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MARINE INSURANCE ACT 1906

[As in force 11/08/16]

An Act to codify the Law relating to Marine Insurance

Marine Insurance

S. 1 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.

S. 2 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 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 by this Act defined.

S. 3 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 moveables are exposed to maritime perils. Such property is in this Act referred to 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.

"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 detainments 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

S. 4 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 is 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.

S. 5 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 a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or damage thereto, or by the detention thereof, or may incur liability in respect thereof.

S. 6 When interest must attach

(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.

S. 7 Defeasible or contingent interest

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

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

S. 8 Partial interest

A partial interest of any nature is insurable.

S. 9 Re-insurance

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

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

S. 10 Bottomry

The lender of money on bottomry or respondentia has an insurable interest in respect of the loan.

S. 11 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.

S. 12 Advance freight

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

S. 13 Charges of insurance

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

S. 14 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.

S. 15 Assignment of interest

Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect. But the provisions of this section do not affect a transmission of interest by operation of law.

Insurable Value

S. 16 Measure of insurable value

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

(1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:

The insurable value, in the case of a 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:

(2) 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:

(3) 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:

(4) 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

S. 17 Insurance is uberrimae fidei

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

S. 18 Disclosure by assured

(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is 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 judgment 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. The insurer is presumed to know matters of common notoriety or knowledge, and 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 it is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact.

(5) The term "circumstance" includes any communication made to, or information received by, the assured.

S. 19 Disclosure by agent effecting insurance

Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer--

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

(b) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent.

S. 20 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, must be true. If it be untrue the insurer may avoid the contract.

(2) A representation is material which would influence the judgment 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 be 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 be made in good faith.

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

(7) Whether a particular representation be material or not is, in each case, a question of fact.

S. 21 When contract is deemed to be concluded

A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and, for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, . . .

ANNOTATIONS:

Words omitted repealed by the Finance Act 1959, s 37(5), Sch 8, Part II, and the Finance Act (Northern Ireland) 1959, s 17(2), Sch 3, Part II.

The Policy

S. 22 Contract must be embodied in policy

Subject to the provisions of any statute, a contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

S. 23 What policy must specify

A marine policy must specify--

(1) The name of the assured, or of some person who effects the insurance on his behalf:

(2)-(5) . . .

ANNOTATIONS:

Sub-ss (2)-(5): repealed by the Finance Act 1959, ss 30(5), (7), 37(5), Sch 8, Part II, and the Finance Act (Northern Ireland) 1959, ss 5(5), (7), 17(2), Sch 3, Part II.

S. 24 Signature of insurer

(1) A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

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

S. 25 Voyage and time policies

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

(2) . . .

ANNOTATIONS:

Sub-s (2): repealed by the Finance Act 1959, ss 30(5), (7), 37(5), Sch 8, Part II, and the Finance Act (Northern Ireland) 1959, ss 5(5), (7), 17(2), Sch 3, Part II.

S. 26 Designation of subject-matter

(1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

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

S. 27 Valued policy

(1) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) 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 be total or partial.

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

S. 28 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 herein-before specified.

S. 29 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 indorsement on the policy, or in other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an 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 must be treated as an unvalued policy as regards the subject-matter of that declaration.

S. 30 Construction of terms in policy

(1) A policy may be in the form in the First Schedule to this Act.

(2) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the First Schedule to this Act shall be construed as having the scope and meaning in that schedule assigned to them.

S. 31 Premium to be arranged

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

Double Insurance

S. 32 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 is not 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 must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;

(c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;

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

Warranties, etc

S. 33 Nature of warranty

(1) A warranty, in the following sections relating to warranties, 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 may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

S. 34 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 assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

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

S. 35 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 must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.

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

S. 36 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.

S. 37 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.

S. 38 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.

S. 39 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 purposes 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.

S. 40 No implied warranty that goods are seaworthy

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

(2) In a voyage policy on goods or other moveables 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 moveables to the destination contemplated by the policy.

S. 41 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

S. 42 Implied condition as to commencement of risk

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

(2) The implied condition may be negated 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.

S. 43 Alteration of port of departure

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

S. 44 Sailing for different destination

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

S. 45 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.

S. 46 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; there must be a deviation in fact to discharge the insurer from his liability under the contract.

S. 47 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 must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation.

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

S. 48 Delay in voyage

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

S. 49 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 barratrous conduct of the master or crew, if barratry be one of the perils insured against.

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

Assignment of Policy

S. 50 When and how policy is assignable

(1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It 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 is entitled to sue thereon in his own name; and the defendant is 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.

S. 51 Assured who has no interest cannot assign

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 is inoperative:

Provided that nothing in this section affects the assignment of a policy after loss.

The Premium

S. 52 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 is not bound to issue the policy until payment or tender of the premium.

S. 53 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.

S. 54 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 acknowledgment 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

S. 55 Included and excluded losses

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

(2) In particular,--

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

(b) Unless the policy otherwise provides, the insurer on ship or goods is not 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 is not 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.

S. 56 Partial and total loss

(1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.

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

(3) 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.

(4) 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.

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

S. 57 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.

S. 58 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.

S. 59 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 moveables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

S. 60 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 unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred.

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

(i) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (a) it is unlikely that he can recover the ship or goods, as the case may be, or (b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

(ii) 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.

In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(iii) 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.

S. 61 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.

S. 62 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 must give notice of abandonment. If he fails to do so the loss can only 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 must 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 are not 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. The mere silence of the insurer after notice is not an acceptance.

(6) Where a notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

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

(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.

S. 63 Effect of abandonment

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

(2) Upon the abandonment of a ship, the insurer thereof is 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 is 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)

S. 64 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. Particular charges are not included in particular average.

S. 65 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) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

S. 66 General average loss

(1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

(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 a 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 is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connexion 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 is to be determined as if those subjects were owned by different persons.

Measure of Indemnity

S. 67 Extent of liability of insurer for loss

(1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is 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.

S. 68 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,--

(1) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy:

(2) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

S. 69 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, is as follows:-

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty:

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to 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:

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

S. 70 Partial loss of freight

Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of 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.

S. 71 Partial loss of goods, merchandise, etc

Where there is a partial loss of goods, merchandise, or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows:-

(1) Where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity is 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:

(2) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss:

(3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is 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:

(4) "Gross value" means the wholesale price or, if there be 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 is 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.

S. 72 Apportionment of valuation

(1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

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

S. 73 General average contributions 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; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must 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 must 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 must be determined on the like principle.

S. 74 Liabilities to 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.

S. 75 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 the provisions of 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.

S. 76 Particular average warranties

(1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice unless the contract contained in the policy be apportionable; but, if the contract be 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 is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(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 cannot 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. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

S. 77 Successive losses

(1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is 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 can only recover in respect of the total loss:

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

S. 78 Suing and labouring clause

(1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is 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, are not recoverable under the suing and labouring clause.

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

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

Rights of Insurer on Payment

S. 79 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 thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby 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 acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon 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.

S. 80 Right of contribution

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

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

S. 81 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 is deemed to be his own insurer in respect of the uninsured balance.

Return of Premium

S. 82 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.

S. 83 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, is thereupon returnable to the assured.

S. 84 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 is thereupon returnable 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 is, under the like conditions, thereupon returnable to the assured.

(3) In particular--

(a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is 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 is not 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, is 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 is not 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 is returnable, provided that this rule does not 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 is not returnable;

(e) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

(f) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is 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 is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

Mutual Insurance

S. 85 Modification of Act 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 provisions of this Act relating to the premium do 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

S. 86 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.

S. 87 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 be such as to bind both parties to the contract.
- (2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

S. 88 Reasonable time, etc. a question of fact

Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact.

S. 89 Slip as evidence

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

S. 90 Interpretation of terms

In this Act, unless the context or subject-matter otherwise requires,-

"Action" includes counter-claim and set off:

"Freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money:

"Moveables" means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents:

"Policy" means a marine policy.

S. 91 Savings

- (1) Nothing in this Act, or in any repeal effected thereby, shall affect--
 - (a) The provisions of the Stamp Act 1891, or any enactment for the time being in force relating to the revenue;
 - (b) The provisions of the Companies Act 1862, or any enactment amending or substituted for the same;
 - (c) The provisions of any statute not expressly repealed by this Act.
- (2) The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

S. 94 Short title

This Act may be cited as the Marine Insurance Act 1906.

Schedule 1 (s 30)

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, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the whereof is master under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship.

upon the said ship, etc.

and so shall continue and endure, during her abode there, upon the said ship, etc.

And further, until the said ship, with all her ordnance, 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 contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

IN WITNESS whereof we, the assurers, have subscribed our names and sums assured in London.

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

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require:--

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.

(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 moveables are insured "from the loading thereof," the risk does not attach until such goods or moveables 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 moveables continues until they are "safely landed," they must 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 license 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 rioters who attack the ship from the shore.

9 The term "thieves" does not cover clandestine theft or a theft committed by any one 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 specifically 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 moveables, as well as freight payable by a third party, but 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 must be insured specifically, and not under the general denomination of goods.

MARINE INSURANCE (GAMBLING POLICIES) ACT 1909

An Act to prohibit Gambling on Loss by Maritime Perils.

s 1 Prohibition of gambling on loss by maritime perils.

(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 shall be liable, on summary conviction, to imprisonment, [...] [FN1] for a term not exceeding six months or to a fine not exceeding [level 3 on the standard scale] [FN2], and in either case to forfeit to the Crown any money he may receive 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 Act.

(3) Proceedings under this Act shall not be instituted without the consent in England of the Attorney-General, in Scotland of the Lord Advocate, and in Ireland of the [Attorney-General for Northern Ireland] [FN3].

(4) Proceedings shall not be instituted under this Act 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 Act.

(5) If proceedings under this Act 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 Act, 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 Act, may appeal to [the Crown Court] [FN4].

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

(9) Subsection (7) of this section shall not apply to Scotland.

Reference to Ireland to be construed as exclusive of Republic of Ireland: S.R. & O. 1923/405 (Rev. X, p. 298; 1923, p. 400), art. 2

[FN1] Words omitted by virtue (England, Wales) of Criminal Justice Act 1948 (c. 58), s. 1(2) and (Scotland) Criminal Procedure (Scotland) Act 1975 (c. 21), s. 221(2)

[FN2] Words substituted by (England, Wales) Criminal Justice Act 1982 (c.48), ss. 38, 46 and (Scotland) Criminal Procedure (Scotland) Act 1975 (c.21), ss. 289F, 289G

[FN3] Words substituted by S.R. & O. 1921/1802 (Rev. XVI, p. 954; 1921, p. 1332), art. 2(2)

s 2 Short title.

This Act may be cited as the Marine Insurance (Gambling Policies) Act 1909 and the Marine Insurance Act 1906, and this Act may be cited together as the Marine Insurance Acts 1906 and 1909.

THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 1930

An Act to confer on third parties rights against insurers of third-party risks in the event of the insured becoming insolvent, and in certain other events.

s 1 Rights of third parties against insurers on bankruptcy &c. of the insured.

(1) Where under any contract of insurance a person (hereinafter referred to as the insured) is insured against liabilities to third parties which he may incur, then--

(a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or
(b) in the case of the insured being a company, in the event of a winding-up order [or an administration order] [FN1] being made, or a resolution for a voluntary winding-up being passed, with respect to the company, or of a receiver or manager of the company's business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge [or of] [FN2] [a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 being approved under that Part:] [FN3];

if, either before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where [the estate of any person falls to be administered in accordance with an order under] [FN4] [section 421 of the Insolvency Act 1986] [FN5] , then, if any debt provable in bankruptcy [(in Scotland, any claim accepted in the sequestration)] [FN6] is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor's rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in [any such order] [FN7], be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance made after the commencement of this Act in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1) of this section or upon the [estate of any person falling to be administered in accordance with an order under [section 421 of the Insolvency Act 1986] [FN8]] [FN9] making of an order under section one hundred and thirty of the Bankruptcy Act 1914, in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or subsection (2) of this section, the insurer shall, subject to the provisions of section three of this Act, be under the same liability to the third party as he would have been under to the insured, but--

(a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this Act shall affect the rights of the insured against the insurer in respect of the excess; and
(b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this Act shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this Act, the expression "liabilities to third parties," in relation to a person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This Act shall not apply--

(a) where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company; or
(b) to any case to which subsections (1) and (2) of section seven of the Workmen's Compensation Act 1925, applies.

[FN1] Words added by Insolvency Act 1985, s.235(1), Sch.8 para.7(2)(a)

[FN2] Words substituted by Insolvency Act 1985, s.235(1), Sch.8 para.7(2)(a)

[FN3] Words substituted by Insolvency Act 1986, s.439(2), Sch.14

[FN4] Words substituted by Insolvency Act 1985, s.235(1), Sch. 8 para.7(2)(a)

[FN5] Words substituted by Insolvency Act 1986, 439(2), Sch. 14

[FN6] Words inserted (S.) by Bankruptcy (Scotland) Act 1985, s.75(1), Sch.7 para.6(1)

[FN7] Words substituted by Insolvency Act 1985, s.235(1), Sch.8 para.7(2)(b)

[FN8] Words substituted by Insolvency Act 1986, s.439(2), Sch. 14

[FN9] Words substituted by Insolvency Act 1985, s.235(1), Sch.8 para.7(2)(c)

s 2 Duty to give necessary information to third parties.

(1) In the event of any person becoming bankrupt or making a composition or arrangement with his creditors, or in the event of [the estate of any person falling to be administered in accordance with an order under] [FN1] [section 421 of the Insolvency Act 1986] [FN2], or in the event of a winding-up order [or an administration order] [FN3] being made, or a resolution for a voluntary winding-up being passed, with respect to any company or of a receiver or manager of the company's business or undertaking being duly appointed or of possession being taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the charge it shall be the duty of the bankrupt, debtor, personal representative of the deceased debtor or

company, and, as the case may be, of the trustee in bankruptcy, trustee, liquidator, [administrator,] [FN4] receiver, or manager, or person in possession of the property to give at the request of any person claiming that the bankrupt, debtor, deceased debtor, or company is under a liability to him such information as may reasonably be required by him for the purpose of ascertaining whether any rights have been transferred to and vested in him by this Act and for the purpose of enforcing such rights, if any, and any contract of insurance, in so far as it purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the giving of any such information in the events aforesaid or otherwise to prohibit or prevent the giving thereof in the said events shall be of no effect.

[(1A) The reference in subsection (1) of this section to a trustee includes a reference to the supervisor of a [voluntary arrangement proposed for the purposes of, and approved under, Part I or Part VIII of the Insolvency Act 1986[...]] [FN5] [FN6] [FN7]

(2) If the information given to any person in pursuance of subsection (1) of this section discloses reasonable ground for supposing that there have or may have been transferred to him under this Act rights against any particular insurer, that insurer shall be subject to the same duty as is imposed by the said subsection on the persons therein mentioned.

