CHAPTER 32
MARINE INSURANCE
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32. INTRODUCTION

Marine Cargo Insurance is governed by Marine Insurance Act, 1963. Section 3 of the Act defines a contract of Marine insurance as ‘an agreement whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed to against losses incidental to marine adventure’.

32.1. INSURABLE INTEREST

Section 8(I) of the Marine Insurance Act states that the ‘assured’ must be interested in the subject matter (goods) insured at the time of loss. Insurance is effected either by shipper/exporter or buyer by virtue of their ownership of goods or acquiring an interest in the goods respectively. The shipper /exporter has to take the insurance in case the terms of the sale is on CIF basis and the buyer in cases where the goods are consigned on C&F or FOB basis.

32.2. MARINE INSURANCE POLICY

A marine insurance policy must specify:

i) Name of the assured or person who effect the insurance on his behalf.

ii) Subject matter (goods) insured

iii) Risk insured against

iv) Voyage or period or both covered by the insurance

v) Sum(s) insured

vi) Name(s) of insurer(s)

A Marine Cargo Policy is freely assignable to any one who may acquire an insurable interest and can be assigned either before or after a loss.

32.3. RISKS NOT COVERED

The marine insurance policies normally do not cover the following risks

32.3.1. GENERAL EXCLUSION CLAUSES

i) Loss, damage or expense caused by delay and inherent vice or nature of the goods

ii) Loss damage or expense attributed to willful misconduct of the insured.

iii) Ordinary leakage/ordinary loss in weight or volume / ordinary wear and tear of the insured goods.

iv) Insufficiency or unsuitability of packing.

v) Deliberate damage to / destruction of the goods.
vi) Insolvency or financial default of the owners, managers, charterers or operators of the vessel.

vii) Loss damage or expenses arising from use of atomic weapons or nuclear fission and / or other like reaction or radioactive force.

32.3.2. UNSEAWORTHINESS AND UNFITNESS CLAUSE

Unseaworthiness / unfitness of vessel or craft where the assured or his servant is privy to such Unseaworthiness / unfitness at the time the goods are loaded therein.

32.3.3. WAR EXCULSION CLAUSE

War, Civil war, revolution, rebellion, insurrection, civil strike, derelict weapons of war, capture, detainment etc. (Specific policy to be taken).

32.3.4. STRIKE EXCLUSION CLAUSE

Strikes, lock-outs, labour disturbances, riots, civil commotions, terrorist attacks etc.

32.4. PERIOD OF COVER

♦ The insurance cover is available for the entire period of transit from the time the goods leave the warehouse at the place of commencement and continues during such transit including deviation. The cover terminates on delivery of the goods, at the warehouse at the named destination or on expiry of 60 days (sea consignment) / 30 days (air consignment) on completion of discharge from the vessel at final port.

♦ The Bank as a standard practice, specifies marine insurance to be taken on ‘warehouse to warehouse’ basis. As per the ‘Transit Clause’, if goods are not delivered within the time limit, cover ceases on expiry of 60/30 days and would have to be appropriately extended.

♦ The Institute Cargo Clauses provides warehouse to warehouse cover, unless specifically deleted.

32.5. TYPES OF COVER

32.5.1. INSTITUTE CARGO CLAUSE ( C )

The insurance policy under Cargo Clauses ( C ) covers loss of damage to goods caused by:

i) Fire or explosion,

ii) Stranding, grounding, sinking or capsizing of vessel,

iii) Overturning or derailment of land conveyance,
iv) Collusion or contact of vessel, craft or conveyance etc. with any external object other than water,
v) Discharge of cargo at a port of distress,
vi) General average sacrifice and
vii) Jettison.

32.5.2. INSTITUTE CARGO CLAUSE (B)

In addition to risks covered under Institute Cargo Clause (C) the following risks are covered by policies to which Cargo Clause (B) is attached:

i) Loss of or damage to the goods attributable to earthquake, volcanos, eruption or lightning,
ii) Washing overboard,
iii) Loss of or damage to the goods caused by entry of sea, lake or river water into the vessel, craft, hold, conveyance container, liftvan or place of storage, and
iv) Total loss of any package lost overboard or dropped whilst loading on to or unloading from vessel or craft.

