

1. BASIC CONCEPTS & FUNDAMENTALS:

The origin of marine insurance – 4th century BC.

“Bottomry Bond”: An advance of money on a **Ship**, which is repayable with **interest (premium)** if the ship reaches the destination safely and if lost, the advance is extinguished.

”Respondia Bonds”: Similar advance granted on the security of **Cargo**.

International Contract of Sale (INCOTERMS) : For Cargo Insurance

| Sale Contract | Who pays for Freight | Who buy insurances | Seller’s Risk (For Insurance) | Buyer’s Risk |
|---------------------------------|----------------------|--------------------|--|--|
| FOB (Free On Board) | Buyer | Buyer | From his premises to the Ship’s Rail at the port of shipment | From the ship’s rail till he receives the goods. |
| FAS (Free Alongside Ship) | Buyer | Buyer | From his premises to the quay (dock) alongside the ship at the port of shipment | From the quay (dock) alongside the ship till he receives the goods. |
| C & F (Cost & Freight) or CFR | Seller | Buyer | From his premises till they are loaded on overseas vessel, at the port of shipment | From the time the cargo is placed on board of the vessel till he receives the goods. |
| CIF (Cost, Insurance & Freight) | Seller | Seller | From warehouse to warehouse | After he receives goods from warehouse of the destination. |

Insurable Interest: **Defined in Marine Insurance Act, 1963.** An assured is not required to have an insurable interest when the insurance is effected but he must have

- a) A reasonable expectation of acquiring such interest, and
- b) An interest **at the time of loss**.

2. CARGO UNDERWRITING

Broadly four principal factors are involved in the consideration of a cargo risk:

- (I) **THE VESSEL:** Various factors like Age, Size, Fitness & Seaworthiness and competence of Master and Crew, Whether Chartered or not, Whether Classified by Indian Register of Shipping or Lloyd’s Shipping Index, Whether **Liners** (Loads at an advertised berth and runs to an advertised schedule) or **Tramp** (Carries mostly bulk cargo and seasonal in nature, Liner is a better risk than Tramp), Whether approved by GIC.
- (II) **THE VOYAGE OR TRANSIT:** Each transshipment involved, will mean additional handling, storage and there will be greater exposure to loss or damage. A good underwriter must be well informed of current world events like hostilities between countries, political tensions, civil wars and also he should be well versed with geography and have a keen interest in world affairs, both political and economic.
- (III) **NATURE OF CARGO AND ITS PACKING:** loss, damage or expense caused by inherent vice is not covered. All policy also exclude ordinary or inevitable losses such as ordinary leakage, ordinary breakage, Ordinary loss in weight or volume or ordinary wear and tear of the subject matter insured. In cargo insurance, the susceptibility of goods to damage by various causes is a vital consideration.

PACKING: The purpose of packing goods for transit is to ensure as far as possible that goods reach destination in the same perfect condition in which they were when they left the shippers premises. The packing requirements of particular types of goods depends upon the **strength of**

packing material, weight of the packing unit, handling mobility of the packaging unit, inherent qualities of the commodities or product packed and hazards involved in a transit.

Some Identifiable Hazards involved in transit are

Internal movement during lifting and lowering of packages,
Dropping during manual handling,
Pushing, dragging and lifting by improperly used handling aids and equipment,
Compression pressure due to high stacks,
Rolling, pitching, surging, swaying and Yaw motions on sea;
Pressures, jolts, impacts and vibrations during Rail and Road transit;
Rain water and Sea water entry;
Condensation, temperature changes and variation in humidity
Theft and pilferage.

Various types of packing are: Corrugated fiber board boxes/cartons, Wooden boxes/cases, Bags, Polythene lined jute bags, Bales, Pallets, Lift van and container transport.

(IV) **CONDITIONS AND TERMS OF INSURANCES:** Rating should take in to consideration each material of the risk involved. To keep regular client wise statistics and fixing the Sum insured for specific voyages/transit. **Consideration of Moral hazard and Physical hazard** is also important for finalization of terms and conditions of insurance.

3. CARGO INSURANCE

CARGO DECLARATION FORM: There is No standard proposal form in marine cargo insurance except in case of **SD P, Annual Policy, Duty and IV Insurance Policy**. The risk is assessed on the basis of information given on the declaration form which is to be completed and signed by the proposer and which contains Name & address, Bankers (if any), description of goods & packing, **value {normally CIF + 10%, which is intended to include the general overheads and perhaps a margin of profit}, Duty increased value indicated separately**}, vessel details, voyage/ transit with transshipments if any, B/L,RR, LR or Air Consignment No, types of insurance required, Claims payable at and signature with date.

