

# MARINE INSURANCE ACT

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## MARINE INSURANCE ACT

**An Act to provide for marine insurance and to prohibit gambling on loss by maritime perils.**

[1961 No. 54.]

*[1st April, 1961]*

[Commencement.]

## **1. Short title**

This Act may be cited as the Marine Insurance Act.  
[L.N. 48 of 1962.]

*Preliminary*

## **2. Interpretation**

In this Act unless the context otherwise requires-

**"action"** includes counter-claim and set-off;

**"freight"** includes the profit derivable by a ship owner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money;

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

**"policy"** means a marine policy;

**"prescribed form"** means the form of policy in the First Schedule.  
For the purposes of this Act, where there is a reference to-

(a) reasonable time; or

(b) reasonable premium; or

(c) reasonable diligence,

the question of what is reasonable shall be a question of fact.

## **3. Marine insurance defined**

A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

## **4. Mixed sea and land risks**

(1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in the course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as defined in section 3 of this Act.

## **5. Marine adventure and maritime perils defined**

(1) Subject to the provisions of this Act, every 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, such property being referred to in this Act as insurable property;

(b) the earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

(c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

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

*Insurable interest*

## **6. Avoidance of wagering or gaming contracts**

(1) Every 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 the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(b) where the policy is made "interest or no interest" or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

## **7. Insurable interest defined**

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

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

## **8. When interest attaches**

(1) The assured must be interested in the subject matter insured at the time of the loss though he need not be interested when the insurance is effected:

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

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

## **9. Defeasible or contingent interest**

(1) A defeasible interest shall be insurable, as also shall be a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise.

## **10. Partial interest**

A partial interest of any nature shall be insurable.

## **11. Re-insurance**

The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it; but unless the policy otherwise provides, the original assured shall have no right or interest in respect of such 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 any member of the crew of a ship has an insurable interest in respect of his wages.

## **14. Advance freight**

In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not payable in case of loss.

## **15. Charges of insurance**

The assured has an insurable interest in the charges of any insurance which he may effect.

## **16. Quantum of interest**

(1) Where the subject matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

## **17. Assignment of interest**

(1) When the assured assigns or otherwise parts with his interest in the subject matter insured, he shall not thereby 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) Nothing in this section shall affect a transmission of interest by operation of law.

## *Insurable value*

### **18. Measure of insurable value**

Subject to the express provision or valuation in the policy, the insurable value of the subject matter insured shall be ascertained as follows-

(a) in insurance on ship, the insurable value which, in the case of steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade, is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy plus the charges of insurance upon the whole;

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

(c) in insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole;

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

## *Disclosure and representations*

### **19. Insurance is *uberrimae fidei***

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

### **20. Disclosure by assured**

(1) Subject to the provision of this section, the assured shall disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured shall be deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgement of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed, namely-

(a) any circumstance which diminishes the risk;

(b) any circumstance which is known or presumed to be known to the insurer, and for the purposes of this paragraph, the presumption shall extend and apply to matters of common notoriety or knowledge, and to matters which an insurer in the ordinary course of his business, as such, ought to know;

(c) any circumstance as to which information is waived by the insurer;

(d) any circumstance which is superfluous to disclose by reason of any express or implied warranty.



(4) For the purposes of this section, "circumstance" includes any communication made to, or information received by, the assured; and whether any particular circumstance which is not disclosed, is material or not is, in each case a question of fact.

## **21. Disclosure by agent effecting insurance**

Subject to the provisions of section 20 of this Act, (which refers to circumstances not requiring to be disclosed by an assured), where an insurance is effected for the assured by an agent, the agent shall disclose to the insurer-

(a) every material circumstance which is known to the agent, who shall be deemed to know every circumstance which, in the ordinary course of business, ought to be known by or to have been communicated to the agent; and

(b) every material circumstance which the assured is bound to disclose unless it comes to the knowledge of the assured too late to communicate it to the agent.

## **22. Representations pending negotiation of contract**

(1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded shall be true; and if untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgement of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to 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 considered 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 a particular representation is material or not is, in each case, a question of fact.

