Origin and Development of Marine Insurance

The History of Marine Insurance in England is associated with the history of Lloyds. The word “Lloyds” is associated with the name of Edward Lloyd, a small coffee-house keeper where in, towards the latter part of the seventeenth century, the commercial community interested in shipping met. The Italian merchants who introduced the practice of marine insurance in England were known as Lombards who took their name from the name of the street of London. It is believed that from them originated the word “ Polizza”- i.e a promise- which is the etymological root of the expression “Policy”. However, the frequenters of “Lloyds” coffee-house were not allowed the privilege of conducting the marine insurance on a monopoly basis and it was in 1720 that the parliament allowed two more marine insurance companies to be established in London. According to history of Marine Insurance, all trade operations of any nature, until 17^{th} century, had operated by sea from one port to another port. When transport facilities were gradually developed, the other modes of conveyances like Road, Rail, Air were utilized.

With the development of various modes of conveyances, Marine insurance is now extended to cover the transit risks for the cargoes travelling by any means of conveyance that is, ocean vessel, ferry, ocean barge, truck, van, rail, post, air and even courier.

Who needs Marine Cargo Insurance

Anyone who Imports, Exports or dispatches cargo from one place to another and who suffers financial losses if the goods are damaged or lost during transit.

What does Marine Insurance Business Mean?

In terms of Section 2 of The Insurance Act,1938, “Marine Insurance Business” means the business of effecting Contracts of Insurance upon vessels of any description including cargoes, freight and other interests which may be legally insured, in or in relation to such vessels, cargoes and freight, goods, wares, merchandise and property of whatever description insured for transit by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies. The law of marine insurance has been codified by the Marine Insurance Act,1963.

What is transit insurance?

Transit insurance covers goods and/or merchandise during ordinary course of transit from one location to another.

If transit insurance is arranged by Carriers, why Assured will buy separate insurance?

The Assured can obtain Marine policy according to their requirements in terms of coverage and limits of liability for the subject risk. The cost of buying the policy may also be less expensive. On the other hand, the insurance arranged by the Carriers will be expensive and may not suit the requirement of the Assured.

Who are entitled to Marine Insurance?

The following are entitled to Marine insurance

1. Individual person(s).
2. Bank or any financial institution.
3. Exporters.
4. Importers.
5. Ship Owners.
6. Ship Builders.
7. Ship Repairers.

Who are not entitled to Marine Insurance?

The following are not entitled to Marine insurance

1. Carriers/Transporters.
2. Clearing and Forwarding Agents.
3. Stevedores.
4. Freight forwarders.
5. Commission Agent.

Basic Principles

The following basic principles are applicable for Marine Cargo insurance contracts

- ✓ Insurable Interest.
- ✓ Indemnity.
- ✓ Utmost Good Faith.
- ✓ Subrogation.
- ✓ Proximate Cause.
- ✓ Contribution.

Insurable Interest

Sec 7 of Marine Insurance Act,1963 refers that every person has insurable interest who is interested in marine adventure. Sec 8 of MI Act refers that 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.

Indemnity

Sec 67 of Marine Insurance Act 1963 refers that 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. Therefore, the Assured is allowed to set the insured value while effecting the insurance according to the value of consignment shown in the invoice issued by them. The Assured is allowed to include some mark up, say 10-15% as incidental charges over and above the invoice value. The maximum liability under the policy shall be the insured value on which the premium is collected.

Why marine policy is an “agreed value” policy?

It is difficult to determine at which stage of the transit the loss may occur and what will be the value of cargo at the time of the loss. In order to eliminate such dispute, Sec 29(2) of Marine Insurance Act provides that a valued policy is a policy which specifies the agreed value of the subject matter insured and subsection (3) of the section enacts that 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, irrespective of loss being total or partial.

Both cargo and Hull policies are valued policy.

Utmost good faith

Sec 19 of Marine Insurance Act, 1963 refers that 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.

What does “uberima fide” mean?

The insurance contract is based on mutual trust. The insured should disclose all the material fact about the subject matter of insurance. A breach of good faith by one party entitles the other to avoid the contract.

Subrogation

Sec 79 of Marine Insurance Act,1963 states that where the insurer pays for a total loss, either of the whole, or in case 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.

To whom the rights of recovery should be protected?

The rights of recovery against carriers, bailees and other third parties should be protected by the insured in the event of a loss who will also authorize the underwriters to initiate recovery proceedings against them through a letter of subrogation.

Proximate Cause

Sec 55 of MI Act provides that unless 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 perils insured against.

Definition of Proximate Cause

In the English case of **Pawseyvs Scottish Union and National Insurance Company (1907)** the proximate cause was defined as "the active efficient cause that sets in motion a chain of events which brings about a result, without the intervention of any force started and working actively from a new and independent source".