(3) The duty to give information imposed by this section shall include a duty to allow all contracts of insurance, receipts for premiums, and other relevant documents in the possession or power of the person on whom the duty is so imposed to be inspected and copies thereof to be taken.

[FN1] Words added by Insolvency Act 1985, s.235(1), Sch.8 para.7(3)(a)

[FN2] Words substituted by Insolvency Act 1986, s.439(2), Sch.14

[FN3] Words added by Insolvency Act 1985, s.235(1), Sch.8 para.7(3)(a)

[FN4] Word added by Insolvency Act 1985, s.235(1), Sch.8 para.7(3)(a)

[FN5] Words substituted by Insolvency Act 1986, s.439(2), Sch.14

[FN6] Words added by Insolvency Act 1985, s.235(1), Sch.8 para.7(3)(b)

[FN7] S. 2(1A) added by Insolvency Act (c. 65), s. 235(1), Sch. 8 para. 7(3)(b)

s 3 Settlement between insurers and insured persons.

Where the insured has become bankrupt or where in the case of the insured being a company, a winding-up order [or an administration order] [FN1] has been made or a resolution for a voluntary winding-up has been passed, with respect to the company, no agreement made between the insurer and the insured after liability has been incurred to a third party and after the commencement of the bankruptcy or winding-up [or the day of the making of the administration order] [FN2], as the case may be, nor any waiver, assignment, or other disposition made by, or payment made to the insured after the commencement [or day] [FN3] aforesaid shall be effective to defeat or affect the rights transferred to the third party under this Act, but those rights shall be the same as if no such agreement, waiver, assignment, disposition or payment had been made.

[FN1] Words added by Insolvency Act 1985, s.235(1), Sch.8 para.7(4)

[FN2] Words added by Insolvency Act 1985, s.235(1), Sch.8 para.7(4)

[FN3] Words added by Insolvency Act , s.235(1), Sch.8 para.7(4)

s 4 Application to Scotland.

In the application of this Act to Scotland--

(a) [...] [FN1]

(b) any reference to [an estate falling to be administered in accordance with an order under] [FN2] [section 421 of the Insolvency Act 1986] [FN3], shall be deemed to include a reference to an award of sequestration of the estate of a deceased debtor, and a reference to an appointment of a judicial factor, under [section 11A of the Judicial Factors (Scotland) Act 1889] [FN4], on the insolvent estate of a deceased person.

[FN1] Repealed (S.) by Bankruptcy (Scotland) Act 1985, s.75(1)(2), Sch.7 para. 6(2)(a), Sch.8

[FN2] Words added by Insolvency Act 1985, s.235(1), Sch.8 para.7(5)

[FN3] Words added by Insolvency Act 1986, s.439(2), Sch.14

[FN4] Words substituted (S.) by Bankruptcy (Scotland) Act 1985, s.75(1), Sch.7 para.6(2)(b)

s 5 Short title.

This Act may be cited as the Third Parties (Rights against Insurers) Act 1930.

GAMBLING ACT 2005

...

335 Enforceability of gambling contracts

(1) The fact that a contract relates to gambling shall not prevent its enforcement.

(2) Subsection (1) is without prejudice to any rule of law preventing the enforcement of a contract on the grounds of unlawfulness (other than a rule relating specifically to gambling).

...

THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 2010

An Act to make provision about the rights of third parties against insurers of liabilities to third parties in the case where the insured is insolvent, and in certain other cases.

Transfer of rights to third parties

1 Rights against insurer of insolvent person etc

(1) This section applies if—

- (a) a relevant person incurs a liability against which that person is insured under a contract of insurance, or
- (b) a person who is subject to such a liability becomes a relevant person.

(2) The rights of the relevant person under the contract against the insurer in respect of the liability are transferred to and vest in the person to whom the liability is or was incurred (the “third party”).

(3) The third party may bring proceedings to enforce the rights against the insurer without having established the relevant person's liability; but the third party may not enforce those rights without having established that liability.

(4) For the purposes of this Act, a liability is established only if its existence and amount are established; and, for that purpose, “establish” means establish—

- (a) by virtue of a declaration under section 2 or a declarator under section 3,
- (b) by a judgment or decree,
- (c) by an award in arbitral proceedings or by an arbitration, or
- (d) by an enforceable agreement.

(5) In this Act—

- (a) references to an “insured” are to a person who incurs or who is subject to a liability to a third party against which that person is insured under a contract of insurance;
- (b) references to a “relevant person” are to a person within sections 4 to 7 [(and see also paragraph 1A of Schedule 3)]**1**;
- (c) references to a “third party” are to be construed in accordance with subsection (2);
- (d) references to “transferred rights” are to rights under a contract of insurance which are transferred under this section.

1 Words inserted by Insurance Act 2015 c. 4 Sch.2 para.4 (August 1, 2016 being the day on which 2010 c.10 comes fully into force)

2 Establishing liability in England and Wales and Northern Ireland

(1) This section applies where a person (P)—

- (a) claims to have rights under a contract of insurance by virtue of a transfer under section 1, but

(b) has not yet established the insured's liability which is insured under that contract.

(2) P may bring proceedings against the insurer for either or both of the following—

- (a) a declaration as to the insured's liability to P;
- (b) a declaration as to the insurer's potential liability to P.

(3) In such proceedings P is entitled, subject to any defence on which the insurer may rely, to a declaration under subsection (2)(a) or (b) on proof of the insured's liability to P or (as the case may be) the insurer's potential liability to P.

(4) Where proceedings are brought under subsection (2)(a) the insurer may rely on any defence on which the insured could rely if those proceedings were proceedings brought against the insured in respect of the insured's liability to P.

(5) Subsection (4) is subject to section 12(1).

(6) Where the court makes a declaration under this section, the effect of which is that the insurer is liable to P, the court may give the appropriate judgment against the insurer.

(7) Where a person applying for a declaration under subsection (2)(b) is entitled or required, by virtue of the contract of insurance, to do so in arbitral proceedings, that person may also apply in the same proceedings for a declaration under subsection (2)(a).

(8) In the application of this section to arbitral proceedings, subsection (6) is to be read as if “tribunal” were substituted for “court” and “make the appropriate award” for “give the appropriate judgment”.

(9) When bringing proceedings under subsection (2)(a), P may also make the insured a defendant to those proceedings.

(10) If (but only if) the insured is a defendant to proceedings under this section (whether by virtue of subsection (9) or otherwise), a declaration under subsection (2) binds the insured as well as the insurer.

(11) In this section, references to the insurer's potential liability to P are references to the insurer's liability in respect of the insured's liability to P, if established.

3 Establishing liability in Scotland

(1) This section applies where a person (P)—

- (a) claims to have rights under a contract of insurance by virtue of a transfer under section 1, but

(b) has not yet established the insured's liability which is insured under that contract.

(2) P may bring proceedings against the insurer for either or both of the following—

- (a) a declarator as to the insured's liability to P;

(b) a declarator as to the insurer's potential liability to P.

(3) Where proceedings are brought under subsection (2)(a) the insurer may rely on any defence on which the insured could rely if those proceedings were proceedings brought against the insured in respect of the insured's liability to P.

(4) Subsection (3) is subject to section 12(1).

(5) Where the court grants a declarator under this section, the effect of which is that the insurer is liable to P, the court may grant the appropriate decree against the insurer.

(6) Where a person applying for a declarator under subsection (2)(b) is entitled or required, by virtue of the contract of insurance, to do so in an arbitration, that person may also apply in the same arbitration for a declarator under subsection (2)(a).

(7) In the application of this section to an arbitration, subsection (5) is to be read as if "tribunal" were substituted for "court" and "make the appropriate award" for "grant the appropriate decree".

(8) When bringing proceedings under subsection (2)(a), P may also make the insured a defender to those proceedings.

(9) If (but only if) the insured is a defender to proceedings under this section (whether by virtue of subsection (8) or otherwise), a declarator under subsection (2) binds the insured as well as the insurer.

(10) In this section, the reference to the insurer's potential liability to P is a reference to the insurer's liability in respect of the insured's liability to P, if established.

Relevant persons

4 Individuals

(1) An individual is a relevant person if any of the following is in force in respect of that individual in England and Wales—

(a) [...]1

(b) an administration order made under Part 6 of the County Courts Act 1984,

(c) an enforcement restriction order made under Part 6A of that Act,

(d) subject to subsection (4), a debt relief order made under Part 7A of the Insolvency Act 1986,

(e) a voluntary arrangement approved in accordance with Part 8 of that Act, or

(f) a bankruptcy order made under Part 9 of that Act.

(2) An individual is a relevant person if [either] 2 of the following is in force in respect of [the individual's estate] 3 in Scotland—

(a) an award of sequestration made [by virtue of section 2 or 5 of the Bankruptcy (Scotland) Act 2016] 4 , [or] 5

(b) a protected trust deed within the meaning of that Act [.] 6

(c) [...]6

(3) An individual is a relevant person if any of the following is in force in respect of that individual in Northern Ireland—

(a) an administration order made under Part 6 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)),

(b) a deed of arrangement registered in accordance with Chapter 1 of Part 8 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

[(ba) subject to subsection (4), a debt relief order made under Part 7A of that Order,] 7

(c) a voluntary arrangement approved under Chapter 2 of Part 8 of that Order, or

(d) a bankruptcy order made under Part 9 of that Order.

(4) If an individual is a relevant person by virtue of subsection (1)(d) [or (3)(ba)] 8 , that person is a relevant person for the purposes of section 1(1)(b) only.

(5) Where an award of sequestration made [by virtue of section 2 or 5 of the Bankruptcy (Scotland) Act 2016] 9 is recalled or reduced, any rights which were transferred under section 1 as a result of that award are re-transferred to and vest in the person who became a relevant person as a result of the award.

(6) [...]10

Notes

1 Repealed by Deregulation Act 2015 c. 20 Sch.6(1) para.2(22) (August 1, 2016: repeal came into force as SI 2015/1572 subject to 2015 c.20 Sch.6 para.3 on October 1, 2015 but cannot take effect until the commencement of 2010 c. 10 s.4(1)(a) on August 1, 2016)

2 Word substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(2)(a)(i) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

3 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(2)(a)(ii) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

4 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(2)(a)(iii) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

5 Word inserted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(2)(a)(iv) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

6 Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(2)(a)(v) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

7 Added by Insurance Act 2015 c. 4 Sch.2 para.2(2) (August 1, 2016: insertion came into force in relation to the insured persons to whom 2010 c.10 applies on March 25, 2010 but cannot take effect until the commencement of 2010 c.10 s.4(3) on August 1, 2016)

8 Words inserted by Insurance Act 2015 c. 4 Sch.2 para.2(3) (August 1, 2016: insertion came into force in relation to the insured persons to whom 2010 c.10 applies on March 25, 2010 but cannot take effect until the commencement of 2010 c.10 s.4(4) on August 1, 2016)

9 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(2)(b) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

10 Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(2)(c) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

5 Individuals who die insolvent

(1) An individual who dies insolvent is a relevant person for the purposes of section 1(1)(b) only.

(2) For the purposes of this section an individual (D) is to be regarded as having died insolvent if, following D's death—

(a) D's estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986 or Article 365 of the Insolvency (Northern Ireland) Order 1989 (S.I.

1989/2405 (N. I. 19)),

(b) an award of sequestration is made [by virtue of section 2 or 5 of the Bankruptcy (Scotland) Act 2016] **1** in respect of D's estate and the award is not recalled or reduced, or

(c) a judicial factor is appointed under section 11A of the Judicial Factors (Scotland) Act 1889 in respect of D's estate and the judicial factor certifies that the estate is absolutely insolvent within the meaning of the [Bankruptcy (Scotland) Act 2016]**2** .

(3) Where a transfer of rights under section 1 takes place as a result of an insured person being a relevant person by virtue of this section, references in this Act to an insured are, where the context so requires, to be read as references to the insured's estate.

Notes

1 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(3)(a) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

2 Word substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(3)(b) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

6 Corporate bodies etc

(1) A body corporate or unincorporated body is a relevant person if a compromise or arrangement between the body and its creditors (or a class of them) is in force, having been sanctioned in accordance with section 899 of the Companies Act 2006**2**.**1**

(2) A body corporate or an unincorporated body is a relevant person if, in England and Wales or Scotland—

(a) a voluntary arrangement approved in accordance with Part 1 of the Insolvency Act 1986 is in force in respect of it,

[(b) the body is in administration under Schedule B1 to that Act,]**3**

(c) there is a person appointed in accordance with Part 3 of that Act who is acting as receiver or manager of the body's property (or there would be such a person so acting but for a temporary vacancy),

(d) the body is, or is being, wound up voluntarily in accordance with Chapter 2 of Part 4 of that Act,

(e) there is a person appointed under section 135 of that Act who is acting as provisional liquidator in respect of the body (or there would be such a person so acting but for a temporary vacancy), or

(f) the body is, or is being, wound up by the court following the making of a winding-up order under Chapter 6 of Part 4 of that Act or Part 5 of that Act.

(3) A body corporate or an unincorporated body is a relevant person if, in Scotland—

(a) an award of sequestration has been made [by virtue of section 6 of the Bankruptcy (Scotland) Act 2016] **4** in respect of the body's estate, and the body has not been discharged under that Act,

(b) the body has been dissolved and an award of sequestration has been made [by virtue of]**5** that section in respect of its estate, [or]**6**

(c) a protected trust deed within the meaning of the [Bankruptcy (Scotland) Act 2016]**7** is in force in respect of the body's estate [.]**8**

(d) [...] **8**

(4) A body corporate or an unincorporated body is a relevant person if, in Northern Ireland—

(a) a voluntary arrangement approved in accordance with Part 2 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N. I. 19)) is in force in respect of the body,

[(b) the body is in administration under Schedule B1 to that Order,]**9**

(c) there is a person appointed in accordance with Part 4 of that Order who is acting as receiver or manager of the body's property (or there would be such a person so acting but for a temporary vacancy),

(d) the body is, or is being, wound up voluntarily in accordance with Chapter 2 of Part 5 of that Order,

(e) there is a person appointed under Article 115 of that Order who is acting as provisional liquidator in respect of the body (or there would be such a person so acting but for a temporary vacancy), or

(f) the body is, or is being, wound up by the court following the making of a winding-up order under Chapter 6 of Part 5 of that Order or Part 6 of that Order.

[(4A) A body corporate or unincorporated body is a relevant person if it is in insolvency under Part 2 of the Banking Act 2009]**11** .

(4B) A body corporate or unincorporated body is a relevant person if it is in administration under relevant sectoral legislation as defined in Schedule A1.] **10**

(5) A body within [subsection (1)]**12** is not a relevant person in relation to a liability that is

transferred to another body by the order sanctioning the compromise or arrangement.

