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## MARINE INSURANCE POLICIES IN INDIA: LEGAL FRAMEWORK, RISK ALLOCATION, AND PRACTICAL CHALLENGES UNDER THE MARINE INSURANCE ACT, 1963

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### Abstract

Marine insurance serves as a critical tool in international trade, offering protection against the multifaceted risks involved in maritime ventures. Given the unpredictable nature of the sea and related logistics, marine insurance policies are uniquely tailored through mutual agreements between the insurer and the insured. This research explores the essential components, classifications, and legal frameworks governing marine insurance policies under the Marine Insurance Act, 1963. It also delves into the concept of insurable value and the legal principles surrounding the assignment of marine policies. By systematically analysing statutory provisions and industry practices, this paper aims to enhance understanding of the structure and practical applications of marine insurance in the Indian legal context.

### Introduction

Marine insurance has long played a pivotal role in global commerce, offering a financial safeguard against the inherent uncertainties of maritime operations. Unlike other forms of insurance, marine insurance does not conform to a uniform contractual structure. Instead, it is characterised by its flexibility—allowing parties the freedom to define their own terms and conditions based on mutual understanding. This aspect is vital in an industry where no two shipments, vessels, or voyages are ever quite the same.

The Marine Insurance Act, 1963, serves as the legislative cornerstone for regulating marine insurance contracts in India. It establishes the legal requirement for a written marine policy (Section 24), outlines the vital components a policy must contain (Section 25), and elaborates on determining insurable value (Section 18). It also addresses the assignment of marine policies, setting this category of insurance apart from other contracts in terms of transferability.

This paper seeks to unpack the key legal and practical elements of marine insurance policies

in India. From understanding the policy components to examining the nuances of valuation and assignment, the study provides an in-depth legal analysis while also recognising the evolving needs of industry stakeholders.

### Research Methodology

The research methodology adopted in this paper is doctrinal and qualitative in nature. Primary data has been sourced from statutory provisions of the Marine Insurance Act, 1963 and relevant sections of the Indian Contract Act, 1872. Judicial precedents, such as *New India Assurance Co Ltd v G.N. Sainani*, have been referenced to provide clarity on the legal position of policy assignment.

Secondary sources such as scholarly articles, legal commentaries, and insurance industry reports have been examined to supplement statutory interpretation with practical insights. The research employs an analytical approach to dissect the structure and classifications of marine insurance policies, while also considering the operational realities of international trade and shipping. This methodology ensures a comprehensive

understanding of both the theoretical and practical dimensions of marine insurance law in India.

### MARINE INSURANCE POLICY

Given the diverse and often intricate nature of maritime risks, marine insurance does not follow a rigid contract template. Instead, the parties involved—usually the insurer and the insured—enjoy the liberty to define the terms of their agreement according to their mutual understanding. These terms, including the scope of coverage and responsibilities of each party, are laid out in detail within the insurance policy.

As per Section 24 of the Marine Insurance Act, 1963, a marine insurance agreement must be formalised through a written marine policy in order to be admissible as legal evidence. This legal stipulation can create complications for policyholders—if no formal policy exists, it becomes extremely difficult for the insured to substantiate the terms of coverage in court, effectively hindering any claim process.

#### Components of a Marine Insurance Policy

Though the Marine Insurance Act of 1963<sup>783</sup> does not offer a specific definition for the term “marine policy,” it lays down an elaborate statutory structure that outlines the essential components a valid policy must include. Essentially, the policy serves as a contractual agreement between the insurer and the insured, detailing their mutual obligations, rights, and responsibilities. Section 25 of the Act is particularly critical, as it specifies the required particulars that every marine insurance policy must contain for it to be considered valid and enforceable under the law.

**Outlined below are the core elements that Section 25 mandates:**

- (i) **Insured Party Identification:** This denotes the person or business entity obtaining coverage against maritime risks. It could also include

an authorised representative acting on behalf of the insured. Correctly naming the insured is of utmost importance since it establishes who has the legal authority to file a claim in the event of a covered loss. Mistakes or vagueness in identifying the insured party may lead to complications or outright rejection of claims.

- (ii) **Specification of the Insured Subject Matter:** This element identifies what exactly is being insured. It might pertain to goods in transit, the ship itself (commonly known as the “hull”), the anticipated freight, or any other interest at stake in a marine venture. Precise and unambiguous detailing helps eliminate any scope for confusion or legal conflict and ensures the insurer is well aware of the nature of the risk involved.

- (iii) **Covered Perils or Risks:** A crucial aspect of any marine insurance contract is the explicit listing of perils the policy is intended to cover. These may encompass dangers such as marine accidents, fire, theft, acts of piracy, natural calamities, ship collisions, and more. Policies may also include coverage for war risks, inland transportation threats, and other extensions, depending on what is agreed upon. A well-documented list of covered risks reduces ambiguity and potential legal disputes later.