Contribution

Sec 80 (1) of Marine Insurance Act, 1963 states that 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 this contract.

Conditions giving rise to right of contribution

1. The loss must be due to a peril which is common to both policies.

2. The same interest must be covered by both policies.

3.Both policies must be enforceable.

Types of Sales Contract

The contract negotiated between a buyer and seller is subject to certain Terms of Sale, which will determine the rights and obligations of both parties. The International Chamber of Commerce has devised certain rules for appropriate interpretations of the common trade terms, which are known as "INCOTERMS"(International Rules for the Interpretation of Trade Terms).

The new Incoterms 2010 contain 11 terms to ascertain from which point the insurance will be required vis-à-vis insurable interest i.e., who should take the policy and when.

History of INCOTERMS

International Chamber of Commerce first published Incoterms in 1936. Subsequent editions: 1953,1967,1976,1980,1990,2000 and 2010.

The following Incoterms are commonly used:

EX-Works

The term represents the minimum obligation for the seller and, therefore, the maximum for the Buyer. The seller has to place the goods at the disposal of the buyers at seller's premises or any agreed place such as a factory or a warehouse. It is the buyer's obligation to load the goods and arrange for transportation of the goods and insurance.

FOB/FCA/FAS

The Seller fulfills his obligation to deliver and the transfer of risk up to the point of placing of the goods on board the overseas vessel. When the ship's rail serves no practical purpose, such as container traffic, the FCA term is more appropriate to use. In FAS (Free alongside ship) the seller must deliver goods alongside the vessel at loading berth named by the buyer. The buyer has to arrange for insurance for loading of the cargo on to the overseas vessel, subsequent voyage and transit up to the destination.

CFR(Cost and Freight)

The seller bears risk from the time of movement of goods from his ware house until the goods are on board the vessel in the port of shipment. The seller bears ocean freight charges up to the port of destination.

CIF(Cost, Insurance and Freight)

The term gives the seller complete control over the whole transaction requiring him to

- provide insurance, for the entire transit, usually from warehouse to warehouse
- contact for the delivery of goods on board the vessel
- pay freight costs to destination port
- complete custom formalities for export.
-

Key point on INCOTERMS

While accepting the risk the underwriters should verify the sale and/or purchase contract of the client with their buyers and/or suppliers to understand from which point the insurance should be required vis-à-vis insurable interest i.e., who should take the policy and when.

An overview of risks exposed during transit

During the course of transit, the cargo may be exposed to various risks despite adopting adequate precautions in packing, transportation, loading/unloading, selection of carriers etc. The risks can be classified into two categories, depending on their cause:

-Standard risks of transport

-Exceptional risks of transport (War/SRCC or similar events)

When these risks occur, they result in:

- Particular Average

- General Average

Particular Average

The Particular Average refers to physical damage and loss to the cargos suffered by the insured during a particular voyage/transit.

Depending upon the voyage, conveyance and nature of cargoes, the insured may suffer the followinglosses:

- Loss or damage to cargo due to sinking of vessels, grounding, stranding, capsizing, collision, fire, earthquake, volcanic eruption etc.

- Loss or damage to cargo due to sea water, river water, fresh water, washing overboard, lost overboard, entry of lake water, sea water into the vessel and place of storage, condensation, contamination, heating and sweating, oil stained, acid damage, mud damage etc.

- Accident to the carrying conveyances, mishandling, spillage, shortage, theft, pilferage and non delivery of entire consignment etc.

In addition to physical loss or damage to cargo, the insured may also incur certain expenses at short of destination to avert or minimize the losses.

General Average

A General Average loss is a general average act which refers “All loss which arises in consequence of extraordinary sacrifice made or incurred for the preservation of the ship and cargo comes within general average, and must be borne proportionately by all who are interested.” (**MrJustice Lawrence, in Birkleyv. Presgrave**).

Example:

(i) A ship had discharged nearly all its cargo when a fire broke out, which necessitated the use of water to extinguish it. The remaining goods were thus damaged. It was held that the common adventure was not at an end until all the goods are discharged and therefore the ship was liable to contribute to the damage cargo (**Whitecross Wire Co v.Savill(1882)**)**.**

(ii) The vessel put into a port of refuge to repair general average damage, which necessitated discharge of cargo. It was held that the inward port charges, cost of discharging and warehousing cargo, together with the outward port charges and reloading cargo expenses were all general average (**Atwood v.Sellar(1877 and 1880)**)**.**

General Average contribution in respect of cargo is reimbursed by the insurers in consequence of general average act when the consequence of an event is not expressly excluded from the cover

War and SRCC

War (whether declared or not), civil war, terrorism, seizures, sabotage may cause loss or damage to cargo. Marine policy excludes war risks, strikes, riots and civil commotions and similar risks.