EXTRANEOUS PERILS

The policy issued on Institute Cargo Clause (B) can be extended to cover any of the following non-maritime extraneous perils by payment of suitable extra premium,

i) Theft, pilferage and non delivery,
ii) Fresh and / or rain and / or river water damage,
iii) Hook, oil, mud, acid and damage by other cargo,
iv) Heating and sweating,
v) Breakage, denting, chipping, scratching and blending,
vi) Leakage and
vii) Bursting and tearing

32.5.3. INSTITUTE CARGO CLAUSE (A)

This Insurance covers all risks of loss of or damage to the subject goods insured except general exclusion, Unseaworthiness / unfitness war exclusion and strikes exclusion clauses. This is the widest cover and hence is a standard condition for import LCs issued by the Bank.

32.5.4. WAR AND STRIKE (SRCC) COVER

The risks of loss etc. not eligible under the war and strike exclusion clauses can in addition to Institute Cargo Clauses A, B or C be covered by payment of additional premium. The cover is granted by attaching Institute War Clauses (Cargo) and Institute Strike Claims (Cargo) to the policy of insurance.
32.6. INSURABLE VALUE

The amount of loss payable on marine insurance policy is based on CIF value of goods plus an agreed percentage. The prevailing practice in India is to specify insurable value at CIF plus 10%. ‘Duty’ policies to cover duty payable on the imported goods are also issued.

32.7. LOSS COVERAGE

The losses covered under marine insurance can be broadly classified as:

- **Total Loss**
  - **Actual Total Loss**
  - **Constructive Total Loss**
- **Partial (Average) Loss**
  - **General Average**
  - **Particular Average**

32.7.1. ACTUAL TOTAL LOSS

An ‘Actual Total Loss’ may occur when insured cargo is (a) totally destroyed (e.g. by fire or ship sinks) (b) so damaged that it ceases to be the thing insured (e.g. cement turns to concrete due to water seepage) and (c) irretrievably lost or lost beyond a reasonable time. It can be observed that destruction; is not essential for claiming actual total loss.

32.7.2. CONSTRUCTIVE TOTAL LOSS

‘Constructive Total Loss’ (CTL) may be defined as a total loss when the cost of saving, repairing or reconditioning the insured goods is more than the value of goods. Example, repair cost of machinery damaged due to sea water seepage is more than the invoice value.

While claiming CTL, the insured is to abandon his interest in the insured goods in favour of the insurance company.

32.7.3. GENERAL AVERAGE
‘General Average” (GA) is an extra ordinary sacrifice or expenditure intentionally and reasonably made or incurred for the common safety of property involved in a common maritime voyage. Examples, a) some cargo thrown overboard to lighten the ship in rough weather b) expenses incurred in towing a ship to safety.

The sacrifice/expenditure/loss is to be shared by all interests in the journey i.e. cargo owners, ship owners and freight carriers. The sharing of GA sacrifice or expenditure is worked out by an expert Average Adjuster as per internationally agreed rules. All marine policies covers GA loss and sacrifice.

32.7.4. PARTICULAR AVERAGE

‘Particular Average’ is partial loss or damage in which there is no contribution from other interests in the journey, as in case of general average policy. It becomes payable only when specifically covered. Example, Goods thrown overboard due to deterioration likely to spread to remaining stock.

32.8. TYPES OF POLICIES

32.8.1. SPECIFIC VOYAGE POLICY

A voyage policy covering the risks that may arise during a journey from one specific place to another. The duration clause inherent in the Institute Cargo Clauses provide warehouse to warehouse cover with an outer limit of 60 days in case of sea shipment / 30 days in any case of air shipment from date of discharge at the port of destination.