## **23. When contract deemed to be concluded**

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

### *The policy*

## **24. Contract to be embodied in policy**

(1) Subject to the provisions of any statute, a contract of marine insurance shall not be admissible in evidence unless it is embodied in a marine policy in accordance with the form in the First Schedule to this Act or to the like effect.

[First Schedule.]

(2) The policy may be executed and issued either at the time when the contract is concluded, or afterwards; and subject to the provisions of this Act and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Sched-

ule to this Act shall be construed as having the scope and meaning in that Schedule assigned to them.

(3) Nothing in this section shall affect the operation of a contract for such insurance as is mentioned in section 368 of the Merchant Shipping Act.

[Cap. M11.]

## **25. What policy must specify**

A marine policy shall specify the name of the insured, or of some person who effects the insurance on his behalf.

## **26. Signature of insurer**

(1) A marine policy shall be signed by or on behalf of the insurer, or if the insurer is a corporation, the corporate seal may be sufficient.

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

(3) Nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

## **27. Voyage and time policies**

Where the contract is to insure the subject matter "at and from", or from one place to another or others, the policy is called a voyage policy; and where the contract is to insure the subject matter for a definite period of time the policy is called a time policy. A contract for both voyage and time may be included in the same policy.

## **28. Designation of subject matter**

(1) The subject matter insured shall be designated in a marine policy with reasonable certainty; but the nature and extent of the interest of the assured in the subject matter insured need not be specified in the policy.

(2) 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.

(3) In the application of this section, regard shall be had to any usage regulating the designation of the subject matter insured.

## **29. Valued policy**

(1) A policy may be either valued or unvalued, and for the purposes of this section, a valued policy is a policy which specifies the agreed value of the subject matter insured.

(2) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss is total or partial.

(3) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purposes of determining whether there has been a constructive total loss.

## **30. Unvalued policy**

An unvalued policy is a policy which does not specify the value of the subject matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner specified in section 18 of this Act.

### **31. Floating policy by ship or ships**

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

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

(3) Unless the policy otherwise provides, the declarations shall be made in the order of dispatch or shipment. In the case of goods, they shall comprise all consignments within the terms of the policy, and the value of the goods or other property shall be honestly stated; but any omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

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

### **32. Premium to be arranged**

(1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium shall be payable.

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium shall be payable.

### *Double insurance*

### **33. Double insurance**

(1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance-

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he shall not be entitled to receive any sum in excess of the indemnity allowed by this Act;

(b) where the policy under which the assured claims is a valued policy, the assured 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;

(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;

(cl) where the assured receives any sum in excess of the indemnity allowed by this Act, he shall be deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

### *Warranties, etc.*

### **34. Nature of warranty**

(1) For the purposes of this section and of sections 35 to 42 of this Act (which relate to warranties) a warranty means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty within the meaning of this section may be express or implied, and is a condition which shall be exactly complied with, whether it is material to the risk or not. If it is not so complied with, then, subject to any express provision in the policy, the insurer shall be discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

### **35. When breach of warranty excused**

(1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the fact that the breach has been remedied and the warranty complied with before loss shall be no defence to the assured; but a breach of warranty may be waived by the insurer.

### **36. 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 be included in or written upon the policy, or be contained in some document incorporated by reference into the policy.

(3) An express warranty shall not exclude an implied warranty, unless it is inconsistent therewith.

### **37. Warranty of neutrality**

(1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral" there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

### **38. No implied warranty of nationality**

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

### **39. Warranty of good safety**

Where the subject matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day.

### **40. Warranty of seaworthiness of ship**

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

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purpose of that stage.

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

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

#### **41. No implied warranty that goods are seaworthy**

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

(2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

#### **42. Warranty of legality**

There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.

*The voyage*

#### **43. Implied condition as to commencement of risk**

(1) Where the subject matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded; but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure is not commenced the insurer may avoid the contract.

(2) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

#### **44. Alteration of port of departure**

Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk shall not attach.

