Marine Insurance
SYLLABUS


Types of Insurance Documents, Types of Policy, Underwriting Considerations & Rating Types of Losses & measure of Profits, Claims, Cargo Loss Prevention: Containerization, Multi-Modal Transport, ICDS etc.


Suggested Books:

1. The Principles of marine Insurance by A Primer by Harold Turner
2. Controlling Cargo theft by Tyska Fennely,
3. Inland Marine Insurance –Roderick McNamma,
**General Background**

**Introduction:**

This is the oldest branch of Insurance and is closely linked to the practice of Bottomry which has been referred to in the ancient records of Babylonians and the code of Hammurabi way back in B.C.2250. Manufacturers of goods advanced their material to traders who gave them receipts for the materials and a rate of interest was agreed upon. If the trader was robbed during the journey, he would be freed from the debt but if he came back, he would pay both the value of the materials and the interest.

Marine insurance is an agreement (contract) by which the insurance company (also known as underwriter) agrees to indemnify the owner of a ship or cargo against risks, which are incidental to marine adventures. It also includes insurance of the risk of loss of freight due on the cargo. Marine insurance that covers the risk of loss of cargo by storm known as cargo insurance. The owner of the ship may insure it against loss on account of perils of the sea. When the ship is the subject matter of insurance, it is known as hull insurance. Further, where freight is payable by the owner of cargo on safe delivery at the port of destination, the shipping company may insure the risk of loss of freight if the cargo is damaged or lost. Such a marine insurance is known as freight insurance. All marine insurance contracts are contracts of indemnity.

**Marine insurance** covers the loss or damage of ships, cargo, terminals, and any transport or cargo by which property is transferred, acquired, or held between the points of origin and final destination. Cargo insurance — discussed here — is a sub-branch of marine insurance, though Marine also includes Onshore and Offshore exposed property (container terminals, ports, oil platforms, pipelines); Hull; Marine Casualty; and Marine Liability.

Maritime insurance was the earliest well-developed kind of insurance, with origins in the Greek and Roman maritime loan. Separate marine insurance contracts were developed in Genoa and other Italian cities in the fourteenth century and spread to northern Europe. Premiums varied with intuitive estimates of the variable risk from seasons and pirates.
The modern origins of marine insurance law in English law were in the law merchant, with the establishment in England in 1601 of a specialized chamber of assurance separate from the other Courts. Lord Mansfield, Lord Chief Justice in the mid-eighteenth century, began the merging of law merchant and common law principles. The establishment of Lloyd's of London, competitor insurance companies, a developing infrastructure of specialists (such as shipbrokers, admiralty lawyers, bankers, surveyors, loss adjusters, general average adjusters, et al), and the growth of the British Empire gave English law a prominence in this area which it largely maintains and forms the basis of almost all modern practice. The growth of the London insurance market led to the standardization of policies and judicial precedent further developed marine insurance law. In 1906 the Marine Insurance Act was passed which codified the previous common law; it is both an extremely thorough and concise piece of work. Although the title of the Act refers to marine insurance, the general principles have been applied to all non-life insurance.

In the 19th century, Lloyd's and the Institute of London Underwriters (a grouping of London company insurers) developed between them standardized clauses for the use of marine insurance, and these have been maintained since. These are known as the Institute Clauses because the Institute covered the cost of their publication.

Within the overall guidance of the Marine Insurance Act and the Institute Clauses parties retain a considerable freedom to contract between themselves.

Marine insurance is the oldest type of insurance. Out of it grew non-marine insurance and reinsurance. It traditionally formed the majority of business underwritten at Lloyd's. Nowadays, Marine insurance is often grouped with Aviation and Transit (cargo) risks, and in this form is known by the acronym 'MAT'.

**Meaning & Principles of Marine Insurance.**

Marine insurance is concerned with overseas trade. International trade involves transportation of goods from one country to another country by ships. There are many dangers during the transshipment. The persons who are importing the goods will like to ensure the safe arrival of their goods. The shipping company wants the safety of the ship. So marine insurance insures the coverage of all types of risks which occur during the
transit. Marine insurance may be called a contract whereby the insurer undertakes to indemnify the insured in a manner and to the extent thereby agreed upon against marine losses.

Marine insurance has two branches:

1. Ocean Marine Insurance.
2. Inland Marine Insurance.

Ocean marine insurance covers the perils of the sea whereas inland marine insurance is related to the inland risks on the land.

Marine insurance is one of the oldest forms of insurance. It has developed with the expansion of trade. It was started during the middle ages in Italy and then in England. The sending of goods by the sea involves many perils; so it was necessary to get the goods insured. In modern times marine insurance business is well organized and is carried on scientific lines.

**Principles of Marine Insurance**

The principles of all types of insurance are generally the same and they have been discussed earlier, in detail. Some of the principles related to marine insurance are given as under:

**I. Utmost good faith:**
The marine contract is based on utmost good faith on the part of the parties. The burden of this principle is more on the insured than on the underwriter. The insured should give full information about the subject to the insured. He should not withhold any information. If a party does act in good faith, the other party is at liberty to cancel the contract.

**II. Insurable Interest:**
Insurable interest means that the insured should have interest in the subject when it is to be insured. He should be benefited by the safe arrival of commodities and he should be prejudiced by loss or damage of goods. The insured may not have an insurable interest at the time of acquiring a marine insurance policy, but he should have a reasonable,
expectation of acquiring such interest. The insured must have insurable interest at the
time of loss or damage, otherwise he will not be able to claim compensation.