32.8.2. OPEN COVER

Open Cover is not an insurance policy, but an agreement under which the insurance company would honour and accept declarations of shipments of cargoes and issue stamped specific certificate of insurance against each declaration. The open cover is designed to avoid the inconvenience of negotiating the insured’s consent for each transaction. The open cover agreement generally specifies limitation clause Per Bottom, Per Place clauses etc. restricting the liability of the insurance company to a specific amount. Per Bottom Clause places a limit on the value of goods to be carried in one carrier and Per Place clause on the value of goods at a particular place.

The insured is required to declare each and every shipment. The insurance company may hold an open cover null and void if insured does not willfully report shipments.

32.8.3. OPEN POLICY
Open Policy (Floating Policy) is a stamped enforceable contract of insurance for an agreed amount, against which a series of consignments may be despatched and declared. The sum insured will gradually diminish by the amount of declaration until it is exhausted.

32.9. FILING CLAIMS

In case of an export transaction, the claim is to be filed by the exporter when the ownership of goods has not passed to the overseas buyer e.g. FOB contract in case of damage at port of loading etc. The terms of the contract and more specifically the INCOTERM used will determine the point at which the risk is transferred to the buyer. The overseas buyer will make the claim in other cases. The same principle would appropriately apply in case of an import transaction. The claim is to be filed at the office of insurance company (generally in exports) or their agent (generally in imports) without any delay. It is the duty of the insured to take reasonable measures to avert or minimise the loss/further loss. The rights of the insurance company to claim recovery from carriers, port authorities etc. are to be protected by the insured. Hence in case of loss/damage etc. the insured must lodge a proper monetary claim with carriers, port authorities and other intermediaries. In case of any missing package, a log entry is to be made with port authority and on its subsequent tracing, clearance is to be made only after a joint survey. The joint survey by agents of the carriers, port authority, custom authority and the insurer is also to be arranged within 3 days (7 days for air consignment) of discharge from vessel where loss or damage is apparent / visible.

Procedure and Documentation when a loss arises

a. In the event of loss or damage to the goods giving rise to a claim under/or their agents must give immediate notice of loss to the insurance company and/or their agents mentioned in the policy giving the details of loss.

b. It is a condition of the policy of insurance that insured and/or their agents should act as if uninsured and take such measures as may be reasonable for the purpose of averting or minimising the loss or damage to the goods by an insured peril. Insured or his agents must also ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised.

c. While taking delivery of the goods from the carriers and/or bailees, if the packages show any outward sign of loss or damage, insured and/or their agents must call for a detailed survey by ship surveyors on such packages and also lodge a proper monetary claim on the shipping company for loss or damage found in the packages.

d. If the ship survey is time-barred, the insured and/or the agents must call for an insurance survey on such packages before effecting
delivery. If the packages are found in apparent sound condition but on unpacking if any loss or damage is found, insured and/or their agents must inform immediately the Insurance Company and obtain an insurance survey. Insured should keep the goods as well as the contents with its packing materials intact for inspection by the surveyors for proper assessment of loss or damage.

e. In case of packages which are found to be missing, insured must lodge a proper monetary claim for full value of the missing packages with the shipping company and also with the bailees and obtain a proper acknowledgement from them.

f. In terms of carriage of Goods by Sea Act, 1925 as amended upto 1993 the time limit for filing suit against the shipping companies is one year from the date of discharge. The following documents are required by insurers to finalise the claim promptly:
   1. Original Insurance Policy
   2. Original invoice and packing list
   3. Copy of bill of lading
   4. Survey report/shortland/non-delivery/landed but missing certificate
   5. Copies of correspondence exchanged with the carriers or bailees

The claim is to be filed immediately on discovery/notification of loss. The claims should be supported by following documents:

i) Original insurance policy or certificate of insurance duly endorsed by insured.

ii) Full set of Bill of Lading in case of total loss. Non negotiable copy in other cases.

iii) Copy of invoice with packing / weight list.

iv) Insurance Survey Report or other documentary evidence to substantiate cause and extent of loss.