MARINE COVERNOTE: This is a temporary document evidencing that the insurance has been granted pending the issue of policy due to want of details. Although the contract starts from the time of issuance of cover note, the same cannot be used as a legally valid document in a lawsuit. But in practice no reputed insurers repudiate cover note issued by them. Cover notes are not stamped and temporary in nature having a validity period **not exceeding 30 days**. The covernote contains two special conditions: - a) The insured is required to submit full details of shipment immediately, b) In the event of loss prior to declaration/shipment the valuation shall be cost plus actual charges incurred.

MARINE INSURANCE POLICY: A Marine Cargo/Hull policy is a **Valued policy** (**Value agreed in case of total loss and percentage depreciation in case of partial loss**), but the **Duty and Increased value insurances** are **not valued policy**. Hence marine policy provides a **commercial or modified form** of indemnity. A contract of marine insurance shall not be admitted as evidence unless it is embodied in a **marine policy** in accordance with the Marine Insurance Act 1963(Sec 24).

Stamp Duty: The policy should be stamped as required by the Indian Stamp Act.1899 and the **stamp duty is recoverable** from the assured.

Rate: **By Sea** – 10 paise for every Rs. 1500/- or part, but when premium rate is 0.125% or less then only 10 paise regardless the sum insured. **By other than sea:** 50 paise for SI Rs.5000/- or less and for rest Re 1/- **By Postal:** If by sea then sea rate or the other rate. By Multimodal: The sea rate.

Contents of Schedule of Policy: The policy should contain all the details as mentioned in the declaration form. **War & SRCC premium is shown separately from Marine premium**. In addition the name and address of the **surveyor/claim settling agent to be approached in case of claim should be mentioned** in the policy. **Marine Cargo policies are freely assignable;** hence policy may be assigned by a blank

endorsement. The current policy form contains no insuring conditions. The terms and conditions are set out in the appropriate Institute Cargo Clauses and other Clauses. Starting point consignment and final destination point should be mentioned.

TYPES OF CARGO POLICY:

1. Specific Policy:

- Isolated shipments are covered by issue of individual policies for a specific voyage/transit

2. Open Cover:

- To provide **continuous, automatic and guaranteed coverage** to a **regular importer or exporter** issued for a period of 12 months **without specifying the sum insured** – only limit **per bottom** and limit **per location** are specified
- **Unstamped document** – only an agreement in writing
- Individual **stamped certificate/policy is issued on receipt** of shipment details and premium
- Rate of **premium, terms and conditions are set out in the open cover** and remain unchanged throughout the period
- Limit **per bottom (Refers to sea voyage)** and limit **per location** clearly specified
- Unintentional **genuine omissions is held covered**, but if willfully, subsequent shipment will be null and void.
- Subject matter is broadly defined
- Basis of valuation is specified {Mostly CIF+10% (Max. 15%), but Value prior to shipment= cost+Actual Exp.}
- Provide for inspection of insured's records
- Cancellation – **30 days for marine & 7/2 days for War & SRCC**

3. Open Policy:

- A type of **floating policy** and it is a stamped documents
- To take care of frequent transit with considerable turnover
- Usually issued for covering **transit within Country** by Rail/Road/Air freight/Regd. Post Parcels
- Sum insured normally representing annual turnover – can be enhanced from time to time to suit the requirement
- Unstamped certificate can be issued for each dispatch/declaration – Sec 31 of the Act 1963– declaration should be in the order of dispatch
- Sum insured stands reduced gradually to the extent of dispatches declared
- Policy ceases on expiry date or on exhaustion of the total sum insured whichever shall first occur
- Limit **per Sending (Refers to inland dispatches)** and limit **per location** clearly specified
- Basis of valuation specified {Mostly CIF+10% (Max. 15%)}
- Rate of premium and terms of cover agreed in advance and remained unchanged throughout the policy period
- Provide for inspection of insured's records
- Subject to cancellation with 30 days notice

4. Special Declaration Policy:

- SDP is form of floating policy to clients having large turnover and **frequent inland dispatches** – minimum turnover stipulated is **Rs. 2 crores** – accepted on the basis of **completed proposal** and issued for a **period of 12 months** (Policy also expires on expiry of SI). Convenient declaration facility, say, every 3 months in the form of a certified statement. Final adjustment (Downward only) done on receipt of final declaration, which must be submitted within 60 days of the expiry of the policy.
- **Cannot be assignable or transferable** but claim **can be settled in favour of consignee** with consent of the insured

- Sum insured shall be on the basis of **previous year's turnover** or **estimated annual turnover**. **Midterm increase in SI allowed only once.**
- Entire premium charged on the total turnover/sum insured is collected in advance – discount in premium up to a maximum of 50% is allowed on slab system based **on turnover and loss ratio**. If actual annual turnover is **less than 2 crores no discount** shall be allowed. Policy can be cancelled by either party by 30 days notice.
- Policy can be taken by individual company/firm. Cannot be issued in joint names even if under the same management. Also cannot be issued to transport Operators/Contractors, clearing forwarding and commission Agents or freight forwarders either in their own name or jointly with the owner; except on goods owned by them.