III. Indemnity:
This principle means that the insured will be compensated only to the extent of loss
suffered. He will not be allowed to earn profit from marine insurance. The underwriter
provides to compensate the insured in cash and not to replace the cargo or the ship. The
money value of the subject-matter is decided at the time of taking up the policy.
Sometimes the value is calculated at the time of loss also.

IV. Cause Proxima:
This is a Latin word which means the nearest or proximate cause. It helps in deciding the
actual cause of loss when a number of causes have contributed to the loss. The immediate
cause of loss should be determined to fix the responsibility of the insurer. The remote
cause for a loss is not important in determining the liability. If the proximate cause is
insured against, the insurer will indemnify the loss.

The first known Marine Insurance agreement was executed in Genoa on 13/10/1347 and
marine Insurance was legally regulated in 1369 there.

MEANING OF MARINE INSURANCE
A contract of marine insurance is an agreement whereby the insurer undertakes to
indemnify the insured, in the manner and to the extent thereby agreed, against transit
losses, that is to say losses incidental to transit.
A contract of marine insurance may by its express terms or by usage of trade be extended so as to protect the insured against losses on inland waters or any land risk which may be incidental to any sea voyage.

In simple words the marine insurance includes

A. Cargo insurance which provides insurance cover in respect of loss of or damage to goods during transit by rail, road, sea or air.

Thus cargo insurance concerns the following:

(i) export and import shipments by ocean-going vessels of all types,
(ii) coastal shipments by steamers, sailing vessels, mechanized boats, etc.,
(iii) shipments by inland vessels or country craft, and
(iv) Consignments by rail, road, or air and articles sent by post.

B. Hull insurance which is concerned with the insurance of ships (hull, machinery, etc.). This is a highly technical subject and is not dealt in this module.

2.3 FEATURES OF MARINE INSURANCE

1) Offer & Acceptance: It is a prerequisite to any contract. Similarly the goods under marine (transit) insurance will be insured after the offer is accepted by the insurance company. Example: A proposal submitted to the insurance company along with premium on 1/4/2011 but the insurance company accepted the proposal on 15/4/2011. The risk is covered from 15/4/2011 and any loss prior to this date will not be covered under marine insurance.

2) Payment of premium: An owner must ensure that the premium is paid well in advance so that the risk can be covered. If the payment is made through cheque and it is dishonored then the coverage of risk will not exist. It is as per section 64VB of Insurance Act 1938- Payment of premium in advance.(Details under insurance legislation Module).

3) Contract of Indemnity: Marine insurance is contract of indemnity and the insurance company is liable only to the extent of actual loss suffered. If there is no loss there is no liability even if there is operation of insured peril. Example: If the property under marine (transit) insurance is insured for Rs 20 lakhs and during transit it is damaged to the extent of Rs 10 lakhs then the insurance company will not pay more than Rs 10 lakhs.
4) Utmost good faith: The owner of goods to be transported must disclose all the relevant information to the insurance company while insuring their goods. The marine policy shall be voidable at the option of the insurer in the event of misrepresentation, miss-description or non-disclosure of any material information. Example: The nature of goods must be disclosed i.e. whether the goods are hazardous in nature or not, as premium rate will be higher for hazardous goods.

5) Insurable Interest: The marine insurance will be valid if the person is having insurable interest at the time of loss. The insurable interest will depend upon the nature of sales contract. Example: Mr. A sends the goods to Mr. B on FOB (Free on Board) basis which means the insurance is to be arranged by Mr. B. And if any loss arises during transit then Mr. B is entitled to get the compensation from the insurance company. Example: Mr. A sends the goods to Mr. B on CIF (Cost, Insurance and Freight) basis which means the insurance is to be arranged by Mr. A. And if any loss arises during transit then Mr. A is entitled to get the compensation from the insurance company.

6) Contribution: If a person insures his goods with two insurance companies, then in case of marine loss both the insurance companies will pay the loss to the owner proportionately. Example; Goods worth Rs. 50 lakhs were insured for marine insurance with Insurance Company A and B. In case of loss, both the insurance companies will contribute equally.

7) Period of marine Insurance: The period of insurance in the policy is for the normal time taken for a particular transit. Generally the period of open marine insurance will not exceed one year. It can also be issued for the single transit and for specific period but not for more than a year.

8) Deliberate Act: If goods are damaged or loss occurs during transit because of deliberate act of an owner then that damage or loss will not be covered under the policy.

9) Claims: To get the compensation under marine insurance the owner must inform the insurance company immediately so that the insurance company can take necessary steps to determine the loss.
Principle Of Trade/Commerce:

Marine insurance is an important component of international trade and commerce and subject to international regulations in every stage of operations. It is governed by the Marine Insurance Act 1963 in India and guided by the various clauses formulated by the Institute of London Underwriters (ILU) and the international commercial terms known as ‘Incoterms’. This paper analyses the legal aspects the marine insurance in India and provides an overview and analysis of the Marine Insurance Act, 1963. The need to insure property against the economic consequences of its loss or damage has become a fundamental feature of modern society. Insurance underpins key aspects of society by providing security and protection to individuals, communities and businesses. It facilitates trade and commerce; generates employment; provides risk sharing; encourages innovation by allowing individuals and businesses to engage in more risky business activities, thereby fostering higher levels of economic activity; and mobilizes domestic savings through the collection of premiums by insurance companies which can help build a country’s financial market.