#### **45. Sailing for different destination**

Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk shall not attach.

#### **46. Change of voyage**

(1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

#### **47. Deviation**

(1) Where a ship, without lawful excuse, deviates 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 may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy-

(a) where the course of the voyage is specifically designated by the policy, and that course is departed from; or

(b) where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial and if there is a deviation in fact the insurer is discharged from his liability under the contract.

#### **48. 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 such of them as she goes to, in the order designated by the policy; and if she does not, there is a deviation.

(2) Where the policy is to "ports of discharge" within a given area and they are not named, the ship shall, in the absence of any usage or sufficient cause to the contrary, proceed to them or such of them as she goes to, in their geographical order; and if she does not, there is a deviation.

#### **49. Delay in voyage**

In the case of a voyage policy, the adventure insured shall be prosecuted throughout its course with reasonable dispatch and, if without lawful excuse it is not so prosecuted, the insurer shall be discharged from liability as from the time when the delay became unreasonable.

#### **50. Excuses for deviation or delay**

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

(a) where authorised by any special term in the policy; or

(b) where caused by circumstances beyond the control of the master and his employer; or

(c) where reasonably necessary in order to comply with an express or implied warranty; or

(d) where reasonably necessary for the safety of the ship or subject matter insured; or

(e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(g) where caused by the barratious conduct of the master or crew, if barratry is one of the perils insured against.

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

#### *Assignment of policy*

### **51. When and how policy is assignable**

(1) A marine policy shall be assignable unless it contains terms expressly prohibiting assignment, and a marine policy may be assigned either before or after loss.

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy shall be entitled to sue thereon in his own name; and the defendant shall be entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

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

### **52. Assured who has no interest cannot assign**

(1) Where the assured has parted with or lost his interest in the subject matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy shall be inoperative.

(2) Nothing in this section shall be construed so as to affect the assignment of a policy after loss.

#### *The premium*

### **53. When premium payable**

Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer shall not be bound to issue the policy until payment or tender of the premium.

### **54. Policy effected through broker**

(1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy, and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due

to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent.

### **55. Effect of receipt on policy**

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

#### *Loss and abandonment*

### **56. Included and excluded losses**

(1) Subject to the provisions of this Act and unless the policy otherwise provides, the insurer shall be liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he shall not be liable for any loss which is not proximately caused by a peril insured against.

(2) In particular-

(a) the insurer shall not be liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he shall be liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;

(b) unless the policy otherwise provides, the insurer on ship or goods shall not be liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) unless the policy otherwise provides, the insurer shall not be liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

### **57. Total and partial loss**

(1) A total loss may be either an actual total loss, or a constructive total loss; and any loss other than a total loss, is a partial loss.

(2) 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.

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

(4) Where goods reach their destination in species, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

### **58. Actual total loss**

(1) Where the subject matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

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

### **59. Missing ship**



Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

#### **60. Effect of transhipment, etc.**

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

#### **61. Constructive total loss defined**

(1) Subject to any express provision in the policy, there is a constructive total loss where the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be avoidable, or because it could not be preserved from actual loss without an expenditure which 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; and for the purpose of this paragraph, in estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interest, but account is to be taken of the expenses of future salvage operations, and of any future general average contributions to which the ship would be liable if 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.

#### **62. Effect of constructive total loss**

Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject matter insured to the insurer and treat the loss as if it were an actual total loss.

#### **63. Notice of abandonment**

(1) Subject to the provisions of this section, where the assured elects to abandon the subject matter insured to the insurer, he shall give notice of abandonment, and if he fails to give notice of abandonment, the loss shall be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in terms which indicate the intention of the assured to abandon his insured interest in the subject matter insured unconditionally to the insurer.

(3) Notice of abandonment 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.

(4) Where notice of abandonment is properly given, the rights of the assured shall not be prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer, but the mere silence of the insurer after notice shall not be construed as an acceptance.

(6) Where notice of abandonment is accepted the abandonment is irrevocable, and the acceptance of the notice shall be construed as conclusive admission of liability for the loss and the sufficiency of the notice.