5. Annual Policy:

- Issued **for 12 months** period
- Only to cover transport of goods **belonging to or held in trust (Not under contract of sale or purchase)** by the insured **amongst depots owned or hired** by the insured **within the country by Inland transit.**
- Policy can be taken by individual company/firm. Cannot be issued in joint names even if under the same management. Also cannot be issued to transport Operators/Contractors, clearing forwarding and commission Agents or freight forwarders either in their own name or jointly with the owner; except on goods owned by them.
- AP is not subject to any declaration; the SI represents maximum value of goods on risk at any one time during the policy period and remains constant in the event of no claim.
- The sum insured should represent estimated annual turnover – premium depends on distance specified in the transit and single carrying limit (SCL). Minimum limits of SI are. < 80 km twice SCL or 1% of T/o; > 8- km and < 500 km 4 times SCL – or 2% of T/o >500 km 6 times SCL or 3% of T/o, **whichever is more** – the rate of premium is charged on these limits only and not on the total turnover
- Policy is subject to **condition of average**
- Policy is **not assignable or transferable** – Policy can be cancelled by Insurer only by 30 days notice providing for refund of pro-rata premium.
- Accepted on the **basis of completed proposal**
- **Reinstatement of sum insured** upon payment of claim is permitted
- Basis of valuation should be **prime cost plus expenses incidental to transit & insurance charges**

6. Sellers' Contingency Policy:

- To cover physical loss or damage to consignment **sold on FOB and C&F contracts** in case the buyer repudiates the sale or fail to honour the shipping documents by reason of total loss of consignment during voyage or because of insolvency.
- Normally **combined with the seller's cargo insurance covering the goods from his warehouse until it is loaded onto the ship**. When it is done so, the cover attaches during transit from warehouse to ship and gets suspended after loading on to the ship. The cover **reattaches with retrospective effect** when the above contingencies takes place.
- **This policy is not assignable except to a banker operating in India.**
- Consequent expenses on **storage and transshipment are not covered.**
- Claim recoverable under ECGC of India is also not payable
- Existence of such policies should be made more secretive to avoid possible misuse in case of profitable collusion between the seller and buyer.
- The insured's **status and the moral hazard are the prime factors** for the acceptance of the proposal.

7. Duty and Increased Value Policy:

Cover may be granted in respect of goods imported in India

- Insurance is on increased value of the cargo by reason of payment of custom duty at destination.
- Insurance is on increased value by reason of market value of goods at destination on the date of landing

- **Not on agreed value policy and pays for only pure indemnity.** Actual loss or SI, whichever is less
- **Can be issued only when there is a basic CIF Insurance**
- Issued in favour of persons **holding import license** or any other persons in whose favour the import license is officially endorsed.
- In increased value insurance **75% of actual loss suffered** in the market is payable subject to **75% of the Sum insured** and the assured is required to bear **25% of the claim amount**.
- The **scope and duration are identical to the CIF Insurance**.
- In case of duty insurance a fraction of rate(75%) of premium of CIF insurance is charged and in case of increased value 100% rate of premium is charged.
- **Claim is admissible only when claims under CIF policies admitted.**
- No claim is payable under Duty policy if the consignment is affected prior to arrival of the vessel and before the customs clearance is made.
- The premium shall be paid in advance i.e before arrival of the vessel. Cannot be issued after arrival of the vessel at destination.

8. Special Storage Risk Insurance:

- To protect goods of the consignor during storage at destination Railway yard or Carrier premises **(storage in port trust premises not covered)**, pending clearance by consignee on termination of Open Policy or SDP . Policy **not be Assignable/Transferable**
- This cover may be granted to the consignor in conjunction with an open policy or SDP covering the **transit by Rail / Road**.
- Period of insurance is for **one year** corresponding to open policy or SDP. **Short term not allowed.**

ANALYSIS OF MARINE CARGO INSURANCE CLAUSES:

Marine policy form contains no insuring conditions. The terms and conditions are set out in the appropriate Institute Cargo Clauses & other Clauses and Warranties. The **Institute Clauses** are drafted by the technical and clauses Committee of **Institute of London Underwriters (ILU)**. On the other hand where pure inland transit is concerned i.e. transit within the country by rail/road, **Inland Transit Risk Clauses** are drafted by **TAC**. The prominent clauses are:

- Institute Cargo Clauses A, B & C
- Institute War Clauses (Cargo)
- Institute strikes Clause (Cargo)
- Institute Cargo Clause (AIR)
- Institute War Clauses (Air Cargo)
- Institute strikes Clause (Air Cargo)
- Institute Rail/Road Clause
- Strike Riots and Civil Commotions (SRCC) clause
- Institute Trade Clauses
- Incidental Clauses
- Other Miscellaneous Clauses and warranties

a) Institute Cargo Clauses A, B & C: Risks covered under different clauses are:

| Sl.no | I t e m s | ICC(C) | ICC(B) | ICC(A) |
|-------|--|---------|--------|--------|
| 1 | Fire or explosion | Yes | Yes | Yes |
| 2 | Vessel, craft-stranded, grounded, sunk or capsized | Yes | Yes | Yes |
| 3 | Over turning, derailment of land conveyance | Yes | Yes | Yes |
| 4 | Collision or contact other than water | Yes | Yes | Yes |
| 5 | Discharge of cargo at port of distress | Yes | Yes | Yes |

| | | | | |
|----|--|-----|-----|-----|
| 6 | General average sacrifice | Yes | Yes | Yes |
| 7 | Jettisons | Yes | Yes | Yes |
| 8 | General Average and Salvage charges incurred to avoid loss from any clause(s) except those excluded | Yes | Yes | Yes |
| 9 | Liability under “Both to Blame collision” clause | Yes | Yes | Yes |
| 10 | EQ. Volcanic eruption or lightening | No | Yes | Yes |
| 11 | Washing overboard | No | Yes | Yes |
| 12 | Entry of sea, lake or river water in to vessel, craft, hold, conveyance, container, lift van or place of storage | No | Yes | Yes |
| 13 | TL of any package lost over board or dropped whilst loading/unloading from vessel / craft | No | Yes | Yes |
| 14 | Theft/Pilferage and / or non-delivery | No | No | Yes |
| 15 | Fresh water / rain water damage | No | No | Yes |
| 16 | Hook and or / oil damage | No | No | Yes |
| 17 | Heating & Sweating | No | No | Yes |
| 18 | Damage by mud, acid and other extraneous substances | No | No | Yes |
| 19 | Breakage | No | No | Yes |
| 20 | Leakage | No | No | Yes |
| 21 | Country(Weather) damage | No | No | Yes |
| 22 | Bursting / tearing of bags | No | No | Yes |
| 23 | Piracy | No | No | Yes |
| 24 | Malicious Damage | No | No | Yes |

Add On Covers:

For ICC ‘B’: Extraneous Perils that can be covered **ICC ‘B’** at appropriate addl. premium

- Theft, pilferage and/or non-delivery
- Fresh water and rain water damage
- Damage by hooks, oils, mud, acid and other extraneous substances
- Heating and sweating
- Damage by other cargo
- **Malicious Damage**

For ICC ‘A’:

- War Perils
- Strike Perils (SRCC) which includes **Terrorism**.

General Exclusions under Institute Cargo Clauses: {Applicable to ICC (A), (B), (C)}

1. Willful misconduct of the Assured
2. Ordinary leakage, ordinary loss in weight/volume, or ordinary wear and tear of the subject matter insured
3. Insufficient and unsuitability of packing
4. Inherent vice or nature of the subject matter
5. Delay even though caused by insured perils

6. Insolvency or financial default of the ship owners, managers, charterers or operator
7. Nuclear perils
8. Unseaworthiness and unfitness of the vessel/conveyance (if the Assured is not aware of)
9. War and warlike perils
10. Strike perils.

War perils and strike perils can be covered concurrently by attaching **Institute War and Strike Clauses**.

Duration of Cover:

Risk commencement & termination under a voyage policy is defined in the **transit clause**-known as **warehouse to warehouse clause**.

Cover commences from the time the goods leave the suppliers warehouse or other place of storage as mentioned in the policy, continue during ordinary course of transit & terminates either

A) On delivery to Consignee at the place of destination mentioned in the policy; OR

B) On delivery to any intermediate warehouse used by insured for the purpose of **storage or distribution**; OR

C) On expiry of **60 days after discharge** at final port of destination whichever shall first occur.

b) Institute War Clauses (Cargo):

This is a restricted cover for the period of transit when the goods are **waterborne** and not in land. Cover starts from the time the goods are loaded on the vessel and ceases when discharged from overseas vessel. If the vessel arrives at destination, but unloading is delayed, war cover is **delayed up to 15 days** from the mid-night of day of arrival.

c) Institute Strikes Clauses (Cargo):

Cover is Warehouse to Warehouse with the customary **60 days time** limit after discharge.

d) Institute Cargo Clauses (AIR):

Covers are same ICC (A) except General Average, Salvage charge and “Both to Blame Collision” as these are not connected with air transit. Air Cargo Clauses apply **30 days time limit** after unloading from aircraft

e) Institute War Clauses (Air Cargo):