There are three Institute War Clauses covering cargo transported by vessel, air and postal shipments. The rate for War risk is determined by the London Market War Risks Rating Committee. War cover is not available in land. War and SRCC may be extended to cover with the cargo policy subject to payment of an additional premium.

Extent of Cover under ICC 1982

The process of acceptance and change over from SG (Ships and Goods) policy to the new ICC (Institute Cargo Clause) was initiated from 1.1.1982 in the International Market duly recommended by United Nations Conference on Trade and Development (UNCTAD). The revised wording of ICC, 1982 was adopted in India from 31.03.1983.

What does Ware house to Warehouse mean?

It means insurance policy attach to the cargo from the time it leaves the warehouse or place where it is stored and named in the policy and commences its voyage till it reaches the warehouse at the port of destination mentioned in the policy. The insurance continues till it is finally loaded at warehouse either by rail or by truck from the ship and risk continues till it is finally delivered at the name warehouse.

Attachment/Termination

The risk under marine policy attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of transit and terminates upon delivery to the consignees or other final place of storage at the destination named in the policy. The transit risk may terminate <u>upon delivery of consignment to any other warehouse or place of storage</u>, whether prior to or at the destination named in the policy which the assured elects to use either (i) for storage other than in the ordinary course of transit (ii) for allocation or distribution. The transit risk may also terminate upon expiry of 60 days after the completion of discharge overside of the goods from the overseas vessel at the final port of discharge.

Since period of 60 days is not a storage cover, any unreasonable delay/detention/storage within the control of the assured shall cause immediate termination of the policy.

It is pertaining to note that if the cargo is still in the ordinary course of transit 60 days after discharge and had still not arrived then cover would terminate.

Key point on attachment and termination of risk

Marine policy does not cover loading and unloading risk automatically. Both the risks should be covered subject to payment of additional premium.

Institute Cargo Clause 2009

The Institute Cargo Clause 2009 was implemented on 1st January,2009.

Attachment/Termination

The risk under the particular clause shall commence from the time the subject matter insured is first moved in the warehouse or at the place of storage at the place mentioned in the contract of insurance for the purpose of immediate loading into or on to the carrying vehicle or other conveyance for the commencement of transit.

The cover terminates on completion of unloading from the carrying vehicle or other conveyance at the final warehouse at destination.

The cover will also terminate if the storage is done other than ordinary course of transit for allocation or distribution and if the assured or their employees elect the vehicle or other conveyance or any container for storage other than ordinary course of transit or on expiry of 60 days after completion of discharge from the overseas vessel at the final port of discharge, whichever shall first occur.

Extension of duration of cover

The duration of cover under both ICC 1982 and ICC 2009 may be extended for a further period of 60 days if delay in transit does not remain within the control of the insured.
The duration of cover for Air transit is 30 days and 15 days for War risk.

Risks covered under ICC-C and ICC-B

Institute Cargo Clause (C) covers loss or damage to the subject matter insured reasonably attributable to

- Fire or Explosion.
- Stranding, Grounding, Sinking or Capsizing.
- Overturning or Derailment.
- Collision or contact of vessel craft or conveyance with any external object other than water.
- Discharge of cargo at a port of distress.

- General Average.
- Jettison.

Institute Cargo Clause (B) covers the following perils in addition to the perils covered under Clause (C)

- Earthquake, volcanic eruption or lightning.
- Water damage by entry of sea/river water.
- Washing over board.
- Total loss of package dropped during loading and unloading.

Add on cover

ICC (B) and ICC (C) may be extended to cover theft, pilferage, non- delivery of consignment, malicious damage, rain and/or fresh water damage etc. subject to payment of an additional premium.

Institute Cargo Clause –A

The Institute Cargo Clause-A covers "All Risks" subject to the following general exclusions, which are also common in other two clauses.

- ✓ Wilful misconduct of the Assured.
- ✓ Ordinary leakage, ordinary loss in weight or volume or ordinary wear and tear.
- ✓ Inadequate sufficiency or unsuitability of packing or preparation of packing of the subject matter insured.
- ✓ Inherent vice or nature of the subject matter insured.
- ✓ Delay.
- ✓ Insolvency or financial default of Carriers.
- ✓ Un-seaworthiness and Unfitness exclusion.
- ✓ War and Strikes, Riot and Civil Commotions.

ICC-A covers piracy and frustration of the voyage, which are not included under ICC (B), ICC(C) and War Clause.

Other Cargo Clauses

The Institute of London Underwriters have devised, in consultation with different Trade Associations, some standard clauses for some special type of commodities as mentioned herein under:

- Institute Bulk Oil Clause.
- Institute Frozen Meat Clauses.
- FOSFA (Federation of Oils, Seeds and Fats Association).
- Institute Frozen Food Clause.
- Institute Commodity Trade Clauses.
- Institute Jute Clause.