In the context of globalization, maritime transport is the backbone of international trade with over 80 per cent of world merchandise trade by volume being carried by sea. Marine transport involves risks related with the “perils of the sea”. In this respect, marine insurance is a mechanism that helps to mitigate the risks of financial loss to the property such as ship, goods or other movables, in maritime transport. Insurance is, thus, a necessary component of doing business on an international basis and plays an important role in the international trade. Its purpose is to enable ship-owner, the buyer and seller of the goods to operate their businesses, while relieving themselves, at least partly, of the burdensome financial consequences of their property’s being lost or damaged as a result of various risks of the high seas.

Thus, marine insurance adds the necessary element of financial security so that the risk of an accident happening during the transport is not an inhibiting factor in the conduct of international trade. In this sense, marine insurance is an aid to the conduct of seaborne international trade. Therefore, developing an efficient and competitive insurance market
is of key importance for developing countries like India as they integrate into the world economy.

The normal practice in export/import trade is for the exporter to ask the importer to open a letter of credit with a bank in favor of the exporter. As and when the goods are ready for shipment by the exporter, he hands over the documents of title to the bank and gets the bill of exchange drawn by him on the importer, discounted with the bank. In this process, the goods which are the subject of the sale are considered by the bank as physical security against the monies advanced by it to the exporter. A further security by way of an insurance policy is also required by the bank to protect its interests in the event of the goods suffering loss or damage in transit, in which case the importer may not make the payment. The terms and conditions of insurance are specified in the letter of credit.

For export/import policies, the Institute Cargo Clauses (I.C.C.) are used. These clauses are drafted by the Institute of London Underwriters (ILU) and are used by insurance companies in a majority of countries including India. Over 50 years later, when the world of trade and commerce had changed very significantly, the Court of Appeal was faced with a similar predicament in the case of Container Transport International v. Oceanus Mutual Underwriting Association [1984] 1 Lloyd’s Rep 476.

In his comprehensive and well known judgment, Kerr L.J. considered extensively the theoretical and practical difficulties concerning the interpretation of section 18(2) MIA 1906 concerning materiality. He balanced the competing interests in the following way: “the principle is that if a certain fact is material for the purposes of ss. 18(2) and 20(2), so that a failure to draw the underwriter’s attention to it distorts the fairness of the brokers presentation of the risk, then it is not sufficient that this fact could have been abstracted by the underwriter from material to which he had access or which was cursorily shown to him. On the other hand, if the disclosed facts give a fair presentation of the risk, then the Underwriter must enquire if he wishes to have more information.” It seems therefore, that once the threshold point has been reached, in any specific circumstances, where a fair presentation has been made, the burden transfers to the insurer or reinsurer to request more information, if he wishes. However, at that time, the insured’s duty of disclosure has been satisfied. In such a situation, the preferable view seems to be that, after the
disclosure threshold point had been reached, in any individual case, a failure by the insurer to ask further questions should not lead to an inference of waiver against the insurer because this may result in the dangerous erosion of the duty of disclosure which Lord Justice Scrutton feared, over 50 years previously. In any event, the Oceanus case became notorious for interpreting the definition of materiality in s. 18 MIA 1906 in a much criticized way.

The facts are as follows: CTI hired out containers for ocean transportation. Frequently, problems occurred regarding the liability of the container lessees for repairs under the container hire contracts. It was agreed that CTI would cover an initial part of certain repair costs. CTI obtained insurance of their exposure to the cost of repairs for the containers, initially through Crum & Forster. As a result of their concerns with the claims experience, Crum & Forster quoted renewal on terms which were not acceptable to CTI. The cover was placed subsequently with Lloyd’s but, Lloyd’s also became unhappy with the claims experience - following which the insurance was proposed to and placed with Oceanus.

Subsequently, Oceanus, became unhappy with the claims and alleged that incomplete information concerning the claims history was presented to them, constituting a material misrepresentation. Expert evidence was produced to the Court, on behalf of Oceanus, that a prudent insurer, within the terms of s. 18 (2) of MIA 1906, would have been influenced in his judgment in determining whether he would take the risk or in fixing the premium, if he was made aware of the full facts.

The Court of Appeal decided that the correct test of materiality was whether the fact which was undisclosed or misrepresented was one which a notional prudent insurer would have taken into account in reaching his decision whether or not to accept the risk or in fixing the premium. Controversially, the Court of Appeal determined that it was not necessary to show that the actual underwriter would have been influenced by the non-disclosure or misrepresentation to act in a different way.

The decision was criticized in the English market because it encouraged ingenious reinsurers to base rescission defenses on the objective test of what a prudent underwriter would have done, whilst ignoring what the actual underwriter had done. It was relatively
easy for an insurer to show that the facts not disclosed or misrepresented were worth
collection by the underwriter in formulating his decision by calling expert
underwriting evidence, even though their actual underwriter would not have acted any
differently if the withheld or misrepresented facts were made known to him. Such was
the extent of the concern in the English insurance market, immediately following the
decision, at what was portrayed as a charter to protect the incompetent underwriter, that it
was necessary to find another case, to take to the House of Lords, to re-address some of
the more unsettling aspects of that judgment.