(7) Notice of abandonment shall be unnecessary where, at the time when the assured receives the information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

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

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

#### **64. Effect of abandonment**

(1) Where there is a valid abandonment the insurer shall be entitled to take over the interest of the assured in whatever may remain of the subject matter insured, and all proprietary right incidental thereto.

(2) Upon the abandonment of a ship, the insurer thereof shall be entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer shall be entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

*Partial losses (including salvage and general average and particular charges)*

#### **65. Particular average loss**

(1) A particular average loss is a partial loss of the subject matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured, other than general average and salvage charges, are called particular charges, and are not included in particular average.

#### **66. Salvage charges**

(1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

(2) For the purposes of this section, "salvage charges" means the charges recoverable under maritime law by a salvor independently of contract, but does not include expenses of services in the nature of salvage which are recoverable, if properly incurred, as particular charges of general average loss, as the case may be, where rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against.

#### **67. 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 imperiled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls shall be entitled, subject to the conditions imposed by maritime law, to a rateable contribution, called a general average 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 loss which falls upon him; and, in the case of general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

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

(6) In the absence of express stipulation, the insurer shall not be liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.

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

#### *Measure of indemnity*

### **68. Extent of liability of insurer for loss**

(1) Where there is a loss recoverable under the policy, the insurer, or each insurer if there are more insurers than one, shall be liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

(2) For the purposes of this section "measure of indemnity" means the sum which the assured may recover in respect of a loss on a policy by which he is insured, being in the case of a valued policy the full extent of the value fixed by the policy, and in the case of an unvalued policy, the full extent of the insurable value.

### **69. Total loss**

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

(a) if the policy is a valued policy, the measure of indemnity shall be sum fixed by the policy;

(b) if the policy is an unvalued policy, the measure of indemnity shall be the insurable value of the subject matter insured.

### **70. Partial loss of ship**

Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, shall be as follows-

(a) where the ship has been repaired, the assured shall be entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of anyone casualty;

(b) where the ship has been only partially repaired, the assured shall be entitled to the reasonable cost of such repairs, computed as above, and be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;

(c) where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured shall be entitled to be indemnified for the

reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

### **71. Partial loss of freight**

Subject to any express provisions in the policy, where there is a partial loss of freight, the measure of indemnity shall be such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

### **72. Partial loss of goods, merchandise, etc.**

(1) Where there is a partial loss of goods, merchandise or other moveable, the measure of indemnity, subject to any express provision in the policy, shall be as follows-

(a) where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity shall be 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;

(b) where part of the goods, merchandise, or other movables insured by an unvalued policy is totally lost, the measure of indemnity shall be the insurable value of the part lost, ascertained as in case of total loss;

(c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity shall be such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value.

(2) For the purposes of this section-

**"gross value"** means the wholesale price or, if there is no such price, the estimated value, with in either case, freight, landing charges, and duty paid beforehand, provided that, in the case of goods or merchandise customarily sold in bond, the bonded price shall be deemed to be the gross value;

**"gross proceeds"** means the actual price obtained at a sale where all charges on sale are paid by the sellers.

### **73. Apportionment of valuation**

(1) Where different species of property are insured under a single valuation, the valuation shall be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy; and for the purposes of this sub-

section, the insured value of any part of a species shall be such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(2) Where a valuation is to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods are not ascertainable, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods.

#### **74. General average contribution and salvage charges**

(1) Subject to any express provision in the policy, where the assured has paid, or is liable for any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject matter liable to contribution is insured for its full contributory value. If the subject matter is not insured for its full contributory value, or if only part of it is insured, the indemnity payable by the insurer shall be reduced in proportion to the under insurance; and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount 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 like principle.

#### **75. Liabilities of third parties**

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

#### **76. General provisions as to measure of indemnity**

(1) Where there has been a loss in respect of any subject matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject matter insured was not at risk under the policy.