Cover starts from the time the goods are loaded on the Air craft for commencement of air transit and ceases when discharged from the aircraft at the destination, subject to a time limit of 15 days from the mid-night of day of arrival.

f) Institute Strikes Clauses (Cargo):

Cover is Warehouse to Warehouse with the customary **30 days time** limit after unloading.

g) Institute Transit Clauses (Rail or Road):

| Sl.no | I t e m s | IT(C) | IT(B) | IT(A) |
|-------|--|--------|-------|-------|
| 1 | Fire | Yes | Yes | Yes |
| 2 | Lightning | Yes | Yes | Yes |
| 3 | Breakage of bridges | No | Yes | Yes |
| 4 | Collision with or by the vehicle | No | Yes | Yes |
| 5 | Overturning of the carrying vehicle | No | Yes | Yes |
| 6 | Derailment of accident of like nature to the carrying rail wagon/vehicle | No | Yes | Yes |

| | | | | |
|----|---|----|----|-----|
| 7 | Non Delivery | No | No | Yes |
| 8 | Theft & Pilferage | No | No | Yes |
| 9 | Fresh & /or Rain water damage | No | No | Yes |
| 10 | Damage by hooks, nails, oil, mud, acids & other extraneous substances | No | No | Yes |
| 11 | Malicious Damage | No | No | Yes |

Add On Covers:

For IT 'C' & 'B': Extraneous Perils that can be covered IT 'C' & 'B' at appropriate addl. Premium

- Theft, pilferage and/or non-delivery
- Fresh water and rain water damage
- Damage by hooks, oils, mud, acid and other extraneous substances
- Bursting and tearing of bags
- Breakage and/or Leakage
- **Malicious Damage**

For IT 'A':

- Strike Perils (SRCC) which includes **Terrorism**.

General Exclusions under Institute Transit Clauses: {Applicable to IT (A), (B), (C)}

- Willful misconduct
- Ordinary/inevitable loss or damage
- Insufficient or unsuitable Packing or preparation of goods insured
- Delay even caused by insured perils
- Inherent vice or nature of subject matter
- War perils
- **Strike perils**

(Strike perils can be covered at an additional premium by attaching **SRCC clauses**)

Duration of Cover:

Same as ICC, except

C) On expiry of **7 days after unloading** at final destination whichever shall first occur.

h) Strike Riots and Civil Commotions (SRCC) clause: (For Inland Transit only)

Cover is Warehouse to Warehouse with the customary **7 days time** limit after unloading.

i) Institute Trade Clauses: A number of commodities which require special clauses to provide for particular hazards and which has been drafted and agreed between the ILU and Trade associations.

| <u>Clauses</u> | <u>Time Limit</u> |
|--|----------------------------------|
| 1) Institute Commodity Trade Clause A, B & C | 60 Days |
| 2) Institute Coal Clauses | 60 Days |
| 3) Institute Jute Clauses | 15 Days |
| 4) Institute Natural Rubber Clauses | 30 Days |
| 5) Institute Timber Trade Federation Clauses | 60 Days (Commonly used in India) |
| 6) Institute Bulk Oil Clauses | 60 Days (do) |
| 7) Institute Frozen Food Clauses – Exclg. Meat | |
| 8) Institute Frozen Meat Clauses 'A' & 'C' | |

i) Incidental Clauses:

- **COMPREHENSIVE CLAUSE:** Used when **all add on risks** are given to ICC (B)

- **INSTITUTE REPLACEMENT CLAUSE:** This clause limits the liability in case of loss/damage of the machine to the cost of repairing or replacing the damage part including forwarding and refitting. Import duty may have been paid for the machine. A similar duty will be imposed on any spare part imported. Unless the full duty was included in the SI on the machine the duty of the spare part is not payable. In any event the liability of underwriter should not exceed the SI.
- **PAIR AND SET CLAUSE:** Where the value of a pair or set of article depend on their continuance as a pair and the value is drastically reduced if one of the pair is lost/damaged. The claimant may prefer to abandon the remaining item and claim total loss. Using this clause the underwriter limits his liability to the insured value of the lost/damaged item.
- **CUTTING CLAUSE:** Mostly used in policies covering pipes or similar items. The damage portion should be cut off and balance utilized. This clause limits underwriter's liability to the proportionate insured value of the damaged part cut off and the cost of cutting.
- **LABLE CLAUSE:** This clause excludes damage to the labels on tinned or bottled goods unless the goods themselves are damaged at the same time. But the most commonly used form of label clause limit the liability to the cost of re-labeling and re-packing of the affected goods.
- **PICKING CLAUSE:** If the loss is caused by an insured peril, the insurer is liable for the value of picking (Cost of picking and the cost of re-bailing both sound and damaged material) affected fibres (Mostly country damages in case of Cotton, Wool etc.) less the salvage value of picked materials.
- **GARBLING CLAUSE:** "Garbling means" to sift/cleanse/separate sound from the whole mixed up cargo (mostly applied to tobacco, coffee, beans or grains). This clause provides that the insurer will pay the cost of Garbling.

