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MARINE INSURANCE: REGULATORY IMPLICATIONS, TRENDS AND CHALLENGES IN MARINE INSURANCE LAW

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ABSTRACT

Marine insurance is a unique form of insurance which is important in international trade as it covers the loss or damage caused to the goods in transit for domestic as well as international trade. It provides coverage for shipping goods by sea. Risks such as damage to goods, maritime frauds, collisions, piracy and misplacement are included under the coverage provided in marine insurance. Cargo insurance also includes property which is exposed onshore and offshore such as pipelines, ports, oil platforms and container terminals. Cargo insurance policies include flexible premiums, customer-focused policies and insured value options. Marine insurance policy covers explosion, natural calamity damage, fire accident, survey fees, washing onboard, overturning, jettisons, sinking, stranding, total loss of package during loading or unloading, cost of reconditioning, forwarding expenses, derailment of land conveyance, general average sacrifice salvage charges, if cargo leaves port of distress and collision. The goods transported by aircraft, the items shipped by sea vessels, the goods moved by trains, trucks as well as other rail or road vehicles and items transported by means of canals, rivers and different inland water routes are governed by maritime insurance regulations. Marine insurance comes up with various opportunities and risks for the marine insurance sector. The principles of marine insurance are insurable interest, contribution, proximate cause, absolute honesty, indemnity and subrogation. The maritime sector plays a vital role in increasing international trade opportunities and eliminating trade barriers. As there is rapid growth and progress of the Indian economy, there is creation of new opportunities in the maritime sector which will contribute towards the development of the country. This study will analyse the role of marine insurance in promoting international trade and providing coverage for loss and damage caused to goods in transit.

Keywords: Marine insurance, proximate cause, salvage, collision.

INTRODUCTION

Marine insurance is a type of commercial insurance which provides coverage for loss or damage caused to goods in transit. Logistics companies, businesses, buyers of goods globally use marine insurance policies for protecting their goods from any loss or damage. Marine insurance policies in India are governed by The Marine Insurance Act of 1963 and regulated by the Insurance Regulatory and Development Authority of India (IRDAI). A marine insurance coverage can be beneficial for international trade. The assets of shipping companies like its

equipment and furniture are protected by marine insurance. The goods sold by sellers can be prevented from getting delayed, stolen or damaged. Protection is granted to buyers against already paid-off if they are having entire responsibility towards the shipment's logistics. In India, general insurance companies usually provide marine insurance, and most of them offer several kinds of marine insurance policies for meeting the needs of diverse businesses and people. Several factors such as the level of risk involved, the value and nature of the cargo or vessel and the kind of coverage required usually determine the premium for marine insurance plans in India. The insurance company investigates the claim and decides the amount owed to the cargo owner or carrier. Typically, the settlement amount is determined by the cargo's worth and the extent of the loss or damage. The insurance provider pays the compensation to the cargo owner or shipper. Marine insurance is highly essential for businesses participating in transportation of goods both domestically and internationally. It is designed for safeguarding businesses from monetary damages resulting from unexpected events occurring during transit and also provides financial stability to them which will make them to participate in international trade and commerce.

MEANING OF MARINE INSURANCE

The risks that are associated with maritime transportation such as cargo and ship loss or damage are covered under marine insurance. However, marine insurance coverage is not limited to sea vessels and goods transported by waterways. It also covers items transported by air, train, and road. There are two types of marine insurance commonly known as cargo insurance and hull insurance. Protection against loss or damage to goods in transportation by sea, air, or land is provided by cargo insurance. It includes the property which is exposed onshore and offshore such as oil platforms, container terminals, pipelines, oil platforms, ports, marine casualty, hull and marine liability. The physical damage caused to the ship or vessel, including equipment, machinery, and other parts is covered by hull insurance. It also includes perils such as collision, fire, piracy, theft, hurricanes, weather-related risks like storms and several other types of natural disasters. The coverage period extends from the carrier's departure to the date of arrival. Apart from the sea, marine insurance also covers loss or damage caused by train, road, and air. Protection against physical damage to a ship or vessel, including equipment, machinery, and other components is provided by hull insurance.[1]

TYPES OF MARINE INSURANCE

Marine insurance has been classified into different types according to diverse requirements and interests of individuals and shipping companies. They are outlined below:

- **Marine Cargo Insurance:** If you own cargo, you run the danger of neglecting it at any moment, whether at the terminal or during the voyage. This may result in items being lost, misplaced, or damaged. To safeguard your interests as a cargo owner, maritime cargo insurance will cover your damages in exchange for a reasonable payment of premium.