v) Joint Ship Survey / Discrepancy Certificate, issued by the carriers

vi) Port authority landing certificate

vii) Causal Report when vessel is missing or lost

viii) Ship Master’s Protest or an authenticated copy of extract from ship’s log book in case vessel encountered heavy weather or other casualty during the voyage.

ix) In case of short landing claims, a short landing certificate issued by the carrier or Port authority.

x) A landed but Missing Certificate from port authority in case where package has landed but is missing.

xi) Triplicate copy of Bill of Entry (in case of import into India).

xii) Copies of letters lodging claims on the carrier, port authority etc.
xiii) Letter of subrogation duly stamped and signed.
xiv) Any other document as may be asked by the insurance company.

32.9.1. LIMITATION

No suit can be filed by the insured against the insurer after a lapse of three years from:

i) the date of occurrence of the loss or,

ii) the date when the claim is repudiated either partly or wholly.

If the claim is not settled for three years, it becomes time barred under Law. The claimant would have to file suit within three years to keep their claim rights open. The claim would also remain open if the insurers belatedly repudiate the claim.

Memorandum of Exchange Control Regulations relating to general insurance in India are summarized as under:

32.10. CURRENCY

i) Marine Insurance policies on coastal shipments may be issued only in Indian Rupees

ii) Marine Insurances policies on shipments between India and other countries as also between two points outside India may be issued in Rupees or in any foreign currencies.

32.11. PREMIUM

32.11.1. Premium on Marine policies covering exports

Payment of premium on a marine insurance policy on exports from India may be accepted in rupees provided exporter furnishes to the insurer a certificate to the effect either (a) that insurance charges on the shipment in question have to be borne by him in terms of contract with overseas buyer and that he is not making the payment on behalf of any non-resident or (b) that he is defraying insurance charges on the shipment in question on account of overseas buyer of the goods and he undertakes to add the amount on the invoice and recover the payment so made from the buyer in an approved manner.

NOTES:

A. Overseas buyers may sometimes approach Insurers directly or through their overseas offices/agents for extension of cover for additional risks or for extended transits risks necessitated by circumstances not envisaged when the marine insurance was originally covered in India with the Insurers. Such extensions may be made by Insurers provided the additional premiums are collected from overseas buyers in foreign currency.
B. Certain countries operate restrictions requiring importers in their countries to obtain marine insurance cover from local insurers, settlement under which may not be possible in the event of cargo getting lost before reaching port of destination due to Exchange Control regulations governing remittances against imports into those countries. Insurers may issue in such cases contingency marine insurance policies to exporters to protect their interest till goods are paid for. The policies should be issued with a condition that they will not be assignable to overseas buyer or any other non-resident party. Claims on such policies should be paid only to exporters in India.

32.11.2. Premium on Marine Policies covering Imports

(i) Payment of premium on a marine insurance policy on imports into India may be accepted in rupees provided importer furnishes to the insurer a certificate to the effect that (a) the insurance charges are required to be borne by him in terms of the contract with the overseas seller and (b) where the import is made against an Import Licence, he undertakes to ensure that the amount of insurance premium is endorsed on the import licence in due course.

(ii) In case of imports by the public sector (viz. Central Government, any State Government, Statutory or public bodies and Government undertakings), payment of insurance premium in rupees may be freely accepted.

(iii) In all other cases, where payment of premium in respect of imports is offered in Rupees, prior approval of Reserve Bank will be required. Applications for the purpose should be made by letter (in duplicate) furnishing full particulars.

32.11.3. Premium on Marine Policies covering Shipments between countries outside India

(i) Premiums on marine insurance policies covering shipments between countries outside India must ordinarily be received in foreign currency, but payment in rupees may be accepted provided a certificate from an authorised dealer in foreign exchange is produced to show that the rupees are derived by a remittance from abroad in an approved manner.