THE MARINE INSURANCE ACT
A contract of marine insurance is a contract whereby the insurer undertakes to indemnify
the assured, in manner and to the extent thereby agreed, against marine losses, that is to
say, the losses incident to marine adventure.
1) A contract of marine insurance may, by its express terms, or by usage of trade, be
extended so as to protect the assured against losses on inland waters or on any land risk
which may be incidental to any sea voyage.
2) Where a ship in course of building, or the launch of a ship, or any adventure
analogous to a marine adventure, is covered by a policy in the form of a marine policy,
the provisions of this Act, in so far as applicable, shall apply thereto; but except as by this
section provided, nothing in this Act shall alter or affect any rule of law applicable to any
contract of insurance other than a contract of marine insurance as by this Act defined.
Subject to the provisions of this Act, every lawful marine adventure may be the subject of
a contract of marine insurance.
2) In particular there is a marine adventure where- (a) any ship, goods or other
moveable's are exposed to maritime perils. Such property is in this Act referred to as
“insurable property”; (b) the earning or acquisition of any freight, passage money,
commission, profit, or other pecuniary benefit, or the security for any advances, loan, or
disbursements, is endangered by the exposure of insurable property to maritime perils; (c)
any liability to a third party may be incurred by the owner of, or other person interested in
or responsible for, insurable property, by reason of maritime perils.
(3) “Maritime perils” means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barratry, and other perils, either of the like kind or which may be designated by the policy.

1) Every contract of marine insurance by way of wagering or gaming is void. A wagering or gaming contract-

2) A contract of marine insurance is deemed to be (a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or (b) where the policy is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term: Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

1. Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

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

(1) The assured must be interested in the subject- matter insured at the time of the loss though he need not be interested at the time when the insurance is affected: Provided that where the subject-matter is insured “lost or not lost”, the assured may recover although he may not have acquired his interest until after the loss, unless at the time of affecting the contract of insurance the assured was aware of the loss and the insurer was not.

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss.

Ll.-(l) A defeasible interest is insurable, as also is a contingent interest.

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

A partial interest of any nature is insurable. 13.- (1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it. Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

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

15. The master or any member of the crew of a ship has an insurable interest in respect of his wages.

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

17. The assured has an insurable interest in the charges of any insurance which he may affect. Where the subject-matter insured is mortgaged the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

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

20. 41) If- (a) any person effects a contract of marine insurance without having any bona fide interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject-matter insured, or a bona fide expectation of acquiring such an interest; or
(b) any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer” or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it shall be guilty of an offence, and shall be liable, on summary conviction before a Resident Magistrate, to imprisonment, with or without hard labor, for a term not exceeding six months or to a fine not exceeding four hundred dollars, and in either case, to forfeit to the Crown any money he may receive under the contract.

(2) Any broker or other person through whom, and any insurer with whom, any such contract is effected shall be guilty of an offence, and shall be liable, on summary conviction, to the like penalties if he acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this Act.

(3) Proceedings under this section shall not be instituted without the consent of the Director of Public Prosecutions.

(4) Proceedings shall not be instituted under this section against a person (other than a person in the employment of the owner of the ship in relation to which the contract was made) alleged to have effected a contract by way of gambling on loss by maritime perils until an opportunity has been afforded him of showing that the contract was not such a contract as aforesaid, and any information given by that person for that purpose shall not be admissible in evidence against him in any prosecution under this section.

(5) If proceedings under this section are taken against any person (other than a person in the employment of the owner of the ship in relation to which the contract was made) for effecting such a contract, and the contract was made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term, the contract shall be deemed to be a contract by way of gambling on loss by maritime perils unless the contrary is proved.

(6) For the purpose of giving jurisdiction under this section, every offence shall be deemed to have been committed either in the place in which the same actually was committed or in any place in which the offender may be.

(7) For the purposes of this section the expression “owner” includes charterer.
**Insurable Value**

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

(a) in insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen’s wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole: Provided that the insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade;

(b) in insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance;

(c) in insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole;

(d) in insurance on any other subject matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

**Disclosures and Representations**

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. Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) In the absence of enquiry the following circumstances need not be disclosed, namely-

(a) any circumstance which diminishes the risk;
(b) any circumstance which js known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;
(c) any circumstance as to which information is waived by the insurer;
(d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

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

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

Subject to the provisions of section 23 as to the circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer-

(a) every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and
(b) every material circumstance which the assured is bound to disclose, unless it came to his knowledge too late to communicate it to the agent.

25.-  (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue, the insurer may avoid the contract.

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.

(3) A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief.

(4) A representation as to a matter of fact is true if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

(5) A representation as to a matter of expectation or

(6) A representation may be withdrawn or corrected
(7) Whether a particular representation be material belief is true if it be made in good faith. before the contract is concluded. or not is, in each case, a matter of fact.

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

The Policy

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

28. A marine policy must specify-
(a) the name of the assured, or of some person who effects the insurance on his behalf;
(b) the subject-matter insured and the risk insured against;
(c) the voyage, or period of time, or both, as the case may be, covered by the insurance;
(d) the sum or sums insured; and
(e) the name or names of the insurers.

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

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

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

(2) A time policy which is made for any time exceeding twelve months is invalid:
Provided that a time policy may contain an agreement to the effect that, in the event of the ship being at sea or the voyage being otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship at her destination, or for a reasonable time thereafter not exceeding thirty days; and the policy shall not be invalid on the ground only that by reason of such agreement it may become available for a period exceeding twelve months.

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

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

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

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

32.41) A policy may be either valued or unvalued.

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured. (3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and the assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

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

33. An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner specified in section 21.

34.41) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

(2) The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner.
(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

35.- (1) A policy may be in the form in the Schedule.

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

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

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable.

**Double Insurance**

37.- (1) Where two or more policies are effected by or behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

(2) Where the assured is over-insured by double insurance-

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act; where the policy under which the assured claims is a valued policy, the assured must give credit, as against the valuation, for any sum received by him under any other policy without regard to the actual value of the subject-matter insured; where the policy under which the assured claims is an unvalued policy, he must give credit, as against the full insurable value, for any sum received by him under any other policy; where the assured receives
any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Warranties, etc.