- **Protection and Indemnity (P & I) Insurance:** P & I club offers protection and indemnity insurance. This club is a shipowners' mutual insurance coverage service with an emphasis

[1] Anon What is Marine Insurance? Features & Benefits of Marine Insurance | Policybazaar, in: *Policybazaar*, Abrufbar Unter: https://www.policybazaar.com/commercial-insurance/marine-insurance/

on damages or losses to third-party items that are excluded by other common marine insurance policies.[2]

- **Freight Insurance:** A corporation owning a merchant ship is protected under freight insurance as they are susceptible to monetary loss in freight. For instance, if you have lost the cargo as a result of an accident, the loss will be covered by freight insurance.

- **Freight Demurrage and Defense Insurance:** This insurance is generally referred to as FD & D or defense. The legal cost claims and handling assistance for a wide range of issues that are not covered by P & I, hull, or machinery insurance is offered by this marine insurance policy.

- **Machinery Insurance:** All of the essential machinery on-board is protected by this insurance coverage. The operational damage caused to the ship will be compensated by the insurance company. Still, it is necessary to take a survey and approval from the surveyor.

- **Liability Insurance:** Compensation for any liability arising from the collision or crash of your ship or any type of induced attacks will be offered by this marine insurance policy

- **Hull Insurance:** The hull and the body of your vessel as well as other essential components of the ship's furniture are protected under this marine insurance policy. You can obtain the hull insurance as an owner for protecting your ship, vessel, or boat against loss or damage in an unforeseen event.

MODES OF TRANSPORTATION COVERED BY MARINE INSURANCE

Transportation of goods through different modes such as sea, land, air and inland waterways is covered under marine insurance. In land transport, insurance is provided for goods moved by trains, trucks and several rail or road vehicles. In sea transport, insurance is provided for goods that are transported by sea vessels. In air transport, insurance is provided for cargo transported by aircraft. In inland waterways, insurance is provided for goods that are transported by means of canals, rivers and other inland water routes.

NEED FOR MARINE INSURANCE

Marine insurance is important for individuals and businesses who are involved in international transportation of goods and services. It provides coverage for loss or damage of cargo during transportation, which also includes piracy, theft and other natural disasters. Marine insurance is necessary for shipbuilders and service professionals as it can provide coverage to them against the potential dangers arising from maintenance, repair and construction of ships. This also includes damage caused to vessels in the shipyard as well as third-party liability claims.[3]

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[2] *Trade Finance Global* (2025). Marine Insurance | Updated 2025 Guide | Trade Finance Global, in: *Trade Finance Global*, abrufbar unter: https://www.tradefinanceglobal.com/freight-forwarding/marine-insurance/

[3] *Tata AIG General Insurance Company Limited* (2021). Marine Insurance, in: *Tata AIG General Insurance Company Limited*, abrufbar unter: https://www.tataaig.com/sme-insurance/marine-insurance

Marine contractors which includes people who are working in offshore oil and gas exploration, depend on marine insurance for protecting themselves from the potential dangers associated with their work, which includes damage to equipment, pollution and injuries to personnel. The ships are rented by by charterers for a particular time period and hold responsibility for the operation of the vessel during that time period. Marine insurance is essential for safeguarding them against any loss or damage that may occur while the vessel is in their control. The responsibility of ensuring the safe and efficient handling vessels and cargo in ports lies on terminal operators and port authorities. Some of the most prominent candidates for marine insurance are ship owners. Protection from damage, loss, and liability claims is included in vessel coverage required by them. The transportation of goods is arranged by freight forwarders who are held responsible for making sure that goods reach safely to their destination. Marine insurance is important for freight forwarders because it protects them against any loss or damage that may occur during transit. The particular type of maritime insurance required may differ according on specific situations and perils involved.