(6) Where a body is a relevant person by virtue of [subsection (1)] **12**, section 1 has effect to transfer rights only to a person on whom the compromise or arrangement is binding.

(7) Where an award of sequestration made [by virtue of section 6 of the Bankruptcy (Scotland) Act 2016] **13** is recalled or reduced, any rights which were transferred under section 1 as a result of that award are re-transferred to and vest in the person who became a relevant person as a result of the award.

(8) [...]**14**

(9) In this section—

(a) a reference to a person appointed in accordance with Part 3 of the Insolvency Act 1986 includes a reference to a person appointed under section 101 of the Law of Property Act 1925;

(b) a reference to a receiver or manager of a body's property includes a reference to a receiver or manager of part only of the property and to a receiver only of the income arising from the property or from part of it;

(c) for the purposes of subsection (3) “body corporate or unincorporated body” includes any entity, other than a trust, the estate of which may be sequestrated [by virtue of section 6 of the Bankruptcy (Scotland) Act 2016] **15** ;

(d) a reference to a person appointed in accordance with Part 4 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N. I. 19)) includes a reference to a person appointed under section 19 of the Conveyancing Act 1881.

Notes

1 Substituted by Third Parties (Rights against Insurers) Regulations 2016/570 reg.7(1)(a) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

2 2006 c.46. Section 899 applies with modifications in relation to bank insolvency or administration under the Banking Act 2009 Parts 2 and 3 by virtue of Article 3 of and the Schedule to the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009, S.I. 2009/317; to limited liability partnerships by virtue of regulation 45 of the Limited Liability Partnerships (Application of the Companies Act 2006) Regulations 2009 S.I. 2009/1804;

and to authorised banks by virtue of regulation 29 of and Part 1, paragraph 3 of Schedule 1 to the Scottish and Northern Ireland Banknote Regulations 2009 (S.I. 2009/3056)

3 Substituted by Insurance Act 2015 c. 4 Sch.2 para.3(2) (August 1, 2016: substitution came into force in relation to the insured persons to whom 2010 c.10 applies on March 25, 2010 but cannot take effect until the commencement of 2010 c.10 s.6(2)(b) on August 1, 2016)

4 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(a)(i) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

5 Word substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(a)(ii) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

6 Word inserted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(a)(iii) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

7 Word substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(a)(iv) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

8 Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(a)(v) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

9 Substituted by Insurance Act 2015 c. 4 Sch.2 para.3(3) (August 1, 2016: substitution came into force in relation to the insured persons to whom 2010 c.10 applies on March 25, 2010 but cannot take effect until the commencement of 2010 c.10 s.6(4)(b) on August 1, 2016)

10 Added by Third Parties (Rights against Insurers) Regulations 2016/570 reg.3(1) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

11 2009 c. 1. Part 2 is applied with modifications to building societies by section 90C of the Building Societies Act 1986 (c.53), with further modifications by Article 3 and Part 1 of Schedule 1 to the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805).

12 Words substituted by Third Parties (Rights against Insurers) Regulations 2016/570 reg.7(1)(b) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

13 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(b) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

14 Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(c) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

15 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(4)(d) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

[6A.— Corporate bodies etc that are dissolved

(1) A body corporate or unincorporated body is a relevant person if the body has been dissolved, subject to the exceptions in subsections (2 and (3).

(2) The body is not a relevant person by virtue of subsection (1) if, since it was dissolved (or, if it has been dissolved more than once, since it was last dissolved), something has happened which has the effect that the body is treated as not having been dissolved or as no longer being dissolved.

(3) Subsection (1) applies to a partnership only if it is a body corporate.

(4) For the purposes of this section, “dissolved” means dissolved under the law of England and Wales, Scotland or Northern Ireland (whether or not by a process referred to as dissolution).]1

Notes

1 Added by Third Parties (Rights against Insurers) Regulations 2016/570 reg.4 (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

7 Scottish trusts

(1) A trustee of a Scottish trust is, in respect of a liability of that trustee that falls to be met out of the trust estate, a relevant person if—

(a) an award of sequestration has been made [by virtue of section 6 of the Bankruptcy (Scotland) Act 2016]1 in respect of the trust estate, and the trust has not been discharged under that Act, [or]2

(b) a protected trust deed within the meaning of that Act is in force in respect of the trust estate [.]3

(c) [...]3

(2) Where an award of sequestration made [by virtue of section 6 of the Bankruptcy (Scotland) Act 2016]4 is recalled or reduced any rights which were transferred under section 1 as a result of that award are re-transferred to and vest in the person who became a relevant person as a result of the award.

(3) [...]5

(4) In this section “Scottish trust” means a trust the estate of which may be sequestrated [by virtue of section 6 of the Bankruptcy (Scotland) Act 2016]6.

Notes

1 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(5)(a)(i) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

2 Word inserted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(5)(a)(ii) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

3 Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(5)(a)(iii) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

4 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(5)(b) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

5 Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(5)(c) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

6 Words substituted by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(5)(d) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

Transferred rights: supplemental

8 Limit on rights transferred

Where the liability of an insured to a third party is less than the liability of the insurer to the insured (ignoring the effect of section 1), no rights are transferred under that section in respect of the difference.

9 Conditions affecting transferred rights

(1) This section applies where transferred rights are subject to a condition (whether under the contract of insurance from which the transferred rights are derived or otherwise) that the insured has to fulfil.

(2) Anything done by the third party which, if done by the insured, would have amounted to or contributed to fulfilment of the condition is to be treated as if done by the insured.

(3) The transferred rights are not subject to a condition requiring the insured to provide information or assistance to the insurer if that condition cannot be fulfilled because the insured is—

(a) an individual who has died, [...]1

(b) a body corporate that has been dissolved [, or] 2

[(c) an unincorporated body, other than a partnership, that has been dissolved.] 2

(4) A condition requiring the insured to provide information or assistance to the insurer does not include a condition requiring the insured to notify the insurer of the existence of a claim under the contract of insurance.

(5) The transferred rights are not subject to a condition requiring the prior discharge by the insured of the insured's liability to the third party.

(6) In the case of a contract of marine insurance, subsection (5) applies only to the extent that the liability of the insured is a liability in respect of death or personal injury.

(7) In this section—

“contract of marine insurance” has the meaning given by section 1 of the Marine Insurance

Act 1906;

(a)-(c) [...]3

“personal injury” includes any disease and any impairment of a person's physical or mental condition.

[(8) For the purposes of this section—

(a) “dissolved” means dissolved under the law of England and Wales, Scotland or Northern Ireland (whether or not by a process referred to as dissolution), and

(b) a body has been dissolved even if, since it was dissolved, something has happened which has the effect that (but for this paragraph) the body is treated as not having been dissolved or as no longer being dissolved.]4

Notes

1 Word repealed by Third Parties (Rights against Insurers) Regulations 2016/570 reg.5(2)(a) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

2 Added by Third Parties (Rights against Insurers) Regulations 2016/570 reg.5(2)(b) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

3 Definition repealed by Third Parties (Rights against Insurers) Regulations 2016/570 reg.5(3) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

4 Added by Third Parties (Rights against Insurers) Regulations 2016/570 reg.5(4) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

10 Insurer's right of set off

(1) This section applies if—

(a) rights of an insured under a contract of insurance have been transferred to a third party under section 1,

(b) the insured is under a liability to the insurer under the contract (“the insured's liability”), and

(c) if there had been no transfer, the insurer would have been entitled to set off the amount of the insured's liability against the amount of the insurer's own liability to the insured.

(2) The insurer is entitled to set off the amount of the insured's liability against the amount of the insurer's own liability to the third party in relation to the transferred rights.

11 Information and disclosure for third parties

Schedule 1 (information and disclosure for third parties) has effect.

Enforcement of transferred rights

12 Limitation and prescription

(1) Subsection (2) applies where a person brings proceedings for a declaration under section 2(2)(a), or for a declarator under section 3(2)(a), and the proceedings are started or, in Scotland, commenced—

(a) after the expiry of a period of limitation applicable to an action against the insured to enforce the insured's liability, or of a period of prescription applicable to that liability, but

(b) while such an action is in progress.

(2) The insurer may not rely on the expiry of that period as a defence unless the insured is able to rely on it in the action against the insured.

(3) For the purposes of subsection (1), an action is to be treated as no longer in progress if it has been concluded by a judgment or decree, or by an award, even if there is an appeal or a right of appeal.

(4) Where a person who has already established an insured's liability to that person brings proceedings under this Act against the insurer, nothing in this Act is to be read as meaning—

(a) that, for the purposes of the law of limitation in England and Wales, that person's cause of action against the insurer arose otherwise than at the time when that person established the liability of the insured,

(b) that, for the purposes of the law of prescription in Scotland, the obligation in respect of which the proceedings are brought became enforceable against the insurer otherwise than at that time, or

(c) that, for the purposes of the law of limitation in Northern Ireland, that person's cause of action against the insurer arose otherwise than at the time when that person established the liability of the insured.

13 Jurisdiction within the United Kingdom

(1) Where a person (P) domiciled in a part of the United Kingdom is entitled to bring proceedings under this Act against an insurer domiciled in another part, P may do so in the part where P is domiciled or in the part where the insurer is domiciled (whatever the contract of insurance may stipulate as to where proceedings are to be brought).

(2) The following provisions of the Civil Jurisdiction and Judgments Act 1982 (relating to determination of domicile) apply for the purposes of subsection (1)—

(a) section 41(2), (3), (5) and (6) (individuals);

(b) section 42(1), (3), (4) and (8) (corporations and associations);

(c) section 45(2) and (3) (trusts);

(d) section 46(1), (3) and (7) (the Crown).

(3) In Schedule 5 to that Act (proceedings excluded from general provisions as to allocation of jurisdiction within the United Kingdom) at the end add—

“11 Proceedings by third parties against insurers

Proceedings under the Third Parties (Rights against Insurers) Act 2010.”

Enforcement of insured's liability

14 Effect of transfer on insured's liability

(1) Where rights in respect of an insured's liability to a third party are transferred under section 1, the third party may enforce that liability against the insured only to the extent (if any) that it exceeds the amount recoverable from the insurer by virtue of the transfer.

(2) Subsection (3) applies if a transfer of rights under section 1 occurs because the insured person is a relevant person by virtue of—

(a) section 4(1)(a) or (e), (2)(b) or (3)(b) or (c),

(b) [section 6(1), (2)(a), (3)(c) or (4)(a)] **1**, or

(c) section 7(1)(b).

(3) If the liability is subject to the arrangement, trust deed or compromise by virtue of which the insured is a relevant person, the liability is to be treated as subject to that arrangement, trust deed or compromise only to the extent that the liability exceeds the amount recoverable from the insurer by virtue of the transfer.

(4)-(5) [...]**2**

(6) For the purposes of this section the amount recoverable from the insurer does not include any amount that the third party is unable to recover as a result of—

(a) a shortage of assets on the insurer's part, in a case where the insurer is a relevant person, or

(b) a limit set by the contract of insurance on the fund available to meet claims in respect of a particular description of liability of the insured.

(7) Where a third party is eligible to make a claim in respect of the insurer's liability under or by virtue of rules made under Part 15 of the Financial Services and Markets Act 2000 (the Financial Services Compensation Scheme)—

(a) subsection (6)(a) applies only if the third party has made such a claim, and

(b) the third party is to be treated as being able to recover from the insurer any amount paid to, or due to, the third party as a result of the claim.

Notes

1 Word substituted by Third Parties (Rights against Insurers) Regulations 2016/570 reg.7(2) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

2 Repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(6) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

15 Reinsurance

This Act does not apply to a case where the liability referred to in section 1(1) is itself a liability incurred by an insurer under a contract of insurance.

16 Voluntarily-incurred liabilities

It is irrelevant for the purposes of section 1 whether or not the liability of the insured is or was incurred voluntarily.

17 Avoidance

(1) A contract of insurance to which this section applies is of no effect in so far as it purports, whether directly or indirectly, to avoid or terminate the contract or alter the rights of the parties under it in the event of the insured—

(a) becoming a relevant person, or

(b) dying insolvent (within the meaning given by section 5(2)).

(2) A contract of insurance is one to which this section applies if the insured's rights under it are capable of being transferred under section 1.

18 Cases with a foreign element

Except as expressly provided, the application of this Act does not depend on whether there is a connection with a part of the United Kingdom; and in particular it does not depend on—

(a) whether or not the liability (or the alleged liability) of the insured to the third party was incurred in, or under the law of, England and Wales, Scotland or Northern Ireland;

(b) the place of residence or domicile of any of the parties;

(c) whether or not the contract of insurance (or a part of it) is governed by the law of England and Wales, Scotland or Northern Ireland;

(d) the place where sums due under the contract of insurance are payable.