- Institute Coal Clause.
- Institute Natural Rubber Clause.
- Institute Timber Trade Federation Clause.

Key points Institute Coal Clause covers spontaneous combustion. Contamination due to stress weather is covered under Institute Bulk Oil Clause.

Extent and Duration of cover under Trade Clauses

Institute Trade Clauses	**Extent of cover**	**Duration of cover**
Institute Coal Clause	Spontaneous combustion, inherent vice	On discharge of cargo
Institute Bulk Oil Clause	Contamination due to stress of weather, leakage from connecting pipe lines during loading & discharge, negligence of Master Officer or Crew in pumping cargo	30 days
Institute Jute Clause	Cover similar to that in the commodity trades clauses B but does not cover Earthquake, volcanic eruption etc but provides coverage due to ordinary leakage and deliberate damage to cargo.	30 days
Institute Rubber Clause	Water or condensation, hooks, spilling or leakage of any substance or liquid, other cargo (excluding rubber), or moisture from wet or damp dunnage	30 days
Institute Timber Trade Clause	Washing overboard, theft or non-delivery, malicious act.	60 days
Institute Frozen Food Clause	All Risks other than loss or damage due to variation in temperature howsoever cause& variation in temperature attributable to breakdown of refrigerating machinery for a period of not less than 24 consecutive hours.	5 days

Inland transit clause

There are three sets of pure Inland Transit Clauses which are (i) Inland Transit (Rail or Road) Clause-A (All Risks) (ii) Inland Transit(Rail or Road) Clause –B (Basic Cover) (iii) Inland Transit (Inland Vessels)Clause (Basic Cover).

The Inland Transit Clause-A covers all risks but Inland transit Clause-B covers named perils i.e Fire, lightning, breakage of bridges, collision with or by the carrying vehicle, overturning of the carrying vehicle and derailment or accidents of like nature to the carrying railway wagon/vehicle.

Inland Transit (Inland Vessel) clause covers named perils i.e., fire or explosion, vessel or craft being stranded grounded sunk or capsized,

Inland Transit Clause (C) covers Fire and Lightning only.

Registered post parcel

A minimum of Rs 500/- per package shall be insured with postal authorities.
Following clauses should be attached depending upon the types of voyage/transit:

Types of voyage	**Clauses to be attached**
Inland transit	ITC(A)/ITC(B)/ITC (C), SRCC Clause.
Export/Import	ICC(A)/ICC(B)/ICC(C)/Institute Cargo Clause(Air) excluding sending by post, War/SRCC Clause.
Coastal shipment	ICC(A)/ICC(B)/ICC (C) andSRCC Clause
Inland Waterways	ICC(A)/ICC(B)/ICC(C) and SRCC Clause.

Duration of Cover

- Under Inland Transit Rail or Road Clause A and B, the risk will commence from the time the goods leave the warehouse and/or store at the place named in the policy for the purpose of commencement of journey and shall terminate on expiry of 7 days after arrival of the railway wagon at the final destination railway station or destination town or in respect of transits by road only until expiry of 7 days after arrival of the vehicle at the destination town named in the policy whichever shall first occur.

- Under Inland Transit Rail or Road Clause –C , the risk will commence with the loading of each package into wagon/truck and shall terminates immediately on unloading at destination railway station or at destination point in respect of transit by road.

Extension of storage cover

If the goods are kept in the Carrier's go-down, C&F agent's go-down and Bonded warehouse at the final destination due to the reasons beyond control of the insured, subject to prompt notice given to the underwriters, the cover during storage may be extended for 8 weeks only in addition to 7 days. However, while granting such cover, necessary approval has to be obtained from the Competent Authority.

FOB Extension and Shut out cargo

The policy is extended to cover the interest insured until the goods are placed on board the ocean going vessel or lash barges (including Sling loss) or until expiry of two weeks after arrival of goods at the place of storage at the port town and/or docks awaiting shipment, whichever shall first occur.

The policy is extended to cover shut out cargo whilst the cargo is on board craft, raft or lighter until loaded on oceangoing vessel but not exceeding 48 hours or return to loading point and discharge.

Different Types of Marine Insurance Policies

Specific Policy

The specific policy covers a particular consignment for a specific voyage/transit against an individual proposal submitted by the client. The premium under a specific policy should be paid prior to commencement of the risk. The complete details like commodity, vessels particulars, B/L or RR or AWB number and date, sum insured, details of voyage, terms of cover must be declared while effecting the Insurance.

As per Marine insurance Act, a policy must contain the following particulars:

- The name of the assured.
- The subject matter of insurance and the risk insured against.
- The voyage.
- The sum or sums insured.
- The name of the insurer.