NATURE AND SCOPE OF MARINE INSURANCE

Marine insurance provides protection against the potential risks associated with transportation of goods by sea. It provides financial protection against a broad range of risks faced by marine vessels, such as piracy, collisions, vessel sinking and different types of natural disasters. This specific type of insurance is highly essential for businesses involved in international trade as it covers losses arising from unforeseen circumstances that may cause disruption or damage to cargo in transit. The liability for third-party claims arising from events or accidents is covered under marine insurance.[4]

Marine insurance has a wide scope, but it usually covers several specific domains. The protection offered by marine insurance extends far beyond the protection of cargo and ships. It offers indemnity and management of maritime risk to all the parties involved in the transportation of goods by sea. These domains include:

- **Hull insurance:** The physical damage caused to the vessel itself which includes its equipment and machinery is covered under marine insurance. This coverage is important for shipowners because it provides protection against potential risks such as piracy, fire, collision, and damages caused due to change in weather.
- **War risk insurance:** Due to potential dangers associated with armed conflicts, coverage against loss or damage arising from war-related perils, which includes riots, strikes, civil commotions, as well as acts of terrorism which are generally not included in standard policies is offered by war risk insurance.
- **Liability insurance:** Liability insurance is commonly known as Protection & Indemnity (P&I). The coverage for the legal liabilities of shipowner as a result of ship operation including cargo damage, injuries or death of passengers or crew members as well as environmental pollution is offered by the liability insurance.

[4] *Windward* (2024). What is Marine Insurance?, in: *Windward*, abrufbar unter: https://windward.ai/glossary/what-is-marine-insurance/

- **Cargo insurance:** This type of marine insurance is used very frequently which covers the damage or loss caused to goods in transit by sea and also includes road, rail or air transport associated with the marine journey. Coverage ranges from "All Risks" to more restricted options, such as "With Average" (WA), which often covers different kinds of risks that have been identified.
- **Loss of hire insurance:** Shipowners receive compensation for loss of revenue in situations where a vessel is unable to function as a result of potential risk or covered damage by loss of hire insurance. This helps in maintaining financial stability throughout the repair or recovery time.
- **Freight insurance:** Protection is provided to carrier or shipper against the loss of freight revenue as a result of damage or loss caused to cargo. It is helpful especially for the charterers and the shipping companies.

IMPORTANCE OF MARINE INSURANCE

Marine insurance encourages investment in the maritime sector by reducing the risks of owning, operating, and investing in ships. This protection has the potential to encourage industry investment, resulting in improved efficiency and modernization. There are certain potential risks such as piracy, accidents and natural disasters encountered by the maritime sector. Natural calamities, piracy, and accidents are all potential threats to the maritime sector. Marine insurance enables shipowners and cargo owners to manage these risks and protect themselves from financial damages that may arise. The potential losses incurred during transportation damage, theft, or loss of cargo, equipment, or vessel is covered under marine insurance. These losses can cause significant financial harm to the parties involved, so marine insurance is essential for mitigating the monetary consequences. Several nations demand vessels and shippers to carry maritime insurance in order to comply with rules and regulations. For example, in India, all vessels carrying goods are required to obtain proper marine insurance coverage before departing on their journey. Marine insurance plays a major role in promoting international trade because it assures buyers and sellers that their cargo will be safe during passage. This develops confidence in buyers and sellers to engage in international trade and can result in higher trading volume and profitability.[5]

CHALLENGES IN MARINE INSURANCE

The claims relating to marine insurance involve multiple jurisdictions which have different legal systems and resolving these claims is a complex process. These claims also require thorough scrutiny while determining the reasons and extent of loss or damage caused to goods. Processing marine insurance claims is a complex process as there are different types of risks involved including natural disasters, piracy, piracy, accidents and political instability which cannot be predicted earlier. Marine insurance is a worldwide business that includes multiple insurers, brokers, and policyholders from various countries. Unfortunately, there exists a lack of uniformity and coordination in marine insurance policies and practices around the entire globe. There is complex terminology and restrictions in contracts of marine insurance that

[5] *Anon,* The importance of marine Insurance: Key coverage types explained, abrufbar unter: https://blog.pazago.com/post/importance-of-marine-insurance-coverage

might hinder the procedure of claims. The policies may contain particular coverage exclusions, deductibles, and limitations that must be carefully interpreted. Incorrect interpretation or inconsistency may result in disputes and delays in the resolution of claims.