#### **77. Particular average warranties**

(1) Where the subject matter insured is warranted free from particular average, the assured shall not 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; but, if the contract is apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer shall nevertheless be liable for salvage charges; and the insurer shall also be liable for particular charges for and other expenses of averting a loss insured against, where properly incurred pursuant to the provisions of a suing and labouring clause to the like effect as set out in the prescribed form, if contained in the policy.

(3) Unless the policy otherwise provides, where the subject matter insured is warranted free from particular average under a specified percentage, a general average loss shall not be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject matter insured, and particular charges and the expenses of and incidental to ascertaining and proving the loss shall be excluded.

#### **78. Successive losses**

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

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured may recover in respect only of the total loss.

(3) Nothing in this section shall affect the liability of an insurer under a suing and labouring clause in the prescribed form or to the like effect if contained in the policy.

#### **79. Suing and labouring clause**

(1) Where the policy contains a suing and labouring clause in the prescribed form or to the like effect, the agreement thereby entered into shall be deemed to be supplementary to the contract of insurance and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, shall not be recoverable under the suing and labouring clause.

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy shall not be recoverable under the suing and labouring clause.

(4) It shall be the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss.

#### *Right of insurer on payment*

#### **80. Right of subrogation**

(1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject matter insured, he shall thereupon become entitled to take over the interest of the assured in whatever may remain of the subject matter so paid for, and shall thereby be subrogated to all the rights and remedies of the assured in and in respect of that subject matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he shall acquire no title to the subject matter insured, or such part of it as may remain, but shall thereupon be subrogated to all rights and remedies of the assured in and in respect of the subject matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

#### **81. Right of contribution**

(1) Where the assured is over-insured by double insurance, each insurer shall be bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

(2) If any insurer pays more than his proportion of the loss, he shall be entitled to maintain an action for contribution against the other insurers, and be entitled to the like remedies as a surety who has paid more than his proportion of the debt.

## **82. Effect of under insurance**

Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he shall be deemed to be his own insurer in respect of the uninsured balance.

### *Return of premium*

## **83. Enforcement of return**

Where the premium or a proportionate part thereof is, by this Act declared to be returnable-

(a) if already paid, it may be recovered by the assured from the insurer; and

(b) if unpaid, it may be retained by the assured or his agent.

## **84. Return by agreement**

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

## **85. Return for failure of consideration**

(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium shall thereupon be returned to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium shall, under the like conditions be returned to the assured.

(3) In particular-

(a) where a policy is void, or is avoided by the insurer as from the commencement of the risk, the premium shall be returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium shall not be returnable;

(b) where the subject matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, shall be returnable:

Provided that where the subject matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium shall not be returnable unless, at such time, the insurer knew of the safe arrival;

(c) where the assured has no insurable interest throughout the currency of the risk, the premium shall be returnable, but nothing in this paragraph shall be construed to apply to a policy effected by way of gaming or wagering;

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

(e) where the assured has over-insured under an unvalued policy, a proportionate part of the premium shall be returnable.

(4) Subject to the foregoing provisions of this section, where the assured has over-insured by double insurance, a proportionate part of the several premiums shall be returnable:

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

#### *Mutual insurance*

### **86. Modification in case of 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 provision of this Act relating to the premium shall not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

#### *Supplemental*

### **87. Ratification by assured**

Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

### **88. Implied obligations varied by agreement or usage**

(1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negated or varied by express agreement, or by usage, if the usage is such as to bind both parties to the contract.

(2) The provisions of this section shall extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

### **89. Slip as evidence**

Where there is a duly stamped policy, reference may be made to the slip or covering note, in any legal proceeding.

### **90. Gambling on loss by maritime perils prohibited**

(1) If-

(a) any person effects a contract of marine insurance without having any *bona fide* interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject matter insured, or a *bona fide* expectation of acquiring such an interest; or



(b) any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship and the contract is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term,

the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred naira, and in either case to forfeit to the State any money he may have received under the contract.

(2) Any broker or other person through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence and liable on summary conviction to the like penalties, if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this section.

(3) Proceedings under this section shall not be instituted without the consent of a law officer.