The policy must be appropriately claused, stamped and duly signed by the appropriate authority.

Floating or Open policy

Sec 31 of the Marine Insurance Act, 1963 states that a floating policy is a policy which describes the insurance in general terms, and leaves the name or names of the ship or ships and other particulars to be defined by subsequent declaration.

"Unless the policy otherwise provides, the declarations must be made in 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."

Open (Floating) Policy is effected for an amount sufficiently large to cover the total value of shipments/ dispatches to be made over a specified period usually 12 months.

Subject to its terms and conditions, such a policy covers all shipments/ dispatches made by the Insured. As each shipment/dispatch takes place the required details are declared to the insurers and the value is deducted from the total sum insured under the policy. Here again, the insured is bound to declare all shipments/ dispatches coming within the scope of this policy. It is not open to him to run his own risk on certain shipments/ dispatches or to insure them elsewhere. Omissions or incorrect declarations may be rectified even after the loss or arrival provided such omissions or errors were genuine.

When the total of the amounts of the various declarations reaches or exhausts the amount for which the Policy was originally issued, the Policy is said to have been fully declared. However, the Policy may, of course, be reinstated for a fresh total value of shipment / dispatch to be effected over the remaining period.

Certificate of insurance

This is a document which is issued under an Open Cover or an Open (Floating) Policy. This document is a substitute for a specific policy and is a very simple document containing particulars of the shipment/ dispatch insured, the terms of cover in brief and certifying that the said shipment / dispatch is held covered in terms of the relative open contract.

Keypoint on Certificate of Insurance

The identical terms and conditions of the Open policy should be mentioned in the certificate of insurance. Every certificate of insurance issued under Open policy should be duly claused and stamped specially for export/import shipment.

Open cover

Open cover is a contract effected for a period of time, usually 12 months, whereby the insurer agrees to accept the insurance of all shipments/dispatches made by the Insured during that period. The Insured is bound to declare all shipments/dispatches coming within the scope of contract. It is not open to him to run his own risk on certain shipments/ dispatches or to insure them elsewhere. Open cover is an unstamped document but when the policy will be issued against each and every shipment, the same should be duly stamped.

Special declaration policy

This is a special type of open policy issued for 12 months covering inland transit only. The minimum S.I. under the policy is Rs. 2 Crs and the total value of the goods in transit is required to be declared at least once in a quarter in the form of a certified statement.

Final premium is adjusted (downward only) on the basis of actual annual T.O. of goods covered. The subject policy allows mid term increase of S.I. twice only during a year.

Turn Over discount is available under the policy ranging from 20% to 50% on the premium depending upon the actual T.O. of the insured. Maximum discount available under this policy is 70%, taking into account all discounts available under the policy.Minimum premium for the policy is Rs. 5000.00 only.

Annual policy

The Annual Policy is issued only in respect of goods belonging to the assured or held in trust by him not under any sale or purchase while in transit by road or rail from specified depots/ processing centre to other depots / processing centre. The depots must be owned or hired by the assured but the processing units may not be owned or hired by the insured.

The acceptance of the proposal is subject to the following information:

a)The particulars of transit.
b) The total distance involved from one depot to another depot and/ or processing centre.
c) Description of the goods.
d) Estimated annual turnover.
e) Single carrying limit at any one time.

The minimum rate of premium is 30 times of the chargeable rate.
The minimum premium for the policy is Rs. 5000.00 only.
The issuance of the subject policy warrants approval of H.O.

Reinstatement of sum insured

The Sum insured under this policy shall stand reinstated as from the time of happening of an event giving rise to a valid claim and the Assured shall remain responsible to pay additional premium calculated at prorate daily basis for the remaining period of the policy on such reinstated amount counting from the date of the loss.

It is, however, understood that the total liability of the insurer during the policy period shall not exceed twice the sum insured stated in the policy.

Condition of average

If at the time of any loss or damage happening to the goods in any specified transit, the total value of goods which were in transit at the time of such loss or damage is more than the sum insured in respect of their specific transit, the Assured shall be considered as being his own insurer for the difference, and shall bear a rateable proportion of the loss accordingly.

Multi transit policy

The Marine policy generally covers goods during ordinary course of transit on warehouse to warehouse basis. However, if the consignment comes under the control of the assured at any intermediate point for allocation, redistribution, processing etc. the normal transit policy comes to an end and further transit is treated as fresh transit. Risk during storage at such intermediate points is considered as a separate non-marine risk. To effect a continuous cover whilst in transit or in storage or during processing of the goods, multi transit policy and intermediate storage cover may be granted.The storage places should be covered in all sides including roof.