[19.— Power to change the meaning of “relevant person”

- (1) The Secretary of State may by regulations make provision adding or removing circumstances in which a person is a “relevant person” for the purposes of this Act, subject to subsection (2).
- (2) Regulations under this section may add circumstances only if, in the Secretary of State's opinion, the additional circumstances—
- involve actual or anticipated dissolution of a body corporate or an unincorporated body,
 - involve actual or anticipated insolvency or other financial difficulties for an individual, a body corporate or an unincorporated body, or
 - are similar to circumstances for the time being described in sections 4 to 7.
- (3) Regulations under this section may make provision about—
- the persons to whom, and the extent to which, rights are transferred under section 1 in the circumstances added or removed by the regulations (the “affected circumstances”),
 - the re-transfer of rights transferred under section 1 where the affected circumstances change, and
 - the effect of a transfer of rights under section 1 on the liability of the insured in the affected circumstances.
- (4) Regulations under this section which add or remove circumstances involving actual or anticipated dissolution of a body corporate or unincorporated body may change the cases in which the following provisions apply so that they include or exclude cases involving that type of dissolution or any other type of dissolution of a body—
- section 9(3) (cases in which transferred rights are not subject to a condition requiring the insured to provide information or assistance to the insurer), and
 - paragraph 3 of Schedule 1 (notices requiring disclosure).
- (5) Regulations under this section which add circumstances may provide that section 1 of this Act applies in cases involving those circumstances in which either or both of the following occurred in relation to a person before the day on which the regulations come into force—
- the circumstances arose in relation to the person;
 - a liability against which the person was insured under an insurance contract was incurred.
- (6) Regulations under this section which—
- add circumstances, and
 - provide that section 1 of this Act applies in a case involving those circumstances in which both of the events mentioned in subsection (5)(a) and (b) occurred in relation to a person before the day on which the regulations come into force, must provide that, in such a case, the person is to be treated for the purposes of this Act as not having become a relevant person until that day or a later day specified in the regulations.
- (7) Regulations under this section which remove circumstances may provide that section 1 of this Act does not apply in cases involving those circumstances in which one of the events mentioned in subsection (5)(a) and (b) (but not both) occurred in relation to a person before the day on which the regulations come into force.
- (8) Regulations under this section may—
- include consequential, incidental, supplementary, transitional, transitory or saving provision,
 - make different provision for different purposes, and
 - make provision by reference to an enactment as amended, extended or applied from time to time, (and subsections (3) to (7) are without prejudice to the generality of this subsection).
- (9) Regulations under this section may amend an enactment, whenever passed or made, including this Act.
- (10) Regulations under this section are to be made by statutory instrument.
- (11) Regulations under this section may not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.]¹

Notes

¹ Substituted by Insurance Act 2015 c. 4 Pt 6 s.19 (August 1, 2016: substitution came into force on March 25, 2010 but could not take effect until the commencement of 2010 c.10 s.19 on August 1, 2016)

[19A.— Interpretation

- (1) The references to enactments in [sections 4 to 7, Schedule A1 and paragraph 3(2)(b), (4) and (5) of Schedule 1]² are to be treated as including references to those enactments as amended, extended or applied by another enactment, whenever passed or made, unless the contrary intention appears.
- (2) In this Act, “enactment” means an enactment contained in, or in an instrument made under, any of the following—
- an Act;
 - an Act or Measure of the National Assembly for Wales;
 - an Act of the Scottish Parliament;
 - Northern Ireland legislation.]¹

Notes

¹ Added by Insurance Act 2015 c. 4 Sch.2 para.6 (August 1, 2016: insertion has effect in relation to the insured persons to whom 2010 c.10 applies)

² Words repealed by Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016/1034 Sch.1(1) para.35(7) (November 30, 2016 subject to savings specified in SI 2016/1034 art.7(3))

- (1) Schedule 2 (amendments) has effect.
- (2) Schedule 3 (transitory, transitional and saving provisions) has effect.
- (3) Schedule 4 (repeals and revocations) has effect.

21 Short title, commencement and extent

- (1) This Act may be cited as the Third Parties (Rights against Insurers) Act 2010.
- (2) This Act comes into force on such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland, subject as follows.
- (4) Section 2 and paragraphs 3 and 4 of Schedule 1 do not extend to Scotland.
- (5) Section 3 extends to Scotland only.
- (6) Any amendment, repeal or revocation made by this Act has the same extent as the provision to which it relates.

[SCHEDULE A1 Administration under relevant sectoral legislation

Notes

1 Added by Third Parties (Rights against Insurers) Regulations 2016/570 reg.3(2) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

[For the purposes of section 6(4B)—

- (a) a body is in administration under relevant sectoral legislation if the appointment of an administrator of the body under an enactment listed below has effect, and
- (b) the body does not cease to be in administration merely because an administrator vacates office (by reason of resignation, death or otherwise) or is removed from office.

List of Enactments

Aviation

Chapter 1 of Part 1 of the Transport Act 2000

Energy

Chapter 3 of Part 3 of the Energy Act 2004²

Chapter 5 of Part 2 of the Energy Act 2011

Part 2 of the Energy Act (Northern Ireland) 2011 (c.6 (N.I.))

Financial Services

Part 2 of the Insolvency Act 1986 (as it has effect by virtue of section 249 of the Enterprise Act 2002), as applied by Schedule 15A to the Building Societies Act 1986³

Part 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19)) (as it has effect by virtue of article 4 of the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I.10))), as applied by Schedule 15A to the Building Societies Act 1986

Part 3 of the Banking Act 2009⁴

Investment Bank Special Administration Regulations 2011 (S.I. 2011/245)

Part 6 of the Financial Services (Banking Reform) Act 2013

Postal Services

Part 4 of the Postal Services Act 2011

Railways

Part 1 of the Railways Act 1993⁵

Chapter 7 of Part 4 of the Greater London Authority Act 1999

Water and sewerage

Chapter 2 of Part 2 of the Water Industry Act 1991⁶

Chapter 2 of Part 3 of the Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))¹

Notes

1 Added by Third Parties (Rights against Insurers) Regulations 2016/570 reg.3(2) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

2 2004 c.20. By virtue of section 96 of the Energy Act 2011 (c.16), sections 156 to 167, 171 and 196 of and Schedules 20 and 21 to the Energy Act 2004 apply in relation to an esc (energy supply company) administration order within the meaning of section 94 of the 2011 Act with the modifications provided in section 96(2) to (5) of that Act.

3 1986 c.53. Schedule 15A was inserted by section 39 of, and Schedule 6 to, the Building Societies Act 1997 (c.32). Paragraphs 1 and 2 of Schedule 15A are applied, with modifications, to relevant building societies by Article 11(1) to (3) of the Building Societies (Financial Assistance) Order 2010 (S.I. 2010/1188)

4 Part 3 is applied with modifications in respect of banks in temporary public ownership by regulations 2 to 4 of and the Schedule to the Banking Act 2009 (Bank Administration) (Modification for Application to Banks in Temporary Public Ownership) Regulations 2009 (S.I. 2009/312), and in respect of building societies by Article 3 of and Part 1 of Schedule 1 to the Building Societies (Insolvency and Special Administration) Order 2009 (S.I. 2009/805).

5 1993 c.43. The provisions about administration in Part 1 of the Railways Act 1993 were amended by section 252 of, and Schedule 27 to, the Transport Act 2000 (c.38), sections 1, 49, 50, 54 and 59 of, and Schedules 1 and 13 to, the Railways Act 2005 (c.14), the

Railways (Licensing of Railway Undertakings) Regulations 2005 (S.I. 2005/3050) and the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941).

6 1991 c.56. The provisions about administration in the Water Industry Act 1991 were amended by sections 36 and 101 of, and Schedule 8 to, the Water Act 2003 (c.37), by sections 34, 35 and 49 of, and Schedule 5 to, the Flood and Water Management Act 2010 (c.29), and by sections 5 and 56 of, and Schedules 5 and 7 to, the Water Act 2014 (c.21). Sections 23 to 26 of the 1991 Act are applied with modifications for the purpose of regulation of specified infrastructure projects by regulation 3 of, and Schedule 1 to, the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 S.I. 2013/1582.

SCHEDULE 1 INFORMATION AND DISCLOSURE FOR THIRD PARTIES

1 Notices requesting information

(1) If a person (A) reasonably believes that—

- (a) another person (B) has incurred a liability to A, and
- (b) B is a relevant person,

A may, by notice in writing, request from B such information falling within sub-paragraph (3) as the notice specifies.

(2) If a person (A) reasonably believes that—

- (a) a liability has been incurred to A,
- (b) the person who incurred the liability is insured against it under a contract of insurance,
- (c) rights of that person under the contract have been transferred to A under section 1, and
- (d) there is a person (C) who is able to provide information falling within sub-paragraph (3),

A may, by notice in writing, request from C such information falling within that sub-paragraph as the notice specifies.

(3) The following is the information that falls within this sub-paragraph—

- (a) whether there is a contract of insurance that covers the supposed liability or might reasonably be regarded as covering it;
- (b) if there is such a contract—
 - (i) who the insurer is;
 - (ii) what the terms of the contract are;
 - (iii) whether the insured has been informed that the insurer has claimed not to be liable under the contract in respect of the supposed liability;
 - (iv) whether there are or have been any proceedings between the insurer and the insured in respect of the supposed liability and, if so, relevant details of those proceedings;
 - (v) in a case where the contract sets a limit on the fund available to meet claims in respect of the supposed liability and other liabilities, how much of it (if any) has been paid out in respect of other liabilities;
 - (vi) whether there is a fixed charge to which any sums paid out under the contract in respect of the supposed liability would be subject.
- (4) For the purpose of sub-paragraph (3)(b)(iv), relevant details of proceedings are—
 - (a) in the case of court proceedings—
 - (i) the name of the court;
 - (ii) the case number;
 - (iii) the contents of all documents served in the proceedings in accordance with rules of court or orders made in the proceedings, and the contents of any such orders;
 - (b) in the case of arbitral proceedings or, in Scotland, an arbitration—
 - (i) the name of the arbitrator;
 - (ii) information corresponding with that mentioned in paragraph (a)(iii).
- (5) In sub-paragraph (3)(b)(vi), in its application to Scotland, “fixed charge” means a fixed security within the meaning given by section 47(1) of the Bankruptcy and Diligence etc (Scotland) Act 2007 (asp 3).
- (6) A notice given by a person under this paragraph must include particulars of the facts on which that person relies as entitlement to give the notice.

2 Provision of information where notice given under paragraph 1

(1) A person (R) who receives a notice under paragraph 1 must, within the period of 28 days beginning with the day of receipt of the notice—

- (a) provide to the person who gave the notice any information specified in it that R is able to provide;
- (b) in relation to any such information that R is not able to provide, notify that person why R is not able to provide it.

(2) Where—

- (a) a person (R) receives a notice under paragraph 1,
- (b) there is information specified in the notice that R is not able to provide because it is contained in a document that is not in R's control,
- (c) the document was at one time in R's control, and
- (d) R knows or believes that it is now in another person's control,

R must, within the period of 28 days beginning with the day of receipt of the notice, provide the person who gave the notice with whatever particulars R can as to the nature of the information and the identity of that other person.

(3) If R fails to comply with a duty imposed on R by this paragraph, the person who gave R the notice may apply to court for an order requiring R to comply with the duty.

(4) No duty arises by virtue of this paragraph in respect of information as to which a claim to legal professional privilege or, in Scotland, to confidentiality as between client and professional legal adviser could be maintained in legal proceedings.

3 Notices requiring disclosure: [bodies that have been dissolved]1

(1) If—

(a) a person (P) has started proceedings under this Act against an insurer in respect of a liability [...]**2**

[(b) P claims the liability has been incurred to P by—

(i) a body corporate, or

(ii) an unincorporated body other than a partnership, and

(c) the body has been dissolved.] **3**

P may by notice in writing require a person to whom sub-paragraph (2) applies to disclose to P any documents that are relevant to that liability.

(2) This sub-paragraph applies to a person if—

(a) immediately before the time of the alleged transfer under section 1, that person was an officer or employee of the body, or

(b) immediately before the body [was dissolved (or, if it has been dissolved more than once, immediately before it was last dissolved)]**4**, that person was—

(i) acting as an insolvency practitioner in relation to the body (within the meaning given by section 388(1) of the Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 N.I. 19)), or

(ii) acting as the official receiver in relation to the winding up of the body.

(3) A notice under this paragraph must be accompanied by—

(a) a copy of the particulars of claim required to be served in connection with the proceedings mentioned in sub-paragraph (1), or

(b) where those proceedings are arbitral proceedings, the particulars of claim that would be required to be so served if they were court proceedings.

(4)-(5) [...]**5**

[(6) For the purposes of this paragraph—

(a) “dissolved” means dissolved under the law of England and Wales, Scotland or Northern Ireland (whether or not by a process referred to as dissolution), and

(b) a body has been dissolved even if, since it was dissolved, something has happened which has the effect that (but for this paragraph) the body is treated as not having been dissolved or as no longer being dissolved.]**6**

Notes

1 Words substituted by Third Parties (Rights against Insurers) Regulations 2016/570 reg.6(6) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

2 Words repealed by Third Parties (Rights against Insurers) Regulations 2016/570 reg.6(2)(a) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

3 Sch.1 para.3(1)(b) and (c) substituted for sch.1 para.3(1)(b) by Third Parties (Rights against Insurers) Regulations 2016/570 reg.6(2)(b) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

4 Words substituted by Third Parties (Rights against Insurers) Regulations 2016/570 reg.6(3) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

5 Repealed by Third Parties (Rights against Insurers) Regulations 2016/570 reg.6(4) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

6 Added by Third Parties (Rights against Insurers) Regulations 2016/570 reg.6(5) (August 1, 2016 immediately after the coming into force of 2010 c.10 and 2015 c.4 s.20 and Sch.2)

4 Disclosure and inspection where notice given under paragraph 3

(1) Subject to the provisions of this paragraph and to any necessary modifications—

(a) the duties of disclosure of a person who receives a notice under paragraph 3, and

(b) the rights of inspection of the person giving the notice, are the same as the corresponding duties and rights under Civil Procedure Rules of parties to court proceedings in which an order for standard disclosure has been made.

(2) In sub-paragraph (1), in its application to Northern Ireland—

(a) the reference to Civil Procedure Rules is—

(i) in the case of proceedings in the High Court, to be read as a reference to the Rules of the Court of Judicature (Northern Ireland) 1980 (S.R. 1980 No. 346), and

(ii) in the case of proceedings in the county court, to be read as a reference to the County Court Rules (Northern Ireland) 1981 (S.R. 1981 No. 225), and

(b) the reference to an order for standard disclosure is to be read as a reference to an order for discovery.

(3) A person who by virtue of sub-paragraph (1) or (2) has to serve a list of documents must do so within the period of 28 days beginning with the day of receipt of the notice.

(4) A person who has received a notice under paragraph 3 and has served a list of documents in response to it is not under a duty of disclosure by reason of that notice in relation to documents that the person did not have when the list was served.

5 Avoidance

A contract of insurance is of no effect in so far as it purports, whether directly or indirectly—

(a) to avoid or terminate the contract or alter the rights of the parties under it in the event of a person providing information, or giving disclosure, that the person is required to provide or give by virtue of a notice under paragraph 1 or 3, or

(b) otherwise to prohibit, prevent or restrict a person from providing such information or giving such disclosure.

6 Other rights to information etc

Rights to information, or to inspection of documents, that a person has by virtue of paragraph 1 or 3 are in addition to any such rights as the person has apart from that paragraph.

7 Interpretation

For the purposes of this Schedule—

(a) a person is able to provide information only if—

(i) that person can obtain it without undue difficulty from a document that is in that person's control, or

(ii) where that person is an individual, the information is within that person's knowledge;

(b) a document is in a person's control if it is in that person's possession or if that person has a right to possession of it or to inspect or take copies of it.

(Schedules 2, 3 and 4 are omitted from this bundle)

INSURANCE ACT 2015

An Act to make new provision about insurance contracts; to amend the Third Parties (Rights against Insurers) Act 2010 in relation to the insured persons to whom that Act applies; and for connected purposes.

INSURANCE CONTRACTS: MAIN DEFINITIONS

1. Insurance contracts: main definitions

In this Act (apart from Part 6)—

“consumer insurance contract” has the same meaning as in the Consumer Insurance (Disclosure and Representations) Act 2012;

“non-consumer insurance contract” means a contract of insurance that is not a consumer insurance contract;

“insured” means the party to a contract of insurance who is the insured under the contract, or would be if the contract were entered into;

“insurer” means the party to a contract of insurance who is the insurer under the contract, or would be if the contract were entered into;

“the duty of fair presentation” means the duty imposed by section 3(1).