j) Other Miscellaneous Clauses and Warranties:

WARRANTED EXCLUDING:

- Shortage from sound bags/packages by other than insured perils
- Blowing of tins (For tinned foodstuffs)
- Natural loss in weight and/or trade shortage
- The risk of rejection by Govt. authorities
- The risk of pitting and oxidization (Rust damage in iron sheets/tin plates)

REGISTERED MAIL AND POSTAL ENDING BY AIR

Risk Covered: All risk of physical loss or damage to the subject **or** Total Loss

Duration: From the time the goods are deposited/registered at the post office till delivery to the addressee or his representative or until expiry of 15 days, whichever shall first occur.

Exclusion: Incorrect and/or ambiguous and/or insufficient description on the package, if unaccepted by the addressee and loss of contents from the package delivered with seals intact.

Condition: (1) claim in the form of affidavit must immediately filed against postal authority. (2) Immediate notice of claim must be given to insurance company. (3) Post office receipt will be required as proof in case of claim for non-delivery.

Warranty: It is warranted that the goods insured are also insured with postal authority for the maximum amount as per prevailing Postal regulations.

4. CARGO CLAIMS

TYPES OF MARINE LOSSES:

A. TOTAL LOSS:

i) Actual Total Loss:

1. When destroyed e.g. Burnt or Sunk
2. When ceases to be thing of kind insured e.g. cement converting in to stone due to contact of water
3. When Insured is permanently deprived of the goods e.g. gold in sunken ship

ii) Constructive Total Loss:

1. When actual total loss appears to be unavoidable e.g. sinking ship
2. When preventing actual total loss requires expenditure exceeding its saved value e.g. frustration of voyage

B. PARTIAL LOSS:

i) Particular Average:

1. Short Delivery, 2. Shortage, 3. Partial loss of packages
4. Damages: i) Repairable, ii) Depreciated or Percentage, iii) Sympathetic, iv) Sentimental

ii) General Average:

1. Sacrifice: Jettison, Burning cargo as fuel
2. Expenditure: Part of refuge expenses, Warehousing charge, Loading/unloading, Additional fuel

GENERAL AVERAGE (GA) AND PARTICULAR AVERAGE (PA)

- A loss caused by or directly consequential on a general average act.
- The act include a GA sacrifice as well as a GA expenditure – Voluntarily and intentionally but reasonably made or incurred in time of general peril for the common safety of the property imperiled in a maritime adventure.
- It is the responsibility of the claimant in GA to supply evidence and proof of his loss.

GA Sacrifices:

- Damages to ship's anchors and/or cables whilst attempting to refloat a stranded vessel
- Bulkhead broken to reach the seat of fire in the lower holds
- Sails and spares lost while forcing the vessel off the ground
- Burning of ships materials as fuel to reach nearest port of refuge in time of peril
- Jettisoning of cargo and freight lost on the same
- Damage to other cargo by water used for fire fighting

GA Expenditure:

- Cost of entering and leaving the port of refuge and the cost of loading and reloading of cargo at a port of refuge and incidental storage charges
- Hire charges for craft for lightening the vessel or hire charges for tugs used to tow the vessel to a port of refuge
- Wages and maintenance of crew members for the extra time

Distinction between Particular Average (PA) and General Average (GA):

- PA is partial loss from purely fortuitous or accidental causes e.g. Stranding, Fire, Collision etc.
- GA is a sacrifice or expenditure made or incurred by one of the parties to the maritime adventure for the purpose of saving all the property involved.

TYPES OF CHARGES IN MARINE CLAIMS:

Payable in addition to any loss {Applicable to ICC A,B&C}

A. LOSS PREVENTION CHARGES:

1. Particular Charges: - Particular charges are expenditures incurred by or on behalf of the assured for safety or preservation of the subject matter insured. The charges are other than GA and salvage charge.

2. Sue and Labour Charges: – Reasonable expenses incurred by assured their servant and agents to prevent or minimize the loss and to insure that all rights against carriers, bailees (Port Trust Authority, Warehouse keepers etc.) and other third parties are properly preserved and exercised. **This is payable in addition to any loss and even in addition to the Total Loss, where an Insurer may become liable for more than the Sum insured in respect of one causality.**

DIFFERENCE BETWEEN PARTICULAR CHARGE & SUE AND LABOUR CHARGE:

In practice both the charges are synonymous terms and to draw any distinction between them is of merely academic interest.