Sellers' contingency policy

Sometimes the Exporters export their goods under FOB or C&F terms and not under irrevocable letter of credit. The responsibility of the exporter for arranging insurance ceases as soon as the consignment is safely placed on board the vessel but ownership of the consignment does not change until the buyer accepts the goods and relative documents. In some cases the exporters do not get sale proceeds from the buyer due to the following reasons:

i) The importer may not be interested in those goods.
ii) The goods are not as per sample or specification.
iii) The goods have reached at the port in damaged condition &/or short.
iv) The importer's financial condition is disturbed.

To protect the interest of the sellers against physical loss or damage to the goods, Sellers' contingency insurance policy may be issued to the exporter to protect their interest. The salient features of the policy are as under:

a. This insurance can be issued to protect the interest of the seller.
b. The policy is not assignable.
c. The policy can not be extended beyond the port of discharge.
d. The sale contract cannot be altered subsequent to the operation of the insured peril.
e. The policy covers only physical loss or damage to the goods by insured perils.
f. The claim should be settled in Indian Rupees.

Sellers' Contingency Insurance Policy covers only the event under item number (iii) above. Items (i) (ii) and (iv) are not insurable risks.

Duty policy

The Duty policy is taken out by an Importer who imports the cargo under a valid import license. The policies are issued on actual assessed duty. The policy can also be issued on provisional duty and the same should be adjusted on the actual duty duly assessed by the customs authority after arrival of the goods.

The policy shall be one of the pure indemnities. Duty cover cannot be granted after arrival of the vessel unless it is covered under open policy or open cover. The rate of premium under Duty policy shall be 75% of the cargo rate including all extras.

Increased value insurance

This Policy is issued for import cargo when CIF value at port of loading is less than value at port of destination. The insurance is not for an agreed value but shall be for an amount not exceeding the actual difference between the market value at destination on the date of arrival of the goods in India and the total CIF + Duty subject to establishment of a higher market value or control price as notified by the appropriate statutory authority. The policy has a compulsory excess of 25%. The insurance is generally granted for an amount more than 100% of the CIF value of the cargo. The rate of premium for increased value insurance is 100% of the normal rate applicable to CIF insurance.

Special storage risk insurance

Under this policy, the cover is available to goods during storage at Railway Yard/Carrier's premises pending clearance of cargo by the consignees on termination of cover under Open/Special declaration Policy. Insurance shall be granted in conjunction with the Open policy or Special declaration Policy and the cover shall be identical as available under Open and Special declaration Policy. Basis of valuation shall be the invoice value.

The cover under the policy will commence on expiry of 7 days reckoned from midnight of the day on which the goods are discharged from the train/road vehicle and terminates from the time delivery is taken by the consignee or payment is received by the consignor, whichever is earlier. The policy can not be issued on short term basis. The sum insured can not be less than 10% of the estimated annual dispatches as declared for Open/Special declaration policy, or Rs 20 Lacs, whichever is higher.

Marine Insurance Claim

A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the Assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure.

The purpose of cargo insurance is to indemnify the cargo owner in the event of losses proximately caused by a peril insured against.

Processing of any claim involves examination/verification of the following:

1. An insured peril.
2. An uninsured peril.
3. An excluded peril.

Types of Losses

Sec 56 of MI Act categorizes losses under marine insurance policies into total and partial losses.

The Act further categorizes total loss into Actual Total Loss and Constructive Total Loss.

Partial losses are categorized into Particular Average and General Average.

Actual Total Loss

According to Sec 57 and Sec 58 of MI Act 1963, actual total loss may occur when the cargo is completely destroyed/lost and ceases to be of any value to the insured.

Example: Cargo is destroyed by fire.

Constructive Total Loss

Sec 60 (i) of MI Act, 1963 provides that 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.

Example: There will be a constructive total loss, if the cargo has been damaged during transit but the cost of repairing the damage and the charges for forwarding the repaired goods to their destination will exceed the value of the consignment.

Particular Average (PA)

Sec 64(I) of MI Act, 1963 defines a particular average loss as a partial loss of the interest insured caused by a peril insured against and which is not a general average loss.

Example: Cargo is partially damaged by sea water or fire.

General Average (GA)

GA loss is caused by direct result of a GA Act. General Average Act has following ingredients:

1) General Average may be either a sacrifice or expenditure, extra ordinary in nature.
2) Incurred voluntarily and intentionally.
3) Incurred reasonably and prudently.
4) Incurred when the adventure is in real danger.
5) The losses or expenses so incurred are for common safety of the vessel, cargo carried in it and the freight at risk.
6) The adventure must be saved so that these losses/expenses shall be borne by all interests which have been saved.

The following expenses are also recoverable under Marine Cargo Policy.