- (iv) **Duration or Scope of the Voyage:** The policy must clearly outline the timeframe or voyage limits during which coverage will be in effect. This could either be a specific duration—like from May 1, 2025, to July 31, 2025— or a voyage from one port to another, say from Mumbai to Rotterdam. Accurate demarcation of

<sup>783</sup> Marine insurance act, 1963.

the journey's start and end points (terminus quo and terminus ad quem) ensures a shared understanding of the geographical and temporal scope of the policy.<sup>784</sup>

- (v) **Insured Amount:** This represents the financial ceiling of the insurer's liability, commonly referred to as the "sum insured." It usually includes the cost of the insured subject matter, expected profits, and associated charges like freight. This amount also determines the premium payable. For fair risk coverage, the insured value should correspond to the actual worth to avoid problems like underinsurance or overvaluation.
- (vi) **Insurer's Identity:** The names of all insurance providers assuming the risk must be clearly listed in the policy. Where multiple insurers are involved (co-insurance), each must formally sign the document to authenticate their liability. Missing or unauthorised signatures can undermine the enforceability of the policy and obstruct claims settlement.

These components collectively ensure that a marine insurance policy meets legal standards, fosters transparency, and provides clarity during any dispute or claims process.

### Classifications of Marine Insurance Policies

Marine insurance policies have diversified over time to suit the varying needs of international traders, shipping firms, freight handlers, and logistics operators. Their flexible structures allow policyholders to select specific types based on the duration, nature, and scale of their operations. While the Marine Insurance Act recognises certain basic policy categories, industry practice has introduced several more nuanced and adaptable formats.

Below is a detailed classification of principal and commonly utilised marine insurance policies:

#### Valued Policy

This type of policy assigns a pre-agreed monetary value to the insured property at the outset. This valuation typically includes not only the price of the cargo or ship but also freight charges, incidental expenses, and estimated profit (often in the 10–15% range). This agreed amount becomes the fixed benchmark for claim settlement. Though streamlined, it may still require reassessment in cases of constructive total loss, where salvage costs might exceed the declared value.

#### Unvalued (Open) Policy

Unlike a valued policy, an unvalued or open policy does not set a specific insured value at the start. The value is instead calculated at the time of a loss, within the policy's coverage ceiling. This model is well-suited for businesses with dynamic inventories or changing cargo values. Proper recordkeeping is essential to validate any future claims under such a policy.

#### Voyage Policy

A voyage policy provides coverage for a specific shipment or journey. The protection begins from the port of origin (terminus quo) and continues until the final destination (terminus ad quem) is reached. All route details and voyage terms are clearly defined in the policy. Ideal for single-shipment needs, voyage policies provide focused protection tailored to one-off maritime ventures.

#### Time Policy

Time policies offer insurance for a predetermined period, generally up to one year, regardless of the number of trips undertaken during that span. These policies are especially favoured for insuring vessels rather than cargo, and are commonly used by shipowners engaged in regular trading. Many time policies include cancellation clauses, allowing either

<sup>784</sup> SINGH & KAUSHIK, PRINCIPLE OF INSURANCE LAW 221(3ed. 2020)

party to terminate the agreement with notice, often involving premium adjustments.

### Mixed Policy

Combining features of both time and voyage policies, a mixed policy might cover a specific journey while also providing additional coverage for a set period afterward. For instance, a policy could cover a ship from Chennai to Singapore and continue to provide protection for another 30 days post-arrival. This format is advantageous for situations involving cargo unloading, dockside handling, or subsequent local transportation.

### Floating Policy

A floating policy offers overarching insurance coverage under general terms, with specific shipment details being furnished later through formal declarations. It's a practical solution for exporters and logistics providers who handle frequent or bulk consignments. The open-ended nature of this policy reduces repetitive administrative efforts while maintaining seamless coverage for each declared shipment.

### Builders Risk Policy

This specialised policy insures vessels under construction. It remains valid throughout the build phase and often extends to cover trial runs or the ship's initial voyage. It protects shipyards, constructors, and owners from risks like fire, equipment damage, or theft during the building process. Given the high capital investment in ship construction, this policy serves as an essential risk-management tool.<sup>785</sup>

### Blanket Policy

A blanket policy is suited for entities needing wide coverage over numerous goods, routes, or shipments. The insured estimates the maximum risk exposure and pays a corresponding premium. These policies specify general shipping routes, cargo categories, and terms,

providing broad protection under a single document. They're ideal for organisations engaged in diversified and high-volume trade.

### Port Risk Policy

A port risk policy focuses on insuring a vessel while it is stationary at a port. It covers incidents such as fire, theft, environmental hazards, or operational mishaps during loading or maintenance. These policies are commonly used when ships are docked for extended durations, under repairs, or temporarily out of service.