- i) The first difference is Particular Average charges are incurred either short of destination or at destination, whereas sue & labour charge is incurred only at short of destination.
- ii) The second difference is that the sue & labour charge follow upon loss or damage, whereas particular charges may be incurred when loss is threatened or eminent but avoided by expenses for that purpose.

COMMON POINTS OF PARTICULAR CHARGE & SUE AND LABOUR CHARGE:

- i) Must be incurred for the benefit of specific interest and not for common venture
- ii) Must be incurred by the insured or his agent
- iii) **Under Insurance does not reduce the amount payable as in the case with salvage charge and GA.**
- iv) These charges are paid over and above the sum insured for cargo.

3. Salvage Charges: – Salvage is the remuneration or reward payable according to maritime (Marine) law to salvors who voluntarily and independently of contract render services to save maritime property at sea. These charges, where properly incurred in consequence of a loss by a peril, are recoverable. Such expenses may be recovered as PA (Particular Average) or GA (General Average) loss according to the circumstances under which they are incurred. In India the award of salvage is governed by provisions of the **Indian Merchant Shipping Act**, Similar to **Admiralty Court of UK**. Where life are saved jointly with property, the salvor may claim **Life salvage**, which is not recoverable from Insurer but from **Protection and Indemnity Association and Mutual Clubs (P & I Clubs)**. To support a claim for salvage it is necessary to prove that the salvaged property was in peril and that the services were of material assistance. No reward for services or expenses can be claimed where the services were unsuccessful and property has been lost under **“NO CURE – NO PAY”** contract. The salvage is paid and out of salvaged property. Hence the reward is limited by the value of the property saved. Salvors have a maritime lien of the property salvaged which enables them to retain the property in their possession till the security for salvage is forthcoming.

Under Insurance does not reduce the amount payable as in the case with Sue & labour charge and GA.

B. EXTRA CHARGES:

These includes expenses as Survey fees, Expenses of sale by auction, Sale Charges, Warehouse charges, Loading/unloading charges and other port expenses. These charges are allowed only **if the claim is admitted**. They are not to be included in arriving at the **franchise**.

Forwarding Expenses – When transit is terminated before destination as a result of an insured peril, the insurers will reimburse the assured for any extra charges properly and reasonably incurred in **unloading, storing and forwarding the insured goods to the policy destination**

RECOVERY FROM CARRIER:

| Carriers | Claim lodging time | Suit filing limit |
|-----------------------------------|--|--|
| Rail/Road | 6 months from LR/RR | 3 yrs from date of loss or probable delivery |
| Sea | 3 days of discharge | 1 year after Delivery |
| Air cargo: Dom: International: | 7 days for Damage & 14 days for ND 14 days for Damage & 21days for ND | 2years from date of booking |
| Post office | 1 month for Damage & 3months for ND | 3 years |

5. HULL INSURANCE {HULL & MACHINERY(H&M) POLICY}

CAPACITY OF THE VESSEL:

1. **Gross Register Tonnage (GRT)** – Volume of interior of the vessel, expressed in tons/100 cubic ft. More likely used for Passenger liners.
2. **Dead Weight Tonnage (DWT)** – Capacity in tons of cargo required to load a ship to her loadline (maximum) level. More likely used for Cargo vessels.

A Marine Hull/Cargo policy is a **Valued policy (Value agreed in case of total loss and percentage depreciation in case of partial loss)**. In case the ship is mortgaged to Government, it is necessary to insure for the value fixed by the government.

INDIAN REGISTER OF SHIPPING (IRS): A classification society established in India in 1975. Hull insurance business up to 10 crore was accepted by TAC, **if classified by IRS** and also discounts are offered. Other services or IRS are

*Damage Survey of ship, off shore structures and related equipment;
Warranty Survey of marine transportation and installation of off shore structures;
Design appraisal, inspection and certification of fixed off shore platform during construction;
Survey and supervision of damage repairs, whether in India or abroad.*

HULL RATING:

1. FOR NON RENEWALS:

For calculating the rate, hull risk is divided in to two parts.

Total loss element (TL) and **Average loss element (ex TL)**

TL rate is a rate % applied to the value of vessel (=A) and “exTL” is determined by size GRT or DWT {Rate (say Rs. 30/-) multiplied by size = B}. Then both the rates are combined (=A+B).

Hence final rate called as “**Slip Rate**” =
$$\frac{A+B}{\text{Insured Value}} \times 100$$
 = say 1.023 or any figure

Thus the premium payable is arrived at by applying the **slip rate** to the **insured value**.