THE DUTY OF FAIR PRESENTATION

2.— Application and interpretation

(1) This Part applies to non-consumer insurance contracts only.

(2) This Part applies in relation to variations of non-consumer insurance contracts as it applies to contracts, but—

(a) references to the risk are to be read as references to changes in the risk relevant to the proposed variation, and

(b) references to the contract of insurance are to the variation.

3.— The duty of fair presentation

(1) Before a contract of insurance is entered into, the insured must make to the insurer a fair presentation of the risk.

(2) The duty imposed by subsection (1) is referred to in this Act as “the duty of fair presentation”.

(3) A fair presentation of the risk is one—

(a) which makes the disclosure required by subsection (4),

(b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and

(c) in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.

(4) The disclosure required is as follows, except as provided in subsection (5)—

(a) disclosure of every material circumstance which the insured knows or ought to know, or

(b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

(5) In the absence of enquiry, subsection (4) does not require the insured to disclose a circumstance if—

(a) it diminishes the risk,

(b) the insurer knows it,

(c) the insurer ought to know it,

(d) the insurer is presumed to know it, or

(e) it is something as to which the insurer waives information.

(6) Sections 4 to 6 make further provision about the knowledge of the insured and of the insurer, and section 7 contains supplementary provision.

4.— Knowledge of insured

(1) This section provides for what an insured knows or ought to know for the purposes of section 3(4)(a).

(2) An insured who is an individual knows only—

(a) what is known to the individual, and

(b) what is known to one or more of the individuals who are responsible for the insured's insurance.

(3) An insured who is not an individual knows only what is known to one or more of the individuals who are—

(a) part of the insured's senior management, or

(b) responsible for the insured's insurance.

(4) An insured is not by virtue of subsection (2)(b) or (3)(b) taken to know confidential information known to an individual if—

(a) the individual is, or is an employee of, the insured's agent; and

(b) the information was acquired by the insured's agent (or by an employee of that agent) through a business relationship with a person who is not connected with the contract of insurance.

(5) For the purposes of subsection (4) the persons connected with a contract of insurance are—

(a) the insured and any other persons for whom cover is provided by the contract, and

(b) if the contract re-insures risks covered by another contract, the persons who are (by virtue of this subsection) connected with that other contract.

(6) Whether an individual or not, an insured ought to know what should reasonably have been revealed by a reasonable search of information available to the insured (whether the search is conducted by making enquiries or by any other means).

(7) In subsection (6) “information” includes information held within the insured's organisation or by any other person (such as the insured's agent or a person for whom cover is provided by the contract of insurance).

(8) For the purposes of this section—

(a) “employee”, in relation to the insured's agent, includes any individual working for the agent, whatever the capacity in which the individual acts,

(b) an individual is responsible for the insured's insurance if the individual participates on behalf of the insured in the process of procuring the insured's insurance (whether the individual does so as the insured's employee or agent, as an employee of the insured's agent or in any other capacity), and

(c) “senior management” means those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised.

5.— Knowledge of insurer

(1) For the purposes of section 3(5)(b), an insurer knows something only if it is known to one or more of the individuals who participate on behalf of the insurer in the decision whether to take the risk, and if so on what terms (whether the individual does so as the insurer's employee or agent, as an employee of the insurer's agent or in any other capacity).

(2) For the purposes of section 3(5)(c), an insurer ought to know something only if—

(a) an employee or agent of the insurer knows it, and ought reasonably to have passed on the relevant information to an individual mentioned in subsection (1), or

(b) the relevant information is held by the insurer and is readily available to an individual mentioned in subsection (1).

(3) For the purposes of section 3(5)(d), an insurer is presumed to know—

(a) things which are common knowledge, and

(b) things which an insurer offering insurance of the class in question to insureds in the field of activity in question would reasonably be expected to know in the ordinary course of business.

6.— Knowledge: general

(1) For the purposes of sections 3 to 5, references to an individual's knowledge include not only actual knowledge, but also matters which the individual suspected, and of which the individual would have had knowledge but for deliberately refraining from confirming them or enquiring about them.

(2) Nothing in this Part affects the operation of any rule of law according to which knowledge of a fraud perpetrated by an individual (“F”) either on the insured or on the insurer is not to be attributed to the insured or to the insurer (respectively), where—

(a) if the fraud is on the insured, F is any of the individuals mentioned in section 4(2)(b) or (3), or

(b) if the fraud is on the insurer, F is any of the individuals mentioned in section 5(1).

7.— Supplementary

(1) A fair presentation need not be contained in only one document or oral presentation.

(2) The term “circumstance” includes any communication made to, or information received by, the insured.

(3) A circumstance or representation is material if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms.

(4) Examples of things which may be material circumstances are—

(a) special or unusual facts relating to the risk,

(b) any particular concerns which led the insured to seek insurance cover for the risk,

(c) anything which those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question.

(5) A material representation is substantially correct if a prudent insurer would not consider the difference between what is represented and what is actually correct to be material.

(6) A representation may be withdrawn or corrected before the contract of insurance is entered into.

8.— Remedies for breach

(1) The insurer has a remedy against the insured for a breach of the duty of fair presentation only if the insurer shows that, but for the breach, the insurer—

(a) would not have entered into the contract of insurance at all, or

(b) would have done so only on different terms.

(2) The remedies are set out in Schedule 1.

(3) A breach for which the insurer has a remedy against the insured is referred to in this Act as a “qualifying breach”.

(4) A qualifying breach is either—

(a) deliberate or reckless, or

(b) neither deliberate nor reckless.

(5) A qualifying breach is deliberate or reckless if the insured —

(a) knew that it was in breach of the duty of fair presentation, or

(b) did not care whether or not it was in breach of that duty.

(6) It is for the insurer to show that a qualifying breach was deliberate or reckless.

PART 3 WARRANTIES AND OTHER TERMS

9.— Warranties and representations

(1) This section applies to representations made by the insured in connection with—

- (a) a proposed non-consumer insurance contract, or
- (b) a proposed variation to a non-consumer insurance contract.

(2) Such a representation is not capable of being converted into a warranty by means of any provision of the non-consumer insurance contract (or of the terms of the variation), or of any other contract (and whether by declaring the representation to form the basis of the contract or otherwise).

10.— Breach of warranty

(1) Any rule of law that breach of a warranty (express or implied) in a contract of insurance results in the discharge of the insurer's liability under the contract is abolished.

(2) An insurer has no liability under a contract of insurance in respect of any loss occurring, or attributable to something happening, after a warranty (express or implied) in the contract has been breached but before the breach has been remedied.

(3) But subsection (2) does not apply if—

- (a) because of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract,
- (b) compliance with the warranty is rendered unlawful by any subsequent law, or
- (c) the insurer waives the breach of warranty.

(4) Subsection (2) does not affect the liability of the insurer in respect of losses occurring, or attributable to something happening—

- (a) before the breach of warranty, or
- (b) if the breach can be remedied, after it has been remedied.

(5) For the purposes of this section, a breach of warranty is to be taken as remedied—

(a) in a case falling within subsection (6), if the risk to which the warranty relates later becomes essentially the same as that originally contemplated by the parties,

(b) in any other case, if the insured ceases to be in breach of the warranty.

(6) A case falls within this subsection if—

- (a) the warranty in question requires that by an ascertainable time something is to be done (or not done), or a condition is to be fulfilled, or something is (or is not) to be the case, and
- (b) that requirement is not complied with.

(7) In the Marine Insurance Act 1906—

- (a) in section 33 (nature of warranty), in subsection (3), the second sentence is omitted,
- (b) section 34 (when breach of warranty excused) is omitted.

11.— Terms not relevant to the actual loss

(1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following—

- (a) loss of a particular kind,
- (b) loss at a particular location,
- (c) loss at a particular time.

(2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).

(3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

(4) This section may apply in addition to section 10.

PART 4 FRAUDULENT CLAIMS

12.— Remedies for fraudulent claims

(1) If the insured makes a fraudulent claim under a contract of insurance—

- (a) the insurer is not liable to pay the claim,
- (b) the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and
- (c) in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.

(2) If the insurer does treat the contract as having been terminated—

- (a) it may refuse all liability to the insured under the contract in respect of a relevant event occurring after the time of the fraudulent act, and
- (b) it need not return any of the premiums paid under the contract.

(3) Treating a contract as having been terminated under this section does not affect the rights and obligations of the parties to the contract with respect to a relevant event occurring before the time of the fraudulent act.

(4) In subsections (2)(a) and (3), “relevant event” refers to whatever gives rise to the insurer's liability under the contract (and includes, for example, the occurrence of a loss, the making of a claim, or the notification of a potential claim, depending on how the contract is written).

13.— Remedies for fraudulent claims: group insurance

(1) This section applies where—

- (a) a contract of insurance is entered into with an insurer by a person (“A”),
 - (b) the contract provides cover for one or more other persons who are not parties to the contract (“the Cs”), whether or not it also provides cover of any kind for A or another insured party, and
 - (c) a fraudulent claim is made under the contract by or on behalf of one of the Cs (“CF”).
- (2) Section 12 applies in relation to the claim as if the cover provided for CF were provided under an individual insurance contract between the insurer and CF as the insured; and, accordingly—
- (a) the insurer's rights under section 12 are exercisable only in relation to the cover provided for CF, and
 - (b) the exercise of any of those rights does not affect the cover provided under the contract for anyone else.
- (3) In its application by virtue of subsection (2), section 12 is subject to the following particular modifications—
- (a) the first reference to “the insured” in subsection (1)(b) of that section, in respect of any particular sum paid by the insurer, is to whichever of A and CF the insurer paid the sum to; but if a sum was paid to A and passed on by A to CF, the reference is to CF,
 - (b) the second reference to “the insured” in subsection (1)(b) is to A or CF,
 - (c) the reference to “the insured” in subsection (1)(c) is to both CF and A,
 - (d) the reference in subsection (2)(b) to the premiums paid under the contract is to premiums paid in respect of the cover for CF.

[PART 4A LATE PAYMENT OF CLAIMS]1

Notes

1 Added by Enterprise Act 2016 c. 12 Pt 5 s.28(1) (May 4, 2017)

[13A Implied term about payment of claims

- (1) It is an implied term of every contract of insurance that if the insured makes a claim under the contract, the insurer must pay any sums due in respect of the claim within a reasonable time.
- (2) A reasonable time includes a reasonable time to investigate and assess the claim.
- (3) What is reasonable will depend on all the relevant circumstances, but the following are examples of things which may need to be taken into account—
 - (a) the type of insurance,
 - (b) the size and complexity of the claim,
 - (c) compliance with any relevant statutory or regulatory rules or guidance,
 - (d) factors outside the insurer's control.
- (4) If the insurer shows that there were reasonable grounds for disputing the claim (whether as to the amount of any sum payable, or as to whether anything at all is payable)—
 - (a) the insurer does not breach the term implied by subsection (1) merely by failing to pay the claim (or the affected part of it) while the dispute is continuing, but
 - (b) the conduct of the insurer in handling the claim may be a relevant factor in deciding whether that term was breached and, if so, when.
- (5) Remedies (for example, damages) available for breach of the term implied by subsection (1) are in addition to and distinct from—
 - (a) any right to enforce payment of the sums due, and
 - (b) any right to interest on those sums (whether under the contract, under another enactment, at the court's discretion or otherwise).**11**

Notes

1 Added by Enterprise Act 2016 c. 12 Pt 5 s.28(1) (May 4, 2017)

PART 5 GOOD FAITH AND CONTRACTING OUT

Good faith

14.— Good faith

- (1) Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the other party is abolished.
- (2) Any rule of law to the effect that a contract of insurance is a contract based on the utmost good faith is modified to the extent required by the provisions of this Act and the Consumer Insurance (Disclosure and Representations) Act 2012.
- (3) Accordingly—
 - (a) in section 17 of the Marine Insurance Act 1906 (marine insurance contracts are contracts of the utmost good faith), the words from “, and” to the end are omitted, and
 - (b) the application of that section (as so amended) is subject to the provisions of this Act and the Consumer Insurance (Disclosure and Representations) Act 2012.
- (4) In section 2 of the Consumer Insurance (Disclosure and Representations) Act 2012 (disclosure and representations before contract or variation), subsection (5) is omitted.

Contracting out

15.— Contracting out: consumer insurance contracts

- (1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters provided for in Part 3 or 4 of this Act than the consumer would be in by virtue of the provisions of those Parts (so far as relating to consumer insurance contracts) is to that extent of no effect.
- (2) In subsection (1) references to a contract include a variation.

(3) This section does not apply in relation to a contract for the settlement of a claim arising under a consumer insurance contract.

16.— Contracting out: non-consumer insurance contracts

(1) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects representations to which section 9 applies than the insured would be in by virtue of that section is to that extent of no effect.

(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in Part 2, 3 or 4 of this Act than the insured would be in by virtue of the provisions of those Parts (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.

(3) In this section references to a contract include a variation.

(4) This section does not apply in relation to a contract for the settlement of a claim arising under a non-consumer insurance contract.

[16A Contracting out of the implied term about payment of claims: consumer and non-consumer insurance contracts

(1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters provided for in section 13A than the consumer would be in by virtue of the provisions of that section (so far as relating to consumer insurance contracts) is to that extent of no effect.

(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects deliberate or reckless breaches of the term implied by section 13A than the insured would be in by virtue of that section is to that extent of no effect.

(3) For the purposes of subsection (2) a breach is deliberate or reckless if the insurer—

(a) knew that it was in breach, or

(b) did not care whether or not it was in breach.

(4) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in section 13A than the insured would be in by virtue of the provisions of that section (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.

(5) In this section references to a contract include a variation.

(6) This section does not apply in relation to a contract for the settlement of a claim arising under an insurance contract.]]

Notes

1 Added by Enterprise Act 2016 c. 12 Pt 5 s.29(1) (May 4, 2017)

17.— The transparency requirements

(1) In this section, “the disadvantageous term” means such a term as is mentioned in section 16(2).

(2) The insurer must take sufficient steps to draw the disadvantageous term to the insured’s attention before the contract is entered into or the variation agreed.

(3) The disadvantageous term must be clear and unambiguous as to its effect.

(4) In determining whether the requirements of subsections (2) and (3) have been met, the characteristics of insured persons of the kind in question, and the circumstances of the transaction, are to be taken into account.

(5) The insured may not rely on any failure on the part of the insurer to meet the requirements of subsection (2) if the insured (or its agent) had actual knowledge of the disadvantageous term when the contract was entered into or the variation agreed.