(4) Proceedings shall not be instituted under this section against a person (other than a person in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this section.

(5) If proceedings under this section are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made) for effecting such a contract, and the contract was made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer", or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.

(6) For the purpose of giving jurisdiction under this section, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

(7) Any person aggrieved by an order or decision of a court of summary jurisdiction under this section may appeal to the High Court.

(8) For the purposes of this section, the expression "owner" includes charterer.

## **91. Repeals and savings**

(1) The enactments mentioned in the Second Schedule in so far as they are in force in and form part of the laws of Nigeria, are hereby repealed to the extent specified in that Schedule.

[Second Schedule.]

(2) Nothing in this Act or in any repeal effected thereby, shall affect-

(a) the provisions of the Stamp Duties Act or any enactment for the time being in force relating to the revenue;

[Cap. S8.]

(b) the provisions of the Companies and Allied Matters Act or any enactment amending or substituted for the same;

[Cap. C20.]

(c) the provisions of any statute not expressly repealed by this Act.

(3) The rules of the common law of England, to the extent to which they are in force in Lagos under the Interpretation Act shall, for the purposes of this Act, be in force in all States of Nigeria; and save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

[Cap.I23.]

(4) To give effect to subsection (3) of this section in any State, the rules of the common law shall where necessary be deemed to have been duly revived; and for the removal of doubts, and subject to the provisions of this subsection, the usages of the law merchant in England shall be deemed to be part of the common law and be construed with and form part of this Act.

(5) For the purposes of subsections (3) and (4) of this section, "State" includes the Federal Capital Territory Abuja.

## SCHEDULES

### FIRST SCHEDULE

#### *Form of 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 merchandise, and also upon the body, tackle, apparel, ordinance,

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 said ship, etc., in this voyage, to proceed and sail to and touch and

stay at any ports or places whatsoever.....

without prejudice to this insurance. The said ship, etc., goods and merchandises, etc., for so much as 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 contended to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirate, rovers, thieves, jettisons, letters of mart and counterpart, surprises, takings at sea, arrests, restrains, and detainments of all kings, princes, and people, of what nation, condition, perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandise, 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 insured shall be considered as a wai ver, 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 any place in Nigeria. And so we, the assurers, are contended, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due 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 .

N.B.-Corn, fish, salt, fruit, tlour and seed are warranted free from average, unless general, or the ship be stranded; and sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under ten naira per cent, and all other goods, also the ship and freight, are warranted free from average, under six naira per cent unless general, or the ship be stranded.

#### *Rules for construction of policy*

[Section 25.]

1. Where the subject matter is insured "lost or not lost", and the loss has occurred before the contract is concluded, the risk attaches, unless at such time the assured was aware of the loss, and the insurer was not.
2. Where the subject matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.
3. (a) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.  
(b) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.  
(c) Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.  
(d) Where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner,

or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

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

5. 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.

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

7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8. The term "pirates" includes passengers who mutiny and riots who attack the ship from the shore.

9. The term "thieves" does not cover clandestine theft or a theft committed by anyone of the ship's company, whether crew or passengers.

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

11. 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.

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

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

14. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15. 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 steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

16. 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, both does not include passage money.

17. The term "**goods**" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

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

## SECOND SCHEDULE

### *Enactments repealed*

### *Session and chapter Title or short title Extent of repeal*

19 Geo. 2 c. 37 An Act to regulate insurance on ships belong- The whole Act.

ing to the subject of Great Britain and on  
merchandises or effects laden thereon.

28 Geo. 3 c. 56 An Act to repeal an Act made in the twenty- The whole Act so far

fifth year of the reign of his present majesty as it relates to ma-  
entitled "An Act for regulating Insurance on rine insurance.  
Ships and on goods, merchandise or effects"  
and for substituting other provisions for the  
like purpose in lieu thereof.

31 and 32 Vict. C. 86 The Policies of Marine Assurance Act 1868. The whole Act.

MARINE INSURANCE ACT

### **SUBSIDIARY LEGISLATION**

*No Subsidiary Legislation*