has a defeasible interest that is terminated during the currency of the risk—the premium is not returnable; and
- (f) where the assured has over-insured under an unvalued policy—a proportionate part of the premium is returnable; and
- (g) subject to the preceding provisions of this Act and to Subsection (5), where the assured has over-insured by double insurance—a proportionate part of the several premiums is returnable.

(4) If in a case to which Subsection (3)(a) applies the risk is not apportionable and has once attached, the premium is not returnable.

(5) If in a case to which Subsection (3)(g) applies—

(a) the policies are effected at different times and—

- (i) any earlier policy has at any time borne the entire risk; or
- (ii) a claim has been paid on the policy in respect of the full sum insured by it,

no premium is returnable in respect of the policy; or

(b) the double insurance is effected knowingly by the assured—no premium is returnable.

**PART VIII. – MUTUAL INSURANCE.**

**89. MUTUAL INSURANCE.**

(1) Where two or more persons mutually agree to insure each other against marine losses, there is said to be a mutual insurance.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as is agreed on, may be substituted for the premium.

(3) The provisions of this Act, so far as they are modified by the agreement of the parties, may in the case of mutual insurance be modified by–

- (a) the terms of the policies issued by the association; or
- (b) the rules and regulations of the association.

(4) Subject to the exceptions referred to in this section, this Act applies to a mutual insurance.



**PART IX. – MISCELLANEOUS.**

**90. RATIFICATION BY ASSURED.**

Where a contract of marine insurance is effected in good faith 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.

**91. VARIATION OF IMPLIED OBLIGATIONS.**

(1) Where any right, duty or liability would arise under a contract of marine insurance by implication of law, it may be negated or varied—

- (a) by express agreement; or
- (b) by usage, if the usage is such as to bind both parties to the contract.

(2) Subsection (1) extends to any right, duty or liability declared by this Act that may be lawfully modified by agreement.

**92. REFERENCE TO SLIP OR COVER NOTE.**

Where a policy has been issued in accordance with this Act, this Act does not prevent reference being made in legal proceedings to the slip or cover note or other customary memorandum of a contract of marine insurance.

**SCHEDULE 1 – FORM OF MARINE POLICY.**

Sec. 32(1).

## LLOYD'S S.G. POLICY.

BE IT KNOWN THAT . . . as well in . . . own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause . . . and them, and every of them, to be insured lost or not lost, at and from . . . Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the . . . whereof is master under God, for this present voyage, . . . or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and 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 ordinance, 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 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 concerns 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 contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the masters 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 the 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 it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal

Exchange, or elsewhere in London. And so we, the assurers, are contented, 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 unto 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 London.

*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 centum, and all other goods also the ship and freight, are warranted free from average, under three per centum unless general, or the ship be stranded.

**SCHEDULE 2 – RULES FOR CONSTRUCTION OF MARINE POLICIES.**

Sec. 32(2).

**Sch. 2.1. “Lost or 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 that time, the assured was aware of the loss, and the insurer was not.

**Sch. 2.2. “From”.**

Where the subject-matter is insured “from” a particular place, the risk does not attach until the ship starts on the voyage insured.

**Sch. 2.3. “At and from”.**

(1) 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.

(2) If the ship 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.

(3) 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, and if she is not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(4) 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, but if there is in readiness cargo that belongs to the shipowner, or that some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive the cargo.

**Sch. 2.4. “From the loading thereof”.**

Where goods or other movables are insured “from the loading thereof”, the risk does not attach until the goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.

**Sch. 2.5. “Safely landed”.**

Where the risk on goods or other movables continues until they are “safely landed”, they shall 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.

**Sch. 2.6.Touch and stay.**

In the absence of any further licence or usage, the liberty to touch and stay “at any port or place whatsoever” does not authorize the ship to depart from the course of her voyage from the port of departure to the port of destination.

**Sch. 2.7.“Perils of the seas”.**

The term “**perils of the seas**” refers only to fortuitous accidents or casualties of the seas, and does not include the ordinary action of the winds and waves.

**Sch. 2.8.“Pirates”.**

The term “**pirates**” includes passengers who mutiny and rioters who attack the ship from the shore.

**Sch. 2.9.“Thieves”.**

The term “**thieves**” does not cover clandestine theft or a theft committed by any one of the ship’s company, whether crew or passenger.

**Sch. 2.10.Restrictment 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.

**Sch. 2.11.“Barratry”.**

The term “**barratry**” includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

**Sch. 2.12.“All other perils”.**

The term “**all other perils**” includes only perils similar in kind to the perils specifically mentioned in the policy.

**Sch. 2.13.“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”.

**Sch. 2.14.Stranding.**

Where the ship has stranded, the insurer is liable for the excepted losses even though the loss is not attributable to the stranding, if when the stranding takes place the risk has attached and, in the case of a policy on goods, the damaged goods are on board.

**Sch. 2.15. “Ship”.**

The term “**ship**” includes the hull, materials and outfit, stores and provisions for the officers and crew, and in the case of vessels engaged in a special trade the ordinary fittings requisite for the trade, and also, in the case of a steam-ship, the machinery, boilers, and coals and engine stores, if owned by the assured.

**Sch. 2.16. “Freight”.**

The term “**freight**” includes the profit derivable by a shipowner 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.

**Sch. 2.17. “Goods”.**

(1) The term “**goods**” means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

(2) In the absence of any usage to the contrary, deck cargo and living animals shall be insured specifically, and not under the general denomination of goods.

Office of Legislative Counsel, PNG