18.— Contracting out: group insurance contracts

(1) This section applies to a contract of insurance referred to in section 13(1)(a); and in this section—

“A” and “the Cs” have the same meaning as in section 13,

“consumer C” means an individual who is one of the Cs, where the cover provided by the contract for that individual would have been a consumer insurance contract if entered into by that person rather than by A, and

“non-consumer C” means any of the Cs who is not a consumer C.

(2) A term of the contract of insurance, or any other contract, which puts a consumer C in a worse position as respects any matter dealt with in section 13 than that individual would be in by virtue of that section is to that extent of no effect.

(3) A term of the contract of insurance, or any other contract, which puts a non-consumer C in a worse position as respects any matter dealt with in section 13 than that person would be in by virtue of that section is to that extent of no effect, unless the requirements of section 17 have been met in relation to the term.

(4) Section 17 applies in relation to such a term as it applies to a term mentioned in section 16(2), with references to the insured being read as references to A rather than the non-consumer C.

(5) In this section references to a contract include a variation.

(6) This section does not apply in relation to a contract for the settlement of a claim arising under a contract of insurance to which this section applies.

PART 6 AMENDMENT OF THE THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 2010

19. Power to change meaning of “relevant person” for purposes of 2010 Act

For section 19 of the Third Parties (Rights against Insurers) Act 2010 (power to amend sections 4 to 6 of the Act) substitute—
“19.— Power to change the meaning of “relevant person”

- (1) The Secretary of State may by regulations make provision adding or removing circumstances in which a person is a “relevant person” for the purposes of this Act, subject to subsection (2).
- (2) Regulations under this section may add circumstances only if, in the Secretary of State's opinion, the additional circumstances—
 - (a) involve actual or anticipated dissolution of a body corporate or an unincorporated body,
 - (b) involve actual or anticipated insolvency or other financial difficulties for an individual, a body corporate or an unincorporated body, or
 - (c) are similar to circumstances for the time being described in sections 4 to 7.
- (3) Regulations under this section may make provision about—
 - (a) the persons to whom, and the extent to which, rights are transferred under section 1 in the circumstances added or removed by the regulations (the “affected circumstances”),
 - (b) the re-transfer of rights transferred under section 1 where the affected circumstances change, and
 - (c) the effect of a transfer of rights under section 1 on the liability of the insured in the affected circumstances.
- (4) Regulations under this section which add or remove circumstances involving actual or anticipated dissolution of a body corporate or unincorporated body may change the cases in which the following provisions apply so that they include or exclude cases involving that type of dissolution or any other type of dissolution of a body—
 - (a) section 9(3) (cases in which transferred rights are not subject to a condition requiring the insured to provide information or assistance to the insurer), and
 - (b) paragraph 3 of Schedule 1 (notices requiring disclosure).
- (5) Regulations under this section which add circumstances may provide that section 1 of this Act applies in cases involving those circumstances in which either or both of the following occurred in relation to a person before the day on which the regulations come into force—
 - (a) the circumstances arose in relation to the person;
 - (b) a liability against which the person was insured under an insurance contract was incurred.
- (6) Regulations under this section which—
 - (a) add circumstances, and
 - (b) provide that section 1 of this Act applies in a case involving those circumstances in which both of the events mentioned in subsection (5)(a) and (b) occurred in relation to a person before the day on which the regulations come into force, must provide that, in such a case, the person is to be treated for the purposes of this Act as not having become a relevant person until that day or a later day specified in the regulations.
- (7) Regulations under this section which remove circumstances may provide that section 1 of this Act does not apply in cases involving those circumstances in which one of the events mentioned in subsection (5)(a) and (b) (but not both) occurred in relation to a person before the day on which the regulations come into force.
- (8) Regulations under this section may—
 - (a) include consequential, incidental, supplementary, transitional, transitory or saving provision,
 - (b) make different provision for different purposes, and
 - (c) make provision by reference to an enactment as amended, extended or applied from time to time, (and subsections (3) to (7) are without prejudice to the generality of this subsection).
- (9) Regulations under this section may amend an enactment, whenever passed or made, including this Act.
- (10) Regulations under this section are to be made by statutory instrument.
- (11) Regulations under this section may not be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.”

20. Other amendments

Schedule 2 amends the Third Parties (Rights against Insurers) Act 2010 in relation to the insured persons to whom the Act applies.

PART 7 GENERAL

21.— Provision consequential on Part 2

- (1) The provision made by this section is consequential on Part 2 of this Act.
- (2) In the Marine Insurance Act 1906, sections 18 (disclosure by assured), 19 (disclosure by agent effecting insurance) and 20 (representations pending negotiation of contract) are omitted.
- (3) Any rule of law to the same effect as any of those provisions is abolished.
- (4) In section 152 of the Road Traffic Act 1988 (exceptions to duty of insurers to satisfy judgment against persons insured against third-party risks)—
 - (a) in subsection (2)—
 - (i) in paragraph (a), for “it either under the Consumer Insurance (Disclosure and Representations) Act 2012 or, if that Act does not apply,” substitute “the policy under either of the relevant insurance enactments, or the security”,
 - (ii) in paragraph (b), for “or security under that Act or” substitute “under either of the relevant insurance enactments, or the security”;
 - (b) in subsection (3), after “specifying” insert “the relevant insurance enactment or, in the case of a security,”;
 - (c) after subsection (4) add—

“(5) In this section, “relevant insurance enactment” means the Consumer Insurance (Disclosure and Representations) Act 2012 or Part 2 of the Insurance Act 2015.”

(5) In Article 98A of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I.)) (exceptions to duty of insurers to satisfy judgement against persons insured against third party risks)—

(a) in paragraph (2)—

(i) in paragraph (a), for “it either under the Consumer Insurance Act (Disclosure and Representations) Act 2012 or, if that Act does not apply,” substitute “the policy under either of the relevant insurance enactments, or the security”;

(ii) in paragraph (b), for “or security under that Act or” substitute “under either of the relevant insurance enactments, or the security”;

(b) in paragraph (3), after “specifying” insert “the relevant insurance enactment or, in the case of a security,”;

(c) after paragraph (4) add—

“(5) In this Article, “relevant insurance enactment” means the Consumer Insurance (Disclosure and Representations) Act 2012 or Part 2 of the Insurance Act 2015.”

(6) In section 11 of the Consumer Insurance (Disclosure and Representations) Act 2012 (consequential provision), subsections (1) and (2) are omitted.

22.— Application etc of Parts 2 to 5

(1) Part 2 (and section 21) and section 14 apply only in relation to—

(a) contracts of insurance entered into after the end of the relevant period, and

(b) variations, agreed after the end of the relevant period, to contracts of insurance entered into at any time.

(2) Parts 3 and 4 of this Act apply only in relation to contracts of insurance entered into after the end of the relevant period, and variations to such contracts.

(3) In subsections (1) and (2) “the relevant period” means the period of 18 months beginning with the day on which this Act is passed.

(4) Unless the contrary intention appears, references in Parts 2 to 5 to something being done by or in relation to the insurer or the insured include its being done by or in relation to that person’s agent.

23.— Extent, commencement and short title

(1) This Act extends to England and Wales, Scotland and Northern Ireland, except for—

(a) section 21(4), which does not extend to Northern Ireland; and

(b) section 21(5), which extends to Northern Ireland only.

(2) This Act (apart from Part 6 and this section) comes into force at the end of the period of 18 months beginning with the day on which it is passed.

(3) In Part 6—

(a) section 19 comes into force at the end of the period of two months beginning with the day on which this Act is passed; and

(b) section 20 and Schedule 2 come into force on the day appointed under section 21(2) of the Third Parties (Rights against Insurers) Act 2010 for the coming into force of that Act.

(4) This section comes into force on the day on which this Act is passed.

(5) This Act may be cited as the Insurance Act 2015.

SCHEDULE 1 INSURERS' REMEDIES FOR QUALIFYING BREACHES

PART 1 CONTRACTS

General

1. This Part of this Schedule applies to qualifying breaches of the duty of fair presentation in relation to non-consumer insurance contracts (for variations to them, see Part 2).

Deliberate or reckless breaches

2. If a qualifying breach was deliberate or reckless, the insurer—

(a) may avoid the contract and refuse all claims, and

(b) need not return any of the premiums paid.

Other breaches

3. Paragraphs 4 to 6 apply if a qualifying breach was neither deliberate nor reckless.

4. If, in the absence of the qualifying breach, the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid.

5. If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.

6.— (1) In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

(2) In sub-paragraph (1), “reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 5), where—

[INSERT Formula here]

PART 2 VARIATIONS

General

7. This Part of this Schedule applies to qualifying breaches of the duty of fair presentation in relation to variations to non-consumer insurance contracts.

Deliberate or reckless breaches

8. If a qualifying breach was deliberate or reckless, the insurer—

(a) may by notice to the insured treat the contract as having been terminated with effect from the time when the variation was made, and

(b) need not return any of the premiums paid.

Other breaches

9.— (1) This paragraph applies if—

(a) a qualifying breach was neither deliberate nor reckless, and

(b) the total premium was increased or not changed as a result of the variation.

(2) If, in the absence of the qualifying breach, the insurer would not have agreed to the variation on any terms, the insurer may treat the contract as if the variation was never made, but must in that event return any extra premium paid.

(3) If sub-paragraph (2) does not apply—

(a) if the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms if the insurer so requires, and

(b) paragraph 11 also applies if (in the case of an increased premium) the insurer would have increased the premium by more than it did, or (in the case of an unchanged premium) the insurer would have increased the premium.

10.— (1) This paragraph applies if—

(a) a qualifying breach was neither deliberate nor reckless, and

(b) the total premium was reduced as a result of the variation.

(2) If, in the absence of the qualifying breach, the insurer would not have agreed to the variation on any terms, the insurer may treat the contract as if the variation was never made, and paragraph 11 also applies.

(3) If sub-paragraph (2) does not apply—

(a) if the insurer would have agreed to the variation on different terms (other than terms relating to the premium), the variation is to be treated as if it had been entered into on those different terms if the insurer so requires, and

(b) paragraph 11 also applies if the insurer would have increased the premium, would not have reduced the premium, or would have reduced it by less than it did.

Proportionate reduction

11.— (1) If this paragraph applies, the insurer may reduce proportionately the amount to be paid on a claim arising out of events after the variation.

(2) In sub-paragraph (1), “reduce proportionately” means that the insurer need pay on the claim only Y% of what it would otherwise have been under an obligation to pay under the terms of the contract (whether on the original terms, or as varied, or under the different terms provided for by virtue of paragraph 9(3)(a) or 10(3)(a), as the case may be), where—

(3) In the formula in sub-paragraph (2), “P”—

(a) in a paragraph 9(3)(b) case, is the total premium the insurer would have charged,

(b) in a paragraph 10(2) case, is the original premium,

(c) in a paragraph 10(3)(b) case, is the original premium if the insurer would not have changed it, and otherwise the increased or (as the case may be) reduced total premium the insurer would have charged.

PART 3 SUPPLEMENTARY

12. Section 84 of the Marine Insurance Act 1906 (return of premium for failure of consideration) is to be read subject to the provisions of this Schedule in relation to contracts of marine insurance which are non-consumer insurance contracts.

...

[Schedule 2 is amended, and the changes is makes to the Third Party (Rights Against Insurers Act 2010 are incorporated within that statute].

CONSEQUENTIAL AMENDMENTS TO THE MARINE INSURANCE 1906 EFFECTED BY THE INSURANCE ACT 2015

17. Insurance is uberrimae fidei.

A contract of marine insurance is a contract based upon the utmost good faith [...]1 .

Notes

1 Words repealed by Insurance Act 2015 c. 4 Pt 5 s.14(3)(a) (August 12, 2016)

18.— [...]1

Notes

1 Repealed by Insurance Act 2015 c. 4 Pt 7 s.21(2) (August 12, 2016)

19. [...]1

Notes

1 Repealed by Insurance Act 2015 c. 4 Pt 7 s.21(2) (August 12, 2016)

20.— [...]1

Notes

1 Repealed by Insurance Act 2015 c. 4 Pt 7 s.21(2) (August 12, 2016)

33.— Nature of warranty.

(1) A warranty, in the following sections relating to warranties, 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 may be express or implied.

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. [...]1

Notes

1 Words repealed by Insurance Act 2015 c. 4 Pt 3 s.10(7)(a) (August 12, 2016)

34.— [...]1

Notes

1 Repealed by Insurance Act 2015 c. 4 Pt 3 s.10(7)(b) (August 12, 2016)

INSTITUTE TIME CLAUSES (HULLS)

This insurance is subject to English law and practice

1. NAVIGATION

1.1 The vessel is covered subject to the provisions of this insurance at all times and has leave to sail or navigate with or without pilots, to go on trial trips and to assist and tow vessels or craft in distress, but it is warranted that the vessel shall not be towed, except as is customary or to the first safe port or place when in need of assistance, or undertake towage or salvage services under a contract previously arranged by the Assured and/or Owners and/or Managers and/or Charterers. This Clause 1.1 shall not exclude customary towage in connection with loading and discharging.

1.2 In the event of the vessel being employed in trading operations which entail cargo loading or discharging at sea from or into another vessel (not being a harbour or inshore craft) no claim shall be recoverable under this insurance for loss of or damage to the vessel or liability to any other vessel arising from such loading or discharging operations, including whilst approaching, lying alongside and leaving, unless previous notice that the vessel is to be employed in such operations has been given to the Underwriters and any amended terms of cover and any additional premium required by them have been agreed.

1.3 In the event of the vessel sailing (with or without cargo) with an intention of being (a) broken up, or (b) sold for breaking up, any claim for loss of or damage to the vessel occurring subsequent to such sailing shall be limited to the market value of the vessel as scrap at the time when the loss or damage is sustained, unless previous notice has been given to the Underwriters and any amendments to the terms of cover, insured value and premium required by them have been agreed. Nothing in this Clause 1.3 shall affect claims under Clauses 8 and/or 11.

2. CONTINUATION

Should the vessel at the expiration of this insurance be at sea or in distress or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

3. BREACH OF WARRANTY

Held covered in case of any breach of warranty as to cargo, trade, locality, towage, salvage services or date of sailing, provided notice be given to the Underwriters immediately after receipt of advices and any amended terms of cover and any additional premium required by them be agreed.

4. TERMINATION

This Clause 4 shall prevail notwithstanding any provision whether written typed or printed in this insurance inconsistent therewith.