### MEASURE OF INSURABLE VALUE

Insurable value is the value of the property being insured, which helps determine the level of coverage under the insurance policy. Essentially, it represents the maximum amount the insurer will pay to repair or replace the insured item in the event of a loss.

Determining the insurable value of the subject matter is critical, particularly in cases where an unvalued policy is in place. In such situations, the insurer must assess the indemnity amount. Even with a valued policy, the insurable value may be necessary to confirm the agreed value, especially when a situation like a constructive total loss arises.

In simpler terms, the process of determining insurable value is essential for the following reasons:

- A. It helps determine the extent of indemnity in unvalued policies, where the value of the subject matter isn't pre-established.
- B. It ensures accurate indemnity calculations in valued policies when the stated value needs further clarification, particularly in cases like a constructive total loss.
- C. It provides a clear standard to assess the subject matter's value in valued policies.

If the policy doesn't outline how to calculate the insurable value, Section 18 of the Marine

<sup>785</sup> Ivan Apelbaum, *marine insurance law and practice in India* 113 (2d ed. 2019).

Insurance Act, 1963, provides a framework.<sup>786</sup> Here's a breakdown of how to determine it:

- For ships, the insurable value is assessed when the risk begins. This includes the ship, its equipment, crew supplies, wages already paid, voyage preparation costs, and insurance premiums.
- For steamships, their machinery, boilers, and coal (if owned by the insured) are also part of the insurable value.
- When it comes to cargo, the insurable value is based on its invoice price at the loading port or its market value at that time. This also includes freight charges, the insurance premium, and any expected profit.
- For freight, the insurable value is the total freight amount plus the insurance premium. If the freight is insured by a charterer, it's included in the cargo's insurable value for insurance purposes.
- For any other subject matter, excluding liabilities under civil obligations, its insurable value is determined by its value at the location and time when the insurance begins, along with the applicable insurance premium.

### ASSIGNMENT OF MARINE POLICY

Under the Indian Contract Act, 1872, assignment refers to the transfer of both rights and obligations from one party to another. It is a process where one party passes on their right to receive benefits and their responsibility to fulfill contractual obligations to another person.

Generally, the assignment of an insurance contract requires the prior consent of the insurer to be valid. However, marine insurance, especially cargo insurance, is an exception to

this rule.<sup>787</sup> In these cases, an assignment can be made without needing the insurer's consent or even providing written notice, offering more flexibility compared to other types of insurance.

The Indian Contract Act specifies certain provisions that detail the conditions under which a marine insurance policy can be validly assigned. These provisions address the manner, timing, and necessary formalities to ensure the assignment is legally enforceable.

A marine Insurance policy can be assigned to another party only if the policy allows for such a transfer. The assignment can occur before or after a loss has taken place, but it cannot be done once the insured has fully relinquished ownership of or interest in the goods or if they have been lost entirely. Essentially, as long as the insured retains an interest in the goods, they are allowed to assign the policy—even if the goods have already been damaged or lost.

However, if the insurer has given up their interest in the subject matter, or if the goods have been lost before the assignment, or if there is no clear intention to assign the policy, the assignment would not be valid. Furthermore, the assignment cannot be made by someone who does not have a proprietary or insurable interest at the time of the transfer. This was confirmed in the case of *New India Assurance Co Ltd v G.N. Sainani*.<sup>788</sup>

Assignments can be made through an endorsement on the policy or insurance certificate, or in another customary manner, as long as it is done in accordance with the prescribed rules.

### Conclusion

Marine insurance remains an indispensable element of maritime commerce, offering security and predictability in an otherwise volatile environment. Its legal framework in India, governed chiefly by the Marine Insurance Act, 1963, provides both structure and flexibility—

<sup>786</sup> Marine Insurance Act, 1963, § 18.

<sup>787</sup> S.K. SARVARIA, MULLA ON THE INDIAN CONTRACT ACT 1554 (15th ed. 2021).

<sup>788</sup> *New India Assurance Co. Ltd. v. G.N. Sainani*, AIR 1997.

balancing statutory mandates with the dynamic needs of maritime stakeholders. The essential components outlined under the law ensure transparency and legal enforceability, while various classifications of policies cater to diverse operational requirements.

The doctrine of Insurable value offers clarity in indemnification, particularly in scenarios involving unvalued or constructive total loss claims. Furthermore, the unique provisions allowing assignment of policies without prior insurer consent reflect the commercial exigencies of the shipping and trading sectors.

In sum, marine insurance in India embodies a sophisticated interplay of legal precision and commercial pragmatism. As global trade continues to expand, so too must the legal and regulatory frameworks that support it—ensuring that marine insurance policies remain both robust and responsive to the evolving maritime landscape.