Particular Charges

Sec 64 (2) of M.I. Act defines particular charges to mean expenses incurred by, or on behalf of, the assured for the safety or preservation of the subject matter insured. Unlike Sue and labour charges, there is no particular contractual provision in the policy under which they are paid; consequently, they can not be recovered in excess of 100% payable in respect of a single loss. Particular Charges are incurred to avoid a greater loss which would otherwise fall on the policy and these charges are recoverable as a loss by an insured peril.

Sue and Labour Charges

As per Duty of the Assured Clause, the insured should always act as if he is uninsured. The insured is expected to take all measures to avoid or to minimize the loss despite being insured under the policy. The insureds are entitled to receive all reasonable expenses/charges that they incur for minimizing the loss in addition to the amount of claim payable under the policy, e.g. reconditioning charges of the damaged cargo at an intermediate port to avoid aggravation of damage. It is also to be noted that this is a supplementary agreement to the Policy and the expenses, when properly and reasonably incurred, are payable irrespective of percentage even in addition to a total loss,but not exceeding 100% of the insured value. In fact, sue and labour charges are a type of particular charges.

Extra Charges

These are the expenses which are incurred for proving a claim such as survey fees, settling agents fees etc. Sale charges and auction fees incurred for disposal of the damage cargo are also examples of extra charges.

Salvage Charges

These are the charges payable to the third parties, who, independent of any contract render services to save the adventure. The services are rendered as **"NO CURE-NO PAY"** basis.
Maritime salvage is distinguishable from general average expenditure by English Law, but most foreign codes treat salvage as general average. The difference between general average and salvage charges are as under:

1) General average is the result of a voluntary act on behalf of the whole venture, where as salvage falls directly on each unit of salved property. One can not be made to pay on behalf of another.

2) Salvage is enforceable at the places where the services terminate; general average is only enforceable at destination.

3) The values on which salvage is assessed are also taken at the place where the services terminate, where as contributory values for general average are assessed at the end of the voyage.

4) The claim under generalaverage shall only be admitted if the adventure is saved where as claim for salvage charges shall be admitted even if the adventure is not saved after successful salvaging.

Liability under the policy for salvage charges is assessed in the same way as for general average expenditure.

Salvage Loss

A salvage loss falls short of a constructive total loss because the latter must concern the whole of the goods insured under the particular policy, (unless there are different species insured). The damage goods sometimes are sold at intermediate port in order to prevent them from becoming total loss or being aggravated further if the goods are allowed to be carried up to their final destination. The insured in such situation is allowed to retain the sale proceeds of the goods after deducting the sale charges and survey fees. The difference between the insured value and the amount received by the insured through sale proceeds is the amount of claim payable by the underwriters.

Ordinary Loss

The policy shall not cover any kind of ordinary loss which includes ordinary loss in weight and/or volume and/or leakage as the case may be. Some commodities have recognized trade allowance, but, where there is not, the ordinary loss can be ascertained by investigating deliveries of previous (sound) shipments or the sound part of the shipment on which the claim arises.

Sentimental damage

Sentimental damage is actually a "Fear of Loss." Where some chests of tea were damaged due to sea water but buyers feared that other chests, although sound, might have been damaged as they were sold at a reduced price. Such losses are not a real one and are never recoverable under the policy being in the nature of a **"Trade Loss".**

Sympathetic damage

This is also known as Taint Damage. Cargo which is damaged may taint other cargo. If the original damage is due to an insured Peril, the resulting damage is considered as having been proximately caused by that peril.

Example: Hides damaged by Sea water, putrefy and the consequent odour spoils tobacco in the same hold. Taint damage to tobacco was held to be proximately caused by Sea water.

Claim documents for processing the cargo claim

Evidence of Insurable Interest

The original copy of the policy or the certificate of insurance and all original shipping documents relating to a particular claim. It is to be noted that the insurable interest can not be changed or transferred after the occurrence of the loss.

Evidence of shipment/ dispatch

The original/printed copy of bill of lading and/or AWB and/or Consignment note issued by the carriers.

Evidence of loss or damage

The original survey report for Total and Partial loss.
Certificate of non-delivery, damage/shortage certificate issued by carriers, joint survey report with the carriers, copy of note of protest issued by the master of the vessel etc.

Evidence of Charges involved

Bills, cash memos, certificates, money receipts towards expenses incurred reasonably and prudently for the purpose of minimising the losses in respect of damage to cargo.

Evidence of Insured Value

Original invoice along with the packing list and /or any other document evidencing the actual insured value of the commodity.

Evidence of Preservation of rights of recovery against carriers, bailees& other third Parties

A copy of the delivery slip duly qualified by the insured/ consignees for acceptance of the goods in doubtful condition. Damage/ shortage/ non delivery certificate issued by the carriers, copy of notice of claim lodged on the carriers along with their acknowledgement within the stipulated time period.