PRINCIPLES OF MARINE INSURANCE

Marine insurance is an essential component of the maritime industry. It helps in protecting expensive cargo against unanticipated risks such as collision, theft, fire and explosion, and natural disasters during the journey. Marine insurance functions upon a few key principles that are intended to ensure consistency in the delivery of insurance services. The fundamental principles of marine insurance are utmost good faith, proximate cause, insurable interest, indemnity, subrogation and contribution.[6]

- **Principle of Utmost Good Faith:** There is utmost good faith on the part of the insurer and the insured in every insurance policy. Marine insurance policies are not exempted from it. This principle envisions that a person or organization obtaining marine insurance will provide correct information without hiding important facts. The power of rejecting an application or claim is vested with the insurance company in situations where it considers that the entity purchasing the policy has not provided the essential details. As a result, the insurer must disclose all the associated risks which might influence the the underwriter's decision and must act in good faith towards the insurer during the entire period of policy. The breaches under the concept of uttermost good faith are grouped into four categories: concealment, non-disclosure, fraudulent misrepresentation, and innocent misrepresentation. Therefore, it is essential to provide correct and accurate information when purchasing marine cargo insurance.

- **Principle of Proximate Cause:** Another maritime insurance premise is proximate cause. It is essential to establish the cause of the loss or damage to the goods or vessel. It refers to the most immediate or proximate cause, which aids in determining the true cause if a series of events have contributed to the damage. According to the principle, the insurance provider is obligated to compensate you if the policy covers the proximate cause of your loss. If the proximate cause cannot be covered by your marine insurance policy, the insurance provider is not responsible for providing you with compensation. For example, pirates attack and steal your shipment while it is traveling to Australia. Your insurance only covers losses caused by natural disasters. In the absence of the principle of proximate cause, you may have cited fog as the cause of the theft because it was preventing you watching the pirates and taking action in time. However, piracy will be regarded the proximate cause of your loss under a maritime insurance policy.

- **Principle of Insurable Interest:** Insurable interest is explicitly defined in the Marine Insurance Act of 1963. According to the principle, there must be exposure of a tangible item to marine risks, and it must have a legal relationship with the insured party. In simpler terms, marine insurance is only valid if you are having an insurable interest in the insured

[6] Anon, What are the basic principles of marine insurance?, Abrufbar Unter: https://www.tataaig.com/knowledge-center/marine-insurance/principles-of-marine-insurance

property during the time of loss. This means that you have to benefit from the goods arriving safely and as per the schedule at their desired destination. However, if the items are not delivered on time and in the expected condition, you will incur a loss. So, according to the principle of insurable interest in marine insurance, you must have an insurable interest with goods arriving safely at their destination.

- **Principle of Indemnity:** The main objective of cargo insurance is to put the insured in the same financial situation as if the loss had not occurred. While an insurance policy cannot replace goods destroyed in the event of loss or damage, it may offer adequate reimbursement. The indemnification principle ensures that the policy only pays losses resulting from damaged items. This principle ensures that you do not purchase the coverage for profit. It will provide compensation solely for the amount of the damage sustained. For instance, if you have a Rs.35 lakh marine insurance policy. You lose Rs.15 lakh in a crash. If your policy covers Rs.35 lakh, you can still collect Rs.15 lakh in compensation.

- **Principle of Subrogation:** The principle of subrogation in maritime insurance is based on the principle of indemnity. It ensures that the insured party does not receive the amount of compensation higher than the actual loss sustained. According to this theory, you cannot utilize damaged products after receiving a settlement from your insurance provider. As a result, the scope of any profits derived from the marine insurance contract has been restricted by the principle of subrogation. If you dispose of the damaged goods after filing a claim, you must return the excess amount to the insurance carrier. For example, your shipment is insured for Rs.5 lakh. The entire cargo is damaged in an accident, and the insurer settles your claim. However, after the selling damaged products you earn Rs.20,000. The amount you received now exceeds the loss by Rs.20,000. According to the principle of subrogation, you must repay the additional cash to the insurance carrier because you have already been reimbursed for the loss.