38.-(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

(2) A warranty may be express or implied.

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

39.-(1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

(2) Where a warranty is broken, the assured cannotavail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.

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

40. An express warranty may be in any form of

(2) An express warranty must be included in, or written upon the policy, or must be contained in some document incorporated by reference into the policy.

(3) An express warranty does not exclude an implied warranty, unless it be inconsistent therewith. words from which the intention to warrant is to be inferred. warranties.

41 1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted “neutral”, there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to
say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

42. There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk.

43. Where the subject-matter insured is warranted “well” or “in good safety” on a particular day, it is sufficient if it be safe at any time during that day.

44. (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privities of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

45. -(1) In a policy on goods or other moveable’s there is no implied warranty that the goods or moveable’s are seaworthy.

(2) In a voyage policy on goods or other moveable’s there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveable’s to the destination contemplated by the policy.

46. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner.
The Voyage

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

(2) The implied condition may be negative by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

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

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

50.- (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs.

51.- (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.

(2) There is a deviation from the voyage contemplated by the policy-

(a) where the course of the voyage is specifically designated by the policy, and that course is departed from; or

(b) where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.

(3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.
Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not, there is a deviation.

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

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

54.- (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused-

a) where authorized by any special term in the policy; or

(b) where caused by circumstances beyond the control of the master and his employer; or

(c) where reasonably necessary in order to comply with an express or implied warranty; or

(d) where reasonably necessary for the safety of the ship or subject-matter insured; or

(e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or

(f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(g) where caused by the barbarous conduct of the master or crew, if barratry be one of the perils insured against.

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

Assignment of Policy

55.- (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned
(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defense arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A marine policy may be assigned by endorsement thereon or in other customary manner.

56. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative: Provided that nothing in this section affects the assignment of a policy after loss.

The Premium

57. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, is concurrent conditions and the insurer is not bound to issue the policy until payment or tender of the premium.

58.- (1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person unless when the debt was incurred he had reason to believe that such person was only an agent.

59. Where a marine policy affected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker.
**Loss and Abandonment**

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

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

(b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;

(c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

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

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

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual total loss.

(4) Where the assured brings an action for a total loss, and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

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

62.41) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

(2) In the case of an actual total loss no notice of abandonment need be given.

63. Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.
64. Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of freightment, to justify the master in landing and re-shipping the goods or other moveable’s, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or trans-shipment.

65.-(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual loss without an expenditure which would exceed its value when the expenditure has been incurred.

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

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

(b) in the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or

(c) in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

66. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss. The assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.

67.- (1) Subject to the provisions of this section, where
(2) Notice of abandonment may be given in writing, or by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make enquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

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

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

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has reinsured his risk, no notice of abandonment need be given by him.

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

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner’s goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

**Partial Losses (Including Salvage and General Average and Particular Charges)**

69.- (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.
Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average.

Subject to any express provision in the policy salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

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

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

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

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

Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.

Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.

In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.
(7) Where ship, freight, and cargo, or any two of these interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

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

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

73. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured-
(a) if the policy be a valued policy, the measure of indemnity is the sum fixed by the policy;
(b) if the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject matter insured.

74. Where a ship is damaged, but it is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty; where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage:
Provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;
(c) where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.
75. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

76. Where there is a partial loss of goods, merchandise or other moveable’s, the measure of indemnity, subject to any express provision in the policy, is as follows-

(a) where part of the goods, merchandise or other moveable’s insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy;

(b) where part of the goods, merchandise or other moveable’s insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in the case of total loss;

(c) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value;

(d) “gross value” means the wholesale price, or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand: Provided that in the case of goods or merchandise customarily sold in-bond, the bonded price is deemed to be the gross value;

(e) “gross proceeds” means the actual price obtained at a sale where all charges on sale are paid by the sellers.

77.- (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species in such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.
(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities or descriptions of goods.

78.- *(1)* Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the underinsurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

(2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle.

79. Where the assured has affected insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability.

80.- *(1)* Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

81.41) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportion able; but, if the contract be apportion able, the assured may recover for a total loss of any apportion able part.
(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and laboring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

82.- (1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.

(2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss: Provided that nothing in this section shall affect the liability of the insurer under the suing and laboring clause.

83.- (1) Where the policy contains a suing and laboring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject matter may have been warranted free from particular average, either wholly or under a certain percentage.

(2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and laboring clause.

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

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

84.- (1) Where the insurer pays for a total *loss*, either of the whole, or, in the case of goods, of any apportion able part, of the subject-matter insured, he then becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the *loss*.

(2) Subject to the foregoing provisions, where the insurer pays for a partial *loss*, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in *so* far as the assured has been indemnified, according to this Act, by such payment for the *loss*.

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

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

86. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance.

**Return of Premium**

87. Where the premium or a proportionate part thereof

(a) if already paid, it may be recovered by the assured from the insurer; and

(b) if unpaid, it may be retained by the assured or his agent. *is*, by this Act, declared to be returnable-

88. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.
(1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable, and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3) In particular where the policy is void, or is avoided by the insurer from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable; where the subject-matter insured, or part thereof, has never been imperiled, the premium or, as the case may be, a proportionate part thereof, is returnable: Provided that where the subject-matter has been insured “lost or not lost” and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival; where the assured has no insurable interest throughout the currency of the risk the premium is returnable: Provided that this rule does not apply to a policy effected by way of gaming or wagering; where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable; where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable; subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable.