General Average

The receipt of G.A. deposit and /or a copy of counter guarantee issued by the insured/ consignees against G.A guarantee issued by the underwriters shall be obtained.

It is to be kept in mind that all the documents pertaining to a particular claim shall be submitted in original and /or printed copy of the same. Photo copy of the documents should not be accepted unless the original/printed copies of the documents are submitted to the carriers and/or other Government agencies for recovery claim.

Franchise

Franchise is imposed in order to avoid small losses. Under this clause, parties agree to bear small losses, say up to Rs.500/- or Rs.1000/- up to which the claim shall not be preferred but in excess of the stipulated amount, the entire amount is recoverable under the policy.

Excess

Some commodities loss volume or weight inevitably during transit. For example, tallow may liquefy and leak, whereas other more volatile commodities such as turpentine, loss in volume by evaporation. Such ordinary losses are always excluded.

The excess is imposed under the policies due to the following reasons:

a. To minimize the losses.
b. To avoid settlement of natural/ inevitable losses.

The imposition of Excess under the policies makes the insured his own insurer for a certain percentage of loss, say 1% of the value of the consignment, as agreed. The basis of computation of claim considering fixed percentage of excess is under:

Gross Loss	Rs2,00,000/-
Less salvage	Rs 10,000/-
	Rs 1,90,000/-
Less policy excess	Rs 10,000/-
Net assessed loss	Rs 1,80,000/-
Less 25% for non- protection of rights of recovery	Rs 45,000/-
Net amount payable	**Rs 1,35,000/-**

What will be the treatment of claim if insurance for a shipment is undervalued?

The value of the shipment declared for insurance should reflect true value of a shipment. If a loss occurs and the amount declared is found to be less than the true values i.e., invoicevalue, the claim settlement may be pro-rated to a lesser amount.

Recovery

In case of a cargo claim, the insurers obtain a letter of subrogation from the claimant after indemnification of loss. The letter of subrogation authorizes the underwriters to initiate recovery proceedings against the Carriers, Bailees and other third parties responsible for the loss through their authorized recovery agents.

The underwriters should ensure that the recovery against third parties is protected and pursued vigorously. The carrier's liability and limitation of action are as under:

Carriers' liability and limitation of action

Mode of Transport	Legal Regime	Limits of Liability	Limitation of Action
Carriage by Sea (International)	Hague Rules	100 Pounds per package or unit unless value declared and inserted in Bill of Lading	Suit must be brought within one year of delivery or the date when delivery should have taken place
	Hague Visby Rules (SDR Protocol, 1979)	2 SDR per kg or 666.67 SDR per package	Same as above
	Hamburg Rules	2.5 SDRs per kg or 835 SDRs per package or shipping unit, whichever is higher.	Litigation or arbitration to be commenced within 2 years from the date of delivery of goods or the date delivery should have taken place
Note : Beware that for through Bill of Ladings or Combined Transport Documents, the limit for action may be 6,9,10 or 11 months as mentioned on the reverse of the corresponding Bill of Lading.			
Carriage by Sea (within India)	Carriage of goods by Sea Act 1924 (COGSA)	Same as Hague Visby Rules	Same as Hague Visby Rules
Carriage by land (International)	CMR Convention	8.33 SDR per kg	1 year
Carriage by land (within India)	Carriers' Act 1865	Actual	For filing claims- 6 months from knowledge of loss/date of transport receipt. For filing suit- 3 years from the date of delivery or date delivery should have taken place.
Carriage by Air (International)	Warsaw Convention 1929	16.58 SDR per Kg if value not declared; Actual, if value declared	1. For filing claims a) For Damage -14 days from the date of delivery. b) For Non-delivery–21 days from the date of booking. 2. For filling suit – 2 years from the date of booking

			or date of arrival.
Carriage by Air (Domestic)			1. For filling claims a) For Damage -7 days from the date of delivery. b) For Non-delivery – 14 days from the date of booking. 2. For filling suit – 2 years from the date of booking or date of arrival.
Postal Authority			1. For filling claims – 1 month from the date of delivery in case of shortage / damage and 3 months from the date of booking in case of non-delivery. 2. For filling suit – 3 years from the date of booking after notice of 2 months under Section -80 of CPC.
Major Ports			1.For filling claims, 7 days from the date of discharge. 2. For filling suits, 6 months from the date of discharge.
Indian Port Trust Act, 1908			The Time Limits for Notice of Loss shall vary from Port to Port as per rules of each State. However, the Time limit for filing suit is within 3 Years after notice of 2 months to State Govt. under Section-80 of CPC.
Customs Authorities			Refund of duty paid should be claimed within 6 months from the date of payment of duty.

SDR : Special Drawing Rights, Currency used in International accounting , defined by the I.M.F. as on 31.07.1998, 1 SDR = USD