2. FOR RENEWALS:

Done by TAC based on Indian Hull Understanding {**IHU** in the same line of Joint Hull Understanding (**JHU**) of London market}. Renewal rate are based on claim experience of 4 years as per a formula.

PAYMENT OF PREMIUM: Under the “Premium Installment Clause”, four equal installments are allowed. Stamped duty becomes payable with the 1st installment and is paid before commencement of risk and subsequent installments become payable each quarter on specified dates.

Stamp Duty: Payable by Insured as per Indian Stamp Act, 1899 and the scale is different from Cargo insurance.

ANALYSIS OF MARINE HULL INSURANCE CLAUSES:

Terms of cover for the marine hull policies are set out in the form of Institute Time Clauses – Hulls

Institute Time Clauses- Hulls (ITC- Hulls) (1.10.83):

This provides the widest cover for Hull and machinery interests. There are 26 clauses comprising the set of ITC- Hulls (1.10.83).

PERILS COVERED:

Uncontrollable:-

- Perils of the seas, rivers, lakes or other navigable waters;
- Fire, explosion;
- Violent theft by persons outside the vessel;
- Jettison;
- Piracy;
- Breakdown of or accident to nuclear installations or reactors;
- Contact with aircraft or similar object, or objects falling there from land conveyance, dock or harbour equipment or installation;
- Earthquake, volcanic eruption or lightning.

Controllable:

- Accidents in loading, discharging or shifting cargo or fuel;
- Bursting or boilers, breakage of shafts or any latent defect in the machinery or hull;
- Negligence of master, officers, crew or pilots;
- Negligence of repairers or charterers, provided such repairers or charterers are not the assured under the policy;
- **Barratry** (Every wrongful act willfully committed) of master, officers or crew – provided such loss/damage has not resulted from want of due diligence (Onus of proof upon insurer) by the assured, owners or managers.

Other Perils:-

- Pollution Hazards provides cover if the vessel is damaged by deliberate action by govt. authorities following casualty covered under the policy to avoid pollution.
- 3/4th Collision liability including legal cost to the owner of other ship, subject to max. 3/4 of SI in any one collision (Supplementary cover to insured). **Sistership Clause:** If other ship is of the same ownership or management still will be treated as if it was of separate ownership.
- Sue and Labour charges (Payable in addition to any other claim including TL) & General Average and salvage charges

DEDUCTIBLE (EXCESS) CLAUSE:

- The deductible is an excess and only the balance amount is payable.
- It is applicable to all claims in respect of damage to ship, Collision liability claims, GA & Salvage charges and Sue & Labour charges, **but not applicable to TL & CTL.**
- However when a sue & Labour charge or salvage charge is incurred but a total loss results despite attempts to save the vessel, the deductible is not applied to the charges already incurred.

TERMINATION CLAUSE: The insurance shall terminate automatically in case of

- Change of classification society
- Change, suspension, discontinuance, withdrawal or expiry of class of the vessel.
- Change of ownership or flag

- Transfer of management

When Termination clause operates, a pro-rata daily net of premium is allowed.

Institutes Voyage Clauses- Hulls (1.10.83):

Institute Time clause – Hulls are used when a vessel is insured for 12 months. In case the insurance is for a particular voyage, then Institute voyage clauses – Hulls are incorporated in the policy. This differs from ITC – Hulls in the inclusion of Change of Voyage Clause and omission of some clauses, which have provisions peculiar to time insurance only namely termination clause, Breach of warranty Clause, etc.

GOVERNMENT WAR RISKS INSURANCE SCHEME:

In India war risk insurance in marine hull are governed by the government war risks insurance scheme. This is a voluntary scheme applicable to all ships registered under the Merchant Shipping Act, 1958 and includes ships under construction and mechanized sailing vessels.

The rate of premium for each year is fixed by the government in advance and is payable in 4 equal installments in advance of each quarter. **There is no stamp duty.**

MARINE HULL INSURANCE CLAIMS:

More or less same as Cargo claims.

PROTECTION & INDEMNITY ASSOCIATION AND MUTUAL CLUBS

- Mutual Marine Assurance Association of ship owners for mutual benefit with separate legal entity managed by board of directors and full time employees.
- Financed by initial premium paid by members. Additional requirements are paid by members on calls.
- Provide protection to its members towards :-
 1. Statutory obligation towards master, crew members and passengers as provided by mercantile shipping Act, 1958.
 2. Contractual liabilities towards cargo owners as per provided in the bill of lading.
 3. **1/4th Collision liability**, which is not included in hull policies
 4. Cost incurred towards removal of wreck from the harbour/port
 5. Damage towards Jetties, wharves etc. and other properties of the port authorities.
 6. Pollution by oil or other substances escaping from the ship.

There are no P & I Clubs in India and hence a ship-owner may enter in a P & I Club of abroad.