NOTE: Overseas offices of the Insurers may grant marine insurance cover for trade between China and third countries and receive premium/settle claims through foreign currency accounts maintained by their overseas offices without prior approval of Reserve Bank.
Sometimes, firms and companies in India finance merchanting trade i.e. goods shipped from one foreign country to another and financed by an intermediary in India. In some of these cases goods may be purchased on f.o.b./c.&f. terms and /or sold on c.i.f. terms, the marine insurance cover being arranged by the intermediary in India. Insurance companies registered with IRDA may issue policies covering transit risks between the loading and the destination ports in Rupees or in any foreign currency in such cases, against payment of premium in Rupees by the intermediary, after satisfying themselves that the contract provides for marine insurance being taken by the intermediary.

32.12. CLAIMS AGAINST MARINE POLICIES

Claims against marine insurance policies, when payable to persons, firms or companies in India should be paid only in Rupees, irrespective of the currency in which relative policies had been issued. Where claimant is not a resident, of India, Insurers may settle the claim out of foreign currency balances held by them, provided they are satisfied that ownership of the goods lost, damaged etc., vests in such claimant and that the latter is not making the claim merely as agent of the real owner of the goods in India.

32.12.1. Remittance of Claims on Exports

In the case of marine claims against exports, remittances of claim will be permitted by authorised dealers in foreign exchange on application on form A2 provided the Insurer has satisfied himself that the ownership of the goods on which claim has arisen vests in the non-resident claimant. Applications should be supported by following documents:

a. Statement of claim duly certified by an official authorised by the insurance company registered with IRDA for this purpose.
b. Insurance policy.
c. Survey report or other customary proof of loss.
d. Bill of Lading / Airway bill.
e. Certified copy of invoice.
f. Any other documents ordinarily required to support the claim.

Where original documents are not available for any reason, photo copies may be produced to authorised dealer together with reasons for non-availability of the original documents. This provision does not apply to remittances for replenishment of foreign currency balances which will require specific approval of Reserve Bank.

NOTE: i) Insurers may settle claims in rupees in favour of Indian exporters even in cases where title to the goods has passed to foreign buyer, if a request to that effect has been made by the non-resident claimant. A certificate indicating full particulars of the transaction including number of relative
GR/PP form and amount paid in settlement of claims should be issued to the exporter to enable the latter to obtain necessary approval form Reserve Bank for making replacement shipments.

iii) Claims against marine insurance policies covering exports may also be settled through the overseas claims settling agents, if so desired by insurers. Authorised dealers have been permitted to open revolving letters of credit in favour of established claims-settling agents abroad and reimburse claims under the credit on verification of the necessary documentary evidence viz. statement of claim, survey report or other documentary evidence of loss/damage, original policy or certificate of insurance etc.

32.12.2. Payments in Foreign Currency of certain Import claims

Although it is a basic rule that marine claims on imports should be settled locally in Rupees in favour of importer in cases where ownership of the goods lost, damaged, etc. vests in the importer, Insurers may settle claims from their foreign currency balances in favour of overseas suppliers in the following categories of imports, in order to facilitate early replacement of the lost, damaged etc. goods, on request being received in this regard from importers:

a. Imports by Government Departments and public sector undertakings
b. Imports by private sector undertakings against foreign credits provided the terms of the foreign credit require that insurance cover should be taken in foreign currency for replacement of lost/damaged goods.
c. In all other cases, where the ownership of the goods lost/damaged, etc. vests with the overseas supplier and no payment has been made towards any part of the cost of the goods.

These provisions are applicable not only to marine policies, but also to marine-cum-erection policies, whether issued separately or combined.

32.12.3. Claims on Policies Covering Merchanting Trade

Claims arising from marine insurance policies covering merchanting trade financed through India may be settled by Insurers from their foreign currency balances only if -

a. the ownership of the goods vests with the overseas party and
b. where the claim is proposed to be settled in favour of the overseas supplier, payment for the goods has not been made to the supplier and where claim is proposed to be settled in favour of the overseas buyer, payment for the goods has been received by the Indian intermediary from the buyer.