Marine and Cargo:

Marine and Cargo – ocean marine insurance is divided into three categories:

Yachts – all sailboats and inboard powered boats including luxury vessels fall under this category. The underwriting conditions can be grouped under three categories:

Seaworthiness: this refers to the age, construction and maintenance of the vessel. The older a vessel, the lower its value. The best way to obtain information about a vessel is through a marine survey.

Navigable waters and season: underwriters restrict coverage to only the area for which the yacht, equipment and the operator’s experience are appropriate. This is done with the
help of a navigation warranty, which limits coverage when the vessel is under conditions that have not been agreed to by the underwriter.

**Operator experience:** insurers also consider the policyholder’s experience and training. For example, there are insurers who give credit for completion of Power Squadron or Coast Guard Auxiliary courses. Membership in a

**Principles of Cargo (Marine) Insurance**

The cargo (marine) insurance works on the principles of insurable interest, utmost good faith, and indemnity.

**Insurable Interest**

When the goods are lost or damaged and the owner of the goods (i.e., the title holder in the goods) suffers a loss, fails to realize an expected profit, or incurs liability from the loss or damage, the owner (the title holder) is deemed to have an insurable interest in the goods.

When the exporter delivers the goods, the insurable interest in such goods transfers at the point and time where the risk shifts from the exporter to the importer, as determined by the international commercial terms used. For example, **the point and time where the risk shifts in:**

- **CIF**
  (Cost, Insurance and Freight to the named port of destination) --- the point the risk shifts is on board the ship at the named port of loading, as such the insurable interest transfers from the exporter to the importer at the time the goods pass over the ship's rail.

- **CIP**
  (Carriage and Insurance Paid To the named place of destination) --- the point the risk shifts is at the depot in the country of shipment, as such the insurable interest transfers from the exporter to the importer at the time
the goods are loaded on truck or container, rail car, or airplane (or goods placed in the custody of an air carrier) at the named point of departure.

The time the insurable interest transfers from the exporter to the importer is, technically, the time the exporter endorses the specific policy or the insurance certificate to the importer, as the case may be.

The insurance certificate bears the open policy number of the exporter and, like in a specific policy, the claim agent at port of destination and that claim payable at destination is also indicated.

The importer relies on the specific policy or the insurance certificate and the supporting claims documents as proof that the goods have been insured and that he/she has the insurable interest in the goods when filing for insurance claims against loss or damage.

In the trade terms **DDU** and **DDP**, the exporter is responsible for the risks up to the delivery of goods to the final point at destination (the project site or importer's premises usually), as such the insurable interest in the goods does not transfer from the exporter to the importer in the shipment.

Some countries may require that the import and/or export shipments be insured with their national insurance companies.

**Utmost Good Faith**

The principle of utmost good faith is indispensable in any insurance contract. Under the open policy the insurer usually knows only of the shipments made by the exporter after the receipt of the insurance declaration form and/or the copy of the insurance certificates. Under such circumstances, **a consignment may have reached the importer in:**
- **good condition**, that is, without sustaining any loss or damage, before the insurer knows of such consignment. If the exporter knows that the consignment has safely reached the importer and deliberately does not declare such consignment in the insurance declaration form in order to avoid paying the insurance premium, such action is a breach of good faith. Consequently, the insurer may cancel the insurance policy issued to the exporter when the exporter's bad faith is known.

- **bad condition**, that is, sustaining loss or damage, before the insurer knows of such consignment. Whether or not the exporter knows that the consignment has not safely reached the importer and fails to declare such consignment in the insurance declaration form, the insurer is liable to pay for the loss or damage out of good faith.

**Indemnity**

Cargo insurance is a contract of indemnity, that is, to compensate for the loss or damage in terms of the value of the insured goods. The amount insured as agreed between the insurer and the assured forms the basis of indemnity.

**Institute Clauses**

The Institute Clauses of the **Institute of London Underwriters**, often referred to as the **London Clauses** or **English Clauses**, form the basis of the cargo insurance contract in many countries.

In U.S.A. and some other areas, the Institute Clauses of the **American Institute of Marine Underwriters**, often referred to as the **American Institute Clauses** or **American Clauses**, are used. The American Clauses and the London Clauses can be different from one another.
The most common Institute Clauses include the Institute Cargo Clauses, Institute War Clauses, Institute Strike Clauses, and Institute Air Cargo Clauses.

Institute Cargo Clauses
The Institute Cargo Clauses specifically excludes the risks of war (in the F.C.&S. Clause---Free of Capture and Seizure Clause) and the risks of strikes, riots and civil commotions (in the F.S.R.&C.C. Clause---Free of Strikes, Riots and Civil Commotions Clause). The risks of delay in delivery and inherent vice are not included in the Clauses.

Institute War Clauses (Cargo)
- The Institute War Clauses (Cargo) specifically exclude the loss, damage or expense arising from any hostile use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
  The Clauses cover:
  - the risks excluded in the Institute Cargo Clauses by the F.C.&S. Clause;
  - the loss of or damage to the interest insured caused by: hostilities, warlike operations, civil war, revolution, rebellion, insurrection or civil strife arising therefrom; mines, torpedoes, bombs or other engines of war;
  - the general average and salvage charges incurred for the purpose of avoiding, or in connection with the avoidance of, loss by a peril insured against by these clauses.

Under the War Clauses, the insurance takes effect only as the interest insured are loaded on an overseas vessel and terminates either as the interest are discharged from the overseas vessel at final port or place of discharge, or on expiry of 15 days counting from midnight of the day of arrival of the vessel at the final port or place of discharge, whichever shall first occur. In other words the goods are covered only while they are on a vessel.