Unless the Underwriters agree to the contrary in writing, this insurance shall terminate automatically at the time of

4.1 change of the Classification Society of the vessel, or change, suspension, discontinuance, withdrawal or expiry of her Class therein, provided that if the vessel is at sea such automatic termination shall be deferred until arrival at her next port. However where such change, suspension, discontinuance or withdrawal of her Class has resulted from loss or damage covered by Clause 6 of this insurance or which would be covered by an insurance of the vessel subject to current Institute War and Strikes Clauses Hulls-Time such automatic termination shall only operate should the vessel sail from her next port without the prior approval of the Classification Society,

4.2 any change, voluntary or otherwise, in the ownership or flag, transfer to new management, or charter on a bareboat basis, or requisition for title or use of the vessel, provided that, if the vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, such automatic termination shall if required be deferred, whilst the vessel continues her planned voyage, until arrival at final port of discharge if with cargo or at port of destination if in ballast. However, in the event of requisition for title or use without the prior execution of a written agreement by the Assured, such automatic termination shall occur fifteen days after such requisition whether the vessel is at sea or in port.

A pro rata daily net return of premium shall be made.

5. ASSIGNMENT

No assignment of or interest in this insurance or in any moneys which may be or become payable thereunder is to be binding on or recognised by the Underwriters unless a dated notice of such assignment or interest signed by the Assured, and by the assignor in the case of subsequent assignment, is endorsed on the Policy and the Policy with such endorsement is produced before payment of any claim or return of premium thereunder.

6. PERILS

6.1 This insurance covers loss of or damage to the subject-matter insured caused by

6.1.1 perils of the seas rivers lakes or other navigable waters

6.1.2 fire, explosion

6.1.3 violent theft by persons from outside the vessel

6.1.4 jettison

6.1.5 piracy

6.1.6 breakdown of or accident to nuclear installations or reactors

6.1.7 contact with aircraft or similar objects, or objects falling therefrom, land conveyance, dock or harbour equipment or installation

6.1.8 earthquake volcanic eruption or lightning.

6.2 This insurance covers loss of or damage to the subject-matter insured caused by
6.2.1 accidents in loading discharging or shifting cargo or fuel
6.2.2 bursting of boilers breakage of shafts or any latent defect in the machinery or hull
6.2.3 negligence of Master Officers Crew or Pilots
6.2.4 negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder
6.2.5 barratry of Master Officers or Crew,
provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.
6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of this Clause 6 should they hold shares in the vessel.

7. POLLUTION HAZARD

This insurance covers loss of or damage to the vessel caused by any governmental authority acting under the powers vested in it to prevent or mitigate a pollution hazard, or threat thereof, resulting directly from damage to the vessel for which the Underwriters are liable under this insurance, provided such act of governmental authority has not resulted from want of due diligence by the Assured, the Owners, or Managers of the vessel or any of them to prevent or mitigate such hazard or threat. Master, Officers, Crew or Pilots not to be considered Owners within the meaning of this Clause 7 should they hold shares in the vessel.

8. 3/4THS COLLISION LIABILITY

8.1 The Underwriters agree to indemnify the Assured for three-fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for
8.1.1 loss of or damage to any other vessel or property on any other vessel
8.1.2 delay to or loss of use of any such other vessel or property thereon
8.1.3 general average of, salvage of, or salvage under contract of, any such other vessel or property thereon,
where such payment by the Assured is in consequence of the vessel hereby insured coming into collision with any other vessel.
8.2 The indemnity provided by this Clause 8 shall be in addition to the indemnity provided by the other terms and conditions of this insurance and shall be subject to the following provisions:
8.2.1 Where the insured vessel is in collision with another vessel and both vessels are to blame then, unless the liability of one or both vessels becomes limited by law, the indemnity under this Clause 8 shall be calculated on the principle of cross-liabilities as if the respective Owners had been compelled to pay to each other such proportion of each other's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of the collision.
8.2.2 In no case shall the Underwriters' total liability under Clauses 8.1 and 8.2 exceed their proportionate part of three-fourths of the insured value of the vessel hereby insured in respect of any one collision.
8.3 The Underwriters will also pay three-fourths of the legal costs incurred by the Assured or which the Assured may be compelled to pay in contesting liability or taking proceedings to limit liability, with the prior written consent of the Underwriters.

EXCLUSIONS

8.4 Provided always that this Clause 8 shall in no case extend to any sum which the Assured shall pay for or in respect of
8.4.1 removal or disposal of obstructions, wrecks, cargoes or any other thing whatsoever
8.4.2 any real or personal property or thing whatsoever except other vessels or property on other vessels
8.4.3 the cargo or other property on, or the engagements of, the insured vessel
8.4.4 loss of life, personal injury or illness
8.4.5 pollution or contamination of any real or personal property or thing whatsoever (except other vessels with which the insured vessel is in collision or property on such other vessels).

9. SISTERSHIP

Should the vessel hereby insured come into collision with or receive salvage services from another vessel belonging wholly or in part to the same Owners or under the same management, the Assured shall have the same rights under this insurance as they would have were the other vessel entirely the property of Owners not interested in the vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered shall be referred to a sole arbitrator to be agreed upon between the Underwriters and the Assured.

10. NOTICE OF CLAIM AND TENDERS

10.1 In the event of accident whereby loss or damage may result in a claim under this insurance, notice shall be given to the Underwriters prior to survey and also, if the vessel is abroad, to the nearest Lloyd's Agent so that a surveyor may be appointed to represent the Underwriters should they so desire.
10.2 The Underwriters shall be entitled to decide the port to which the vessel shall proceed for docking or repair (the actual additional expense of the voyage arising from compliance with the Underwriters' requirements being refunded to the Assured) and shall have a right of veto concerning a place of repair or a repairing firm.
10.3 The Underwriters may also take tenders or may require further tenders to be taken for the repair of the vessel. Where such a tender has been taken and a tender is accepted with the approval of the Underwriters, an allowance shall be made at the rate of 30% per annum on the insured value for time lost between the despatch of the invitations to tender required by Underwriters and the acceptance of a tender to the extent that such time is lost solely as the result of tenders having been taken and provided that the tender is accepted without delay after receipt of the Underwriters' approval.

Due credit shall be given against the allowance as above for any amounts recovered in respect of fuel and stores and wages and maintenance of the Master Officers and Crew or any member thereof, including amounts allowed in general average, and for any amounts recovered from third parties in respect of damages for detention and/or loss of profit and/or running expenses, for the period covered by the tender allowance or any part thereof.

Where a part of the cost of the repair of damage other than a fixed deductible is not recoverable from the Underwriters the allowance shall be reduced by a similar proportion.

10.4 In the event of failure to comply with the conditions of this Clause 10 a deduction of 15% shall be made from the amount of the ascertained claim.

11. GENERAL AVERAGE AND SALVAGE

11.1 This insurance covers the vessel's proportion of salvage, salvage charges and/or general average, reduced in respect of any under-insurance, but in case of general average sacrifice of the vessel the Assured may recover in respect of the whole loss without first enforcing their right of contribution from other parties.

11.2 Adjustment to be according to the law and practice obtaining at the place where the adventure ends, as if the contract of affreightment contained no special terms upon the subject; but where the contract of affreightment so provides the adjustment shall be according to the York-Antwerp Rules.

11.3 When the vessel sails in ballast, not under charter, the provisions of the York-Antwerp Rules, 1974 (excluding Rules XX and XXI) shall be applicable, and the voyage for this purpose shall be deemed to continue from the port or place of departure until the arrival of the vessel at the first port or place thereafter other than a port or place of refuge or a port or place of call for bunkering only.

If at any such intermediate port or place there is an abandonment of the adventure originally contemplated the voyage shall thereupon be deemed to be terminated.

11.4 No claim under this Clause 11 shall in any case be allowed where the loss was not incurred to avoid or in connection with the avoidance of a peril insured against.

12. DEDUCTIBLE

12.1 No claim arising from a peril insured against shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including claims under Clauses 8, 11 and 13) exceeds **{Response}** in which case this sum shall be deducted. Nevertheless the expense of sighting the bottom after stranding, if reasonably incurred specially for that purpose, shall be paid even if no damage be found. This Clause 12.1 shall not apply to a claim for total or constructive total loss of the vessel or, in the event of such a claim, to any associated claim under Clause 13 arising from the same accident or occurrence.

12.2 Claims for damage by heavy weather occurring during a single sea passage between two successive ports shall be treated as being due to one accident. In the case of such heavy weather extending over a period not wholly covered by this insurance the deductible to be applied to the claim recoverable hereunder shall be the proportion of the above deductible that the number of days of such heavy weather falling within the period of this insurance bears to the number of days of heavy weather during the single sea passage.

The expression "heavy weather" in this Clause 12.2 shall be deemed to include contact with floating ice.

12.3 Excluding any interest comprised therein, recoveries against any claim which is subject to the above deductible shall be credited to the Underwriters in full to the extent of the sum by which the aggregate of the claim unreduced by any recoveries exceeds the above deductible.

12.4 Interest comprised in recoveries shall be apportioned between the Assured and the Underwriters, taking into account the sums paid by the Underwriters and the dates when such payments were made, notwithstanding that by the addition of interest the Underwriters may receive a larger sum than they have paid.

13. DUTY OF ASSURED (SUE AND LABOUR)

13.1 In case of any loss or misfortune it is the duty of the Assured and their servants and agents to take such measures as may be reasonable for the purpose of averting or minimising a loss which would be recoverable under this insurance.

13.2 Subject to the provisions below and to Clause 12 the Underwriters will contribute to charges properly and reasonably incurred by the Assured their servants or agents for such measures.

General average, salvage charges (except as provided for in Clause 13.5) and collision defence or attack costs are not recoverable under this Clause 13.

13.3 Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

13.4 When expenses are incurred pursuant to this Clause 13 the liability under this insurance shall not exceed the proportion of such expenses that the amount insured hereunder bears to the value of the vessel as stated herein, or to the sound value of the vessel at the time of the occurrence giving rise to the expenditure if the sound value exceeds that value. Where the Underwriters have admitted a claim for total loss and property insured by this insurance is saved, the foregoing provisions shall not apply unless the expenses of suing and labours exceed the value of such property saved and then shall apply only to the amount of the expenses which is in excess of such value.

13.5 When a claim for total loss of the vessel is admitted under this insurance and expenses have been reasonably incurred in saving or attempting to save the vessel and other property and there are no proceeds, or the expenses exceed the proceeds, then this insurance shall bear its pro rata share of such proportion of the expenses, or of the expenses in excess of the proceeds, as the case may be, as may reasonably be regarded as having been incurred in respect of the vessel; but if the vessel be insured for less than its sound value

at the time of the occurrence giving rise to the expenditure, the amount recoverable under this clause shall be reduced in proportion to the under-insurance.

13.6 The sum recoverable under this Clause 13 shall be in addition to the loss otherwise recoverable under this insurance but shall in no circumstances exceed the amount insured under this insurance in respect of the vessel.

14. NEW FOR OLD

Claims payable without deduction new for old.

15. BOTTOM TREATMENT

In no case shall a claim be allowed in respect of scraping gritblasting and/or other surface preparation or painting of the vessel's bottom except that

15.1 gritblasting and/or other surface preparation of new bottom plates ashore and supplying and applying any "shop" primer thereto,

15.2 gritblasting and/or other surface preparation of:

the butts or area of plating immediately adjacent to any renewed or refitted plating damaged during the course of welding and/or repairs, areas of plating damaged during the course of fairing, either in place or ashore,

15.3 supplying and applying the first coat of primer/anti-corrosive to those particular areas mentioned in 15.1 and 15.2 above, shall be allowed as part of the reasonable cost of repairs in respect of bottom plating damaged by an insured peril.

16. WAGES AND MAINTENANCE

No claim shall be allowed, other than in general average, for wages and maintenance of the Master, Officers and Crew, or any member thereof, except when incurred solely for the necessary removal of the vessel from one port to another for the repair of damage covered by the Underwriters, or for trial trips for such repairs, and then only for such wages and maintenance as are incurred whilst the vessel is under way.

17. AGENCY COMMISSION

In no case shall any sum be allowed under this insurance either by way of remuneration of the Assured for time and trouble taken to obtain and supply information or documents or in respect of the commission or charges of any manager, agent, managing or agency company or the like, appointed by or on behalf of the Assured to perform such services.

18. UNREPAIRED DAMAGE

18.1 The measure of indemnity in respect of claims for unrepaired damage shall be the reasonable depreciation in the market value of the vessel at the time this insurance terminates arising from such unrepaired damage, but not exceeding the reasonable cost of repairs.

18.2 In no case shall the Underwriters be liable for unrepaired damage in the event of a subsequent total loss (whether or not covered under this insurance) sustained during the period covered by this insurance or any extension thereof.

18.3 The Underwriters shall not be liable in respect of unrepaired damage for more than the insured value at the time this insurance terminates.

19. CONSTRUCTIVE TOTAL LOSS

19.1 In ascertaining whether the vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

19.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the vessel shall be recoverable hereunder unless such cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

20. FREIGHT WAIVER

In the event of total or constructive total loss no claim to be made by the Underwriters for freight whether notice of abandonment has been given or not.

21. DISBURSEMENTS WARRANTY

21.1 Additional insurances as follows are permitted:

21.1.1 Disbursements, Managers' Commissions, Profits or Excess or Increased Value of Hull and Machinery. A sum not exceeding 25% of the value stated herein.

21.1.2 Freight, Chartered Freight or Anticipated Freight, insured for time. A sum not exceeding 25% of the value as stated herein less any sum insured, however described, under 21.1.1

21.1.3 Freight or Hire, under contracts for voyage. A sum not exceeding the gross freight or hire for the current cargo passage and next succeeding cargo passage (such insurance to include, if required, a preliminary and an intermediate ballast passage) plus the charges of insurance. In the case of a voyage charter where payment is made on a time basis, the sum permitted for insurance shall be calculated on the estimated duration of the voyage, subject to the limitation of two cargo passages as laid down herein. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the freight or hire is advanced or earned by the gross amount so advanced or earned.

21.1.4 Anticipated Freight if the vessel sails in ballast and not under Charter. A sum not exceeding the anticipated gross freight on next cargo passage, such sum to be reasonably

estimated on the basis of the current rate of freight at time of insurance plus the charges of insurance. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured.

21.1.5 Time Charter Hire or Charter Hire for Series of Voyages. A sum not exceeding 50% of the gross hire which is to be earned under the charter in a period not exceeding 18 months. Any sum insured under 21.1.2 to be taken into account and only the excess thereof may be insured, which excess shall be reduced as the hire is advanced or earned under the charter by 50% of the gross amount so advanced or earned but the sum insured need not be reduced while the total of the sums insured under 21.1.2 and 21.1.5 does not exceed 50% of the gross hire still to be earned under the charter. An insurance under this Section may begin on the signing of the charter.

21.1.6 Premiums. A sum not exceeding the actual premiums of all interests insured for a period not exceeding 12 months (excluding premiums insured under the foregoing sections but including, if required, the premium or estimated calls on any Club or War etc. Risk insurance) reducing pro rata monthly.

21.1.7 Returns of Premium. A sum not exceeding the actual returns which are allowable under any insurance but which would not be recoverable thereunder in the event of a total loss of the vessel whether by insured perils or otherwise.