- **Principle of Contribution:** Frequently, one or more insurance carriers will cover the same perils or risks that can damage the goods. The contribution principle applies when numerous insurers cover the same cargo. According to the idea, each insurance provider distributes the payment proportionally in the event of a claim. This guarantees that you do not get more than an indemnity and that all losses are allocated proportionately among the insurers. For instance, assuming you insure goods worth Rs.50 lakh with two insurance providers. If your items are lost in a marine event, both firms will compensate you proportionally. These factors essential for sharing the loss among the insurers are that at least two policies should exist, every policy must have an indemnity clause and same hazard, subject, and interest should be covered by the policies.

MARINE INSURANCE POLICY

According to the Marine Act of 1906, marine insurance is a contract between an insurer and an insured under which the insurer insures the policyholder against transit-related damage or losses. In simple terms, the insurance provider or insurer compensates the insured or purchaser for cargo losses incurred during transportation. Thus, the Marine Insurance Act states that a marine or transit policy of insurance protects cargo transported by land, air, or ocean.

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TYPES OF MARINE INSURANCE POLICIES

- **Port Risk policy:** This policy provides coverage for the risks associated with the vessel whenever it is in port or at anchor. Nevertheless, it does not address the potential risks encountered by the ship when it is at sea. Both cargo and hull are covered under this policy.
- **Time policy:** For the purpose of time policy, marine insurance is limited for a period of one year. It can however be continued for more than a year until the completion of a specific voyage. Usually, it remains in effect for the specified period of time. According to the provisions of the Marine Insurance Act in India, a time policy may be purchased only once a year.
- **Single vessel policy:** Under a single vessel policy, only one vessel owned by the insurer is covered. The vessel is covered under the policy for the risks and contingencies listed in the policy document. Furthermore, either the hull, cargo, or both are covered by this policy.
- **Voyage policy:** Only a single lot or consignment is covered by this particular insurance policy. Whenever a shipment is shipped abroad, the exporter must secure insurance coverage separately. However, each consignment requires time and effort to complete this process. At the same time, an open policy guarantees shipping with convenience.
- **Fleet policy:** When a number of vessels owned by the same insured person is covered under a single policy, it is known as a fleet policy. Every single vessel in the fleet is covered by the policy for similar hazards and potential dangers. Both cargo and hull can be covered under a fleet policy.
- **Mixed policy:** Both time policies and voyage are included in a mixed policy. A specified voyage for a particular period of time is covered under the policy. Coverage for both cargo and hull is included under the mixed policy.
- **Floating policy:** One kind of maritime cargo insurance policy that covers several shipments under one policy without revealing the precise details of every shipment at the time of insurance purchase is called a floating marine insurance policy. Throughout the insurance period, you are required to report the specifics of every shipment as it occurs. Frequent shippers who don't want to purchase a different coverage for every shipment can benefit from this maritime insurance.
- **Named policy:** Only the risks that are explicitly defined in the policy document are covered by a named insurance. Any additional unnamed risks are not covered by the policy. Either the hull, the cargo, or both may be covered by this plan.
- **Blanket policy:** Without delving into specifics about each shipment, it covers all of your shipments under a single policy. In this instance, you pay a set premium determined by the approximate total value of all shipments made throughout the policy period. For shippers with a high and fluctuating amount of shipments, a blanket policy is recommended.
- **Wager policy:** This plan contains no set provisions pertaining to reimbursements. Only the insurance company will pay for the claim if, after the loss assessment, they determine that it needs to be compensated, or else they are unlikely to provide the compensation. There is limited availability of these types of plans. It is also null and void in a court of law because it is not a written plan.