In the case of transshipment, the overseas vessel arrives at an intermediate port or place to discharge the interest for on-carriage by another overseas vessel, the insurance terminates on expiry of 15 days counting from midnight of the day of arrival of the vessel
at the intermediate port or place, but reattaches as the interest are loaded on the on-carrying overseas vessel. During the period of 15 days such insurance remains in force after discharge at such intermediate port or place of discharge.

Need for Marine Cargo Insurance:

The Countries are now becoming trading nation. In order to trade, goods and other merchandise usually have to travel from one country to another. We buy-in raw materials and components, assemble or manufacture them into something else and then sell them overseas or to shops in our own High Streets. This national and international movement of property gives rise to the need for a particular type of insurance, one that provides cover throughout the duration of the transit, that offers protection from risks peculiar to transit and can be handed on from seller to buyer as the property itself changes hands.

There is no law to make insurance of property in transit compulsory but while property is in transit it is at risk. If the prudent trader did not have the opportunity to buy insurance he would need to set aside a considerable sum of money as a contingency against loss or damage. Indeed without insurance the business of trade would be seriously restricted. Raising finance without insurance would be difficult.

The United Kingdom is recognized internationally as being expert in the field of marine insurance. Lloyds and the London based insurance companies and brokers attract foreign insurance buyers. Traders from other nations can buy their marine insurance from the UK market where underwriters and brokers specialize solely in that class. It earns valuable revenue for our country (invisible earnings).

UK based traders have the advantage of both a World leading marine insurance market in London and, as is becoming more frequent, a local insurance market that is growing in ‘marine’ confidence and looks to sell a comprehensive commercial insurance package that meets all the client’s needs, including marine.

Irrespective of the size or nature of the marine transit risk the marine insurance will be governed by the Marine Insurance Act 1906.
The Marine Policy

As long ago as 1791, Justice Buller said of a marine policy that it was ‘an absurd and incoherent instrument’. The Marine Insurance Act 1906 (MIA) brought some cohesion and uniformity to the subject since when underwriters, while adhering to the principles of policy construction have generally been left to their own devices with regard to clauses terms and conditions. The following structure does however remain largely in place.

A contract of marine insurance must be embodied in a marine policy in accordance with the Act (MIA section 22). Section 22 goes on to say that the policy need not be issued immediately upon commencement of the risk because it does not matter that the policy is dated after the attachment date. This is because cover is said to have attached ‘when the proposal of the assured is accepted by the insurer’, (MIA section 21).

The Act goes on to insist upon certain matters appearing in the policy, namely

- The name of the assured must be specified (MIA section 23)
- The document must be signed by the insurer (MIA section 24)
- The subject-matter insured must be designated with reasonable certainty, (MIA section 26) but the section goes on to say that if it is described in general terms then the insurer is deemed to have accepted it and it shall be construed to apply to the interest intended by the assured to be covered.

The Act makes reference to an instrument called a floating policy, (MIA section 29). This is a policy that describes the insured risk in general terms leaving the particular details of a shipment to be declared as and when it occurs.

Thus the sum insured is in the first instance referred to as a maximum limit and later confirmed exactly when the fact is known. Likewise the ship’s name will be filled in together with details of the voyage.

This principle gave rise to the modern day Marine Open Cover whereby risk details are firstly described in general terms and later confirmed by declaration as each shipment
occurs. It can be seen that utmost good faith must exist because both assured and insurer have to agree to declare and accept all shipments that fall within the scope of the policy.

The Act insists upon declarations being made in the order of despatch and with their value honestly stated. Honest errors can however be rectified even after loss or arrival.

**Marine Policy Conditions**

The Marine Insurance Act 1906 (MIA) provides a framework on which marine insurance is based and the policy document hangs on this framework insurers are obliged to issue their policies. Within the policy the insurers are free to use such words and other terms as they see fit and most insurance companies have constructed ‘plain language’ policies that try to meet the demands of the modern insurance buyer.

It is also usual for insurers to use the Institute Clauses - the Institute Cargo Clauses (A) afford the most cover with (C) affording the least i.e.

**Institute Cargo Clauses (C)**

The (C) clauses provide major casualty coverage during the land or sea transit and tend to be used for cargoes that are not easily damaged e.g. scrap steel, coal etc.

Subject to the policy exclusions and warranties the (C) clauses cover loss or damage to the subject matter insured reasonably attributable to:

i. Fire or Explosion

ii. Standing, Grounding, Sinking or Capsizing

iii. Overturning or Derailment

iv. Collision or contact of vessel craft or conveyance with any external objects other than water.

v. Discharge of cargo at point of distress. The insurance also covers loss or damage to the subject matter insured caused by
vi. General Average

vii. Jettison

**Institute Cargo Clauses (B)**

Subject to the policy exclusions and warranties the (B) clauses provide all the cover under (C) and also cover loss of or damage to the subject matter insured reasonably attributable to:

i. Earthquake, volcanic eruption or lightning and

ii. water damage by entry of sea/river water (excluding rainwater)

iii. total loss of package lost overboard

iv. total loss of package dropped during loading and unloading.

These are significant additional coverage’s. Wet damage from sea, lake or river water and accidents in loading and discharge are covered, but there is no coverage for theft, shortage and non-delivery.

**Institute Cargo Clauses (A)**

Subject to the policy exclusions and warranties the (A) clauses provide the widest of all three covers and are generally summed up as All Risks of loss or damage to the subject matter insured.