21.1.8 Insurance irrespective of amount against:

Any risks excluded by Clauses 23, 24, 25 and 26 below.

21.2 Warranted that no insurance on any interests enumerated in the foregoing 21.1.1 to 21.1.7 in excess of the amounts permitted therein and no other insurance which includes total loss of the vessel P.P.I., F.I.A., or subject to any other like term, is or shall be effected to operate during the currency of this insurance by or for account of the Assured, Owners, Managers or Mortgagees.

Provided always that a breach of this warranty shall not afford the Underwriters any defence to a claim by a Mortgagee who has accepted this insurance without knowledge of such breach.

22. RETURNS FOR LAY-UP AND CANCELLATION

22.1 To return as follows:

22.1.1 Pro rata monthly net for each uncommenced month if this insurance be cancelled by agreement.

22.1.2 For each period of 30 consecutive days the vessel may be laid up in a port or in a lay-up area provided such port or lay-up area is approved by the Underwriters (with special liberties as hereinafter allowed)

(a) {Response} per cent net not under repair

(b) {Response} per cent net under repair.

If the vessel is under repair during part only of a period for which a return is claimable, the return shall be calculated pro rata to the number of days under (a) and (b) respectively.

22.2 PROVIDED ALWAYS THAT

22.2.1 a total loss of the vessel, whether by insured perils or otherwise, has not occurred during the period covered by this insurance or any extension thereof

22.2.2 in no case shall a return be allowed when the vessel is lying in exposed or unprotected waters, or in a port or lay-up area not approved by the Underwriters but, provided the Underwriters agree that such non-approved lay-up area is deemed to be within the vicinity of the approved port or lay-up area, days during which the vessel is laid up in such nonapproved lay-up area may be added to days in the approved port or lay-up area to calculate a period of 30 consecutive days and a return shall be allowed for the proportion of such period during which the vessel is actually laid up in the approved port or lay-up area

22.2.3 loading or discharging operations or the presence of cargo on board shall not debar returns but no return shall be allowed for any period during which the vessel is being used for the storage of cargo or for lightering purposes

22.2.4 in the event of any amendment of the annual rate, the above rates of return shall be adjusted accordingly

22.2.5 in the event of any return recoverable under this Clause 22 being based on 30 consecutive days which fall on successive insurances effected for the same Assured, this insurance shall only be liable for an amount calculated at pro rata of the period rates 22.1.2(a) and/or (b) above for the number of days which come within the period of this insurance and to which a return is actually applicable. Such overlapping period shall run, at the option of the Assured, either from the first day on which the vessel is laid up or the first

day of a period of 30 consecutive days as provided under 22.1.2(a) or (b), or 22.2.2 above.

The following clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.

23. WAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

23.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

23.2 capture seizure arrest restraint or detainment (barratry and piracy excepted), and the consequences thereof or any attempt thereat

23.3 derelict mines torpedoes bombs or other derelict weapons of war.

24. STRIKES EXCLUSION

In no case shall this insurance cover loss damage liability or expense caused by

24.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
24.2 any terrorist or any person acting from a political motive.

25. MALICIOUS ACTS EXCLUSION

In no case shall this insurance cover loss damage liability or expense arising from

25.1 the detonation of an explosive

25.2 any weapon of war and caused by any person acting maliciously or from a political motive.

26. NUCLEAR EXCLUSION

In no case shall this insurance cover loss damage liability or expense arising from any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

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INSTITUTE WAR AND STRIKES CLAUSES

HULLS – TIME

This insurance is subject to English law and practice

1. PERILS

Subject always to the exclusions hereinafter referred to, this insurance covers loss of or damage to the Vessel caused by

- 1.1. war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against belligerent power
- 1.2. capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
- 1.3. derelict mines torpedoes bombs or other derelict weapons of war
- 1.4. strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 1.5. any terrorist or any person acting maliciously or from a political motive
- 1.6. confiscation or expropriation

2. INCORPORATION

The Institute Time Clauses-Hulls 1/10/83 (including 4/4ths Collision Clause) except Clauses 1, 2, 3, 4, 6, 12, 21.1.8, 22, 23, 24, 25 and 26 are deemed to be incorporated in this insurance in so far as they do not conflict with the provisions of these clauses.

Held covered in case of breach of warranty as to towage or salvage services provided notice be given to the Underwriters immediately after receipt of advices and any additional premium required by them be agreed.

3. DETAINMENT

In the event that the Vessel shall have been the subject of capture seizure arrest restraint detainment confiscation or expropriation, and the Assured shall thereby have lost the free use and disposal of the Vessel for a continuous period of 12 months then for the purpose of ascertaining whether the Vessel is a constructive total loss the Assured shall be deemed to have been deprived of the possession of the Vessel without any likelihood of recovery.

4. EXCLUSIONS

This insurance excludes

4.1 loss damage liability or expense arising from

4.1.1 any detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter, hereinafter called a nuclear weapon of war

4.1.2 the outbreak of war (whether there be a declaration of war or not) between any of the following countries:

United Kingdom, United States of America, France,

The Union of Soviet Socialist Republics,

The People's Republic of China

4.1.3 requisition of pre-emption

4.1.4 capture seizure arrest restraint detainment confiscation or expropriation by or under the order of the government or any public or local authority of the country in which the Vessel is owned or registered

4.1.5 arrest restraint detainment confiscation or expropriation under quarantine regulations or by reason of any customs or trading

regulations

4.1.6 the operation of ordinary judicial process, failure to provide security or to pay any fine or penalty or any financial cause

4.1.7 piracy (but this exclusion shall not affect cover under Clause 1.4)

4.2 loss damage liability or covered by the Institute Time Clauses – Hulls 1/10/83 (including 4/4ths Collision Clause) or which would be recoverable thereunder but for Clause 12 thereof

4.3 any claim for any sum recoverable under any other insurance on the Vessel or which would be recoverable under such insurance but for the existence of this insurance,

4.4 any claim for expenses arising from delay except such expenses as would be recoverable in principle in English law and practice under the York – Antwerp Rules 1974.

5. TERMINATION

5.1 This insurance may be cancelled by either the Underwriters or the Assured giving 7 days notice (such cancellation becoming effective on the expiry of 7 days from midnight of the day on which notice of cancellation issued by or to the Underwriters). The Underwriters agree however to reinstate this insurance subject to agreement between the Underwriters and the Assured prior to the expiry of such notice of cancellation as to new rate of premium and/or conditions and/or warranties.

5.2 Whether or not such notice of cancellation has been given this insurance shall TERMINATE AUTOMATICALLY

5.2.1 upon the occurrence of any hostile detonation of any nuclear weapon of war as defined in Clause 4.1.1 wheresoever or whensoever such detonation may occur and whether or not the Vessel may be involved

5.2.2 upon the outbreak of war (whether there be a declaration of war or not) between any of the following countries:

United Kingdom, United States of America, France,

The Union of Soviet Socialist Republics,

The People's Republic of China

5.2.3 in the event of the Vessel being requisitioned, either for title or use

5.3 in the event either of cancellation by notice or of automatic termination of this insurance by the reason of the operation of this Clause 5, or of the sale of the Vessel, pro rata net return of the premium shall be payable to the Assured.

This insurance shall not become effective if, subsequent to its acceptance by the Underwriters and prior to the intended time of its attachment, there has occurred any event which would have automatically terminated this insurance under the provisions of Clause 6 above

1/10/83

CL. 281

**Violent Theft, Piracy and Barratry Extension - for use with the Institute War & Strikes Clauses
Hulls - Time 1/10/83**

Where the war and strikes insurance of the vessel is written on terms which include the Institute War & Strikes Clauses Hulls - Time 1/10/83, the said clauses are hereby amended as follows:

- (1) Three new clauses shall be inserted after clause 1.6 as follows:

“1.7 violent theft by persons from outside the Vessel

- (a) *piracy*
- (b) *barratry of Master Officers or Crew”*

- (2) Clause 4.1.7 shall be deleted

- (3) Clause 4.2 shall be deleted and replaced by the following:

“loss damage liability or expense covered by the Institute Time Clauses Hulls Time 1/10/83 (including 4/4ths Collision Clause) or which would be recoverable thereunder but for Clause 12 thereof, as amended by the violent theft, piracy and barratry exclusion clause JH2005/046,”

4 A new clause 4(a) shall be inserted after clause 4 as follows:

“4(a) No claim arising from a peril insured against under clause 1.7 or clause 1.8 above shall be payable under this insurance unless the aggregate of all such claims arising out of each separate accident or occurrence (including any associated sue and labour, general average and salvage or collision liability claims) exceeds the deductible amount agreed (if any) in which case this sum shall be deducted. This clause 4(a) shall not apply to a claim for total or constructive total loss of the vessel or, in the event of such a claim, to any associated sue and labour claim arising from the same accident or occurrence.”

INSTITUTE CARGO CLAUSES (A)

RISKS COVERED

Risks

1. This insurance covers all risks of loss of or damage to the subject-matter insured except as excluded by the provisions of Clauses 4, 5, 6 and 7 below.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

"Both to Blame Collision Clause"

3. This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

EXCLUSIONS

4. In no case shall this insurance cover

4.1 loss damage or expense attributable to wilful misconduct of the Assured

4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured

4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)

4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured

4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

4.7 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

5. 5.1 In no case shall this insurance cover loss damage or expense arising from

5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein

5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading.

5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

6. In no case shall this insurance cover loss damage or expense caused by

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat

6.3 derelict mines torpedoes bombs or other derelict weapons of war.

7. In no case shall this insurance cover loss damage or expense

7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions

7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted

7.4 caused by any person acting from a political, ideological or religious motive.

DURATION

Transit Clause

8. 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit,

continues during the ordinary course of transit

and terminates either

8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or

8.1.4 on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge, whichever shall first occur.

8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

Termination of Contract of Carriage

9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers*, either

9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur,

or

9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

Change of Voyage

10. 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*

10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

CLAIMS

Insurable Interest

11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject matter insured at the time of the loss.

11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

Forwarding Charges

12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

Constructive Total Loss

13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

Increased Value

14. 14.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

14.2 Where this insurance is on Increased Value the following clause shall apply:

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

15. This insurance

15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

15.2 shall not extend to or otherwise benefit the carrier or other bailee.

MINIMISING LOSSES

Duty of Assured

16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

17. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY

18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

19. This insurance is subject to English law and practice.

NOTE:- Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.

CL382

01/01/2009

INSTITUTE CARGO CLAUSES (B)

RISKS COVERED

Risks

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,
 - 1.1 loss of or damage to the subject-matter insured reasonably attributable to
 - 1.1.1 fire or explosion
 - 1.1.2 vessel or craft being stranded grounded sunk or capsized
 - 1.1.3 overturning or derailment of land conveyance
 - 1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
 - 1.1.5 discharge of cargo at a port of distress
 - 1.1.6 earthquake volcanic eruption or lightning,
 - 1.2 loss of or damage to the subject-matter insured caused by
 - 1.2.1 general average sacrifice
 - 1.2.2 jettison or washing overboard
 - 1.2.3 entry of sea lake or river water into vessel craft hold conveyance container or place of storage,
 - 1.3 total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

"Both to Blame Collision Clause"

3. This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

EXCLUSIONS

4. In no case shall this insurance cover
 - 4.1 loss damage or expense attributable to wilful misconduct of the Assured
 - 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
 - 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)
 - 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
 - 4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
 - 4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
 - 4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons
 - 4.8 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
5. 5.1 In no case shall this insurance cover loss damage or expense arising from
 - 5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
 - 5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading.
- 5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.
- 5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

6. In no case shall this insurance cover loss damage or expense caused by
 - 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat

6.3 derelict mines torpedoes bombs or other derelict weapons of war.

7. In no case shall this insurance cover loss damage or expense

7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions

7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted

7.4 caused by any person acting from a political, ideological or religious motive.

DURATION

Transit Clause

8. 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit,

continues during the ordinary course of transit

and terminates either

8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or

8.1.4 on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge, whichever shall first occur.

8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

Termination of Contract of Carriage

9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers*, either

9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur,

or

9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

Change of Voyage

10. 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*

10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

CLAIMS

Insurable Interest

11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject matter insured at the time of the loss.

11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

Forwarding Charges

12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

Constructive Total Loss

13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

Increased Value

14. 14.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

14.2 Where this insurance is on Increased Value the following clause shall apply:

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

15. This insurance

15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

15.2 shall not extend to or otherwise benefit the carrier or other bailee.

MINIMISING LOSSES

Duty of Assured

16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

17. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY

18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

19. This insurance is subject to English law and practice.

NOTE:- Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.

CL383

01/01/2009

INSTITUTE CARGO CLAUSES (C)

RISKS COVERED

Risks

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,
 - 1.1 loss of or damage to the subject-matter insured reasonably attributable to
 - 1.1.1 fire or explosion
 - 1.1.2 vessel or craft being stranded grounded sunk or capsized
 - 1.1.3 overturning or derailment of land conveyance
 - 1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
 - 1.1.5 discharge of cargo at a port of distress,
 - 1.2 loss of or damage to the subject-matter insured caused by
 - 1.2.1 general average sacrifice
 - 1.2.2 jettison.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

"Both to Blame Collision Clause"

3. This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

EXCLUSIONS

4. In no case shall this insurance cover
 - 4.1 loss damage or expense attributable to wilful misconduct of the Assured
 - 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
 - 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)
 - 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
 - 4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
 - 4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
 - 4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons
 - 4.8 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
5. 5.1 In no case shall this insurance cover loss damage or expense arising from
 - 5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
 - 5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading.
- 5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.
- 5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.
6. In no case shall this insurance cover loss damage or expense caused by
 - 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
 - 6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
 - 6.3 derelict mines torpedoes bombs or other derelict weapons of war.
7. In no case shall this insurance cover loss damage or expense

- 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
- 7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted
- 7.4 caused by any person acting from a political, ideological or religious motive.

DURATION

Transit Clause

8. 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit,

continues during the ordinary course of transit

and terminates either

8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or

8.1.4 on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge, whichever shall first occur.

8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

Termination of Contract of Carriage

9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers*, either

9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur, or

9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

Change of Voyage

10. 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*

10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

CLAIMS

Insurable Interest

11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject matter insured at the time of the loss.

11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

Forwarding Charges

12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

Constructive Total Loss

13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

Increased Value

14. 14.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

14.2 **Where this insurance is on Increased Value the following clause shall apply:**

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

15. This insurance

15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

15.2 shall not extend to or otherwise benefit the carrier or other bailee.

MINIMISING LOSSES

Duty of Assured

16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

17. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY

18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

19. This insurance is subject to English law and practice.

NOTE:- Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.

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