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CHARACTERISTICS OF MARINE INSURANCE POLICY

Some of the main characteristics of a cargo insurance policy are outlined below:

- **Flexible Premiums:** Flexible premium payment options including annual, quarterly, or single-payment plans can be offered by the insurance providers. These options differ from plan to plan.
- **Customer-Focused Policies:** The policies implemented for meeting the particular needs and requirements of customers engaged in international transportation of goods by means of sea or waterways have been offered by insurance companies.
- **Insured Value Options:** Customers can choose whether to insure their goods for the actual value or an agreed-upon value.

LANDMARK JUDGEMENTS ON MARINE INSURANCE

1. **Lonides vs. Pender:** In this case, it was held by Justice Blackburn that the rule established in Parsons on Insurance states that everything that would affect the judgment of a rational underwriter governed by the principles and calculations on which underwriters function in practice must be reported, and it provides four tests into which the court will make reference in situations involving overvaluation. These tests are outlined below:
   -Is the overvaluation excessive? -
   -Is it important for the insurer to know if an overvaluation was made with fraudulent purpose, regardless of whether it was actually fraudulent?
   -Was the overvaluation concealed from the insurers?
2. **General Shipping and Forwarding Co. Vs British General Insurance Co. Ltd:** The ship was overpriced by 3,600 pounds. However, the court determined that the insurer had access to all relevant information regarding the vessel, including its actual market worth. The simple fact that he still went on and took the policy to take the risks implies he cannot deny the payment today.
3. **Diwaliben Vasharambhai vs. New India Assurance Co. Ltd:** Even when the agreed-upon value was vastly overpriced, the surveyors' calculations were deemed convincing. This indicates that, due to the nature of the "conclusiveness" of the value specified in the valued policy, there may be a situation in which the insured receives far more than the loss, or far less, unless there is fraud.
4. **Barker vs. Janson:** The worth of a ship dropped substantially, and it was eventually destroyed. It was claimed by the insurer that the complete value of the insurance as decided, but the insurer argued otherwise. It was finally determined by the court that even if the value of the subject matter had decreased significantly prior to the destruction or loss of the insured subject matter, the insurer will still be required to pay the full agreed-upon amount. The purpose of maintaining the agreed-upon value as completely conclusive (except in cases of fraud) is that a bona fide transaction is being entered into at the time of contract formation, and the value is binding because it was agreed upon by consent of both parties, even if it does not reflect the true value of the subject-matter insured.

5. **Castellain vs. Preston:** It was held by Justice Brett that Justice Brett ruled that marine insurance is a contract of indemnity, which means that the assured is fully protected against all losses that occur, nevertheless they should never be overcompensated/reimbursed for more than they lost. This is a "great principle" governing indemnity.

ROLE OF MARINE INSURANCE IN INTERNATIONAL TRADE

International trade usually involves transporting goods over long distances, frequently through maritime routes. Every year billions of tons of cargo is being transported by ships, ranging from raw materials to finished goods, and while the majority of shipments arrive at their destinations safely, the maritime journey is fraught with dangers, including bad weather, piracy, accidents, and even geopolitical tensions, which can result in cargo loss, damage, and delays. Marine insurance plays a major role in promoting international trade because it builds confidence in buyers and sellers that their cargo will be safe during passage. This will aid in the economic growth and progress of the developing countries and will also help in creating friendly relations with different countries.

CONCLUSION

When you are the owner of a ship or a shipping company, your assets and investments can be protected under a marine insurance policy. Exporters can protect their claims by working closely with insurers to streamline the process of recovering losses or spoiling of perishable goods during transportation. This efficient method not only safeguards against potential threats, but also builds trust in international economic operations. Despite of the fact that marine insurance is beneficial for international trade and provides protection against the potential risks such as piracy, accident, collision and loss or damage caused to cargo and hull, but it also has certain limitations. There is thorough scrutiny required for maritime claims and it involves multiple jurisdictions. The process of resolving maritime claims is also complicated. There is lack of unity and cooperation among different countries as every country has its own rules and regulations. A goal-oriented approach and coordination between different nations will help in overcoming these challenges associated with marine insurance. It is essential for the economic development of developing countries and for maintaining friendly relations with different countries in the era of globalization.