The advantage of using Institute Clauses is that they are recognised throughout the world so merely by mentioning the title of the clause traders around the world immediately know the terms and scope of cover provided. Also most of the words and phrases of the Institute Clauses have been elucidated by the courts so their meaning has been clarified.

In addition to using the Institute Clauses insurers also include in their policy wording warranties and other typed or hand written clauses as are deemed appropriate. The Act refers to a warranty as where the assured undertakes that something shall or shall not be done or affirms or negatives the existence of a particular state of facts. “Warranted never
left unattended” is a not unusual warranty to find when the assured uses his own vehicle to delivery a high-risk cargo. This is an example of an express warranty.

Marine cargo policies also have two implied warranties (being warranties that the insurer can rely upon to apply without having to express them). These are; that at the commencement of the voyage the ship is not only seaworthy as a ship but also that she is reasonably fit to carry the goods to the destination; and that the insured adventure is a lawful one so far as the assured can control, and carried out in a lawful manner (MIA sections 33-41).

**What is the duration of cover?**

There are two types of marine policy (in addition to being valued or unvalued), namely a voyage or time policy. Cargo is almost always insured on a voyage basis, which means that cover begins when the goods start their journey and ends when they arrive irrespective of how long it takes provided reasonable despatch is followed throughout (Marine Insurance Act 1906 (MIA) section 48).

The Act deals with the issues concerning the moment of attachment, in section 42 and in subsequent sections deals with such matters as alterations to the port of departure and destination. It sometimes happens that a voyage policy is extended to cover a period of time in store, for example London to Rome including 30 days in store after arrival.

For time policies, as the name suggests cover attaches at a particular moment in time. It is necessary to show on the policy the precise minute when cover begins and ends.

Consider the situation of a trader insuring his cargo on a time basis. If the time covered by the policy runs out then cover ceases even though the cargo is on the high seas, or in the air. This would be an unacceptable state of affairs and for that reason cargo is insured on a voyage basis where cover continues until the goods arrive.

These are the two options mentioned by the Act but it will be recalled that the Act also mentions a “floating policy” (MIA section 29). The floating policy is ideal for traders
with regular sending because it sets down the details in general terms of the traders total requirements and then allows him to declare actual sending’s against it as they occur. The trader has the satisfaction of knowing that all his sending’s that fall within the framework of the policy are covered automatically so that he does not have to make individual arrangements.

The floating policy (or open policy as it is now called), is either written for a period of time, say 12 months or on the basis of “Always open on and after the agreed date and time but within that time frame individual sending’s are insured on a voyage basis”. Thus, marine insurance today is most usually written on the basis of a time contract containing individual voyage policies.

If on the last day of the open cover a sending began its voyage then cover would continue until arrival even though arrival will not be until after the time period of the open policy had expired.

In order to show evidence that a single sending has been insured under an Open policy a certificate can be issued that will have typed on it the particular details, e.g. sum insured, voyage, description of the goods and a summary of the insurance conditions.

**Setting the sum insured**

Section 1 of the Marine Insurance Act 1906 (MIA) says that marine insurance is a contract whereby the insurer undertakes to indemnify the assured in manner and to the extent agreed. Unlike most other classes of insurance that seldom agree a sum insured in advance it is a feature of marine policies that the reverse is true. For most non-marine policies indemnity is more usually based on the actual value lost whereas for marine policies indemnity is based on a value agreed in advance that may be more or less than the value actually at risk.

The Act qualifies this state of affairs by providing a formula by which the sum insured is to be calculated in the absence of ‘..any express provision or valuation in the policy,’ namely;
The prime cost of the property insured plus the expenses of and incidental to shipping and the charges of insurance upon the whole, (MIA section 16). This formula appears in most open marine policies - a term used to describe a policy wherein individual transits are declared usually in arrears and where in the absence of such a declaration carrying an agreed value it could become necessary to revert to the formula in order to arrive at a fair sum insured.

Thus in the absence of an agreed value this formula will apply although as mentioned above, for marine insurance most policies are “valued”. So far as concerns the agreed value, insurers would have an expectation of the value bearing some relationship to its actual value, otherwise the opportunity could be taken by the assured to profit from the loss turning a contract of insurance into a type of gaming device, betting against a successful arrival.

An inflated sum insured is a material fact and failure to declare the fact of inflation could jeopardise a policy.

As though to underline all the other provisions section 17 says that marine insurance is a contract based upon the utmost good faith and if it were not observed by either party the contract may be voided.

MIA sections 27 and 28 deal with the subject of valued and unvalued policies. It confirms that in the absence of fraud the value shown on the policy is conclusive of the insurable value. For unvalued policies where the sum insured is not stated on the policy the insurable value is calculated in accordance with the agreed formula referred to above.

**What is the measure of indemnity?**

Before discussing the measure of indemnity it is important to mention the fundamental principle underlying the marine insurance policy namely that in order to achieve a claims settlement the loss must be shown to have been proximately caused by a peril insured against. The Marine Insurance Act 1906 (MIA) refers to this principle in section 55 and
confirms that insurers are liable for any loss proximately caused by a peril insured against.

The term ‘proximate cause’ means the cause that was most efficient in bringing about the loss. It might not be the nearest in time nor indeed the biggest or most noticeable incident in a chain of events.

In most claim situations there is a single cause that is readily apparent but on some occasions, sometimes as a result of goods being conveyed in sealed sea-going containers where loss and damage remain hidden, there are a number of possibilities and trying to distinguish the proximate cause can be troublesome. For example was the proximate cause of loss ‘theft’ during the course of transit that is recoverable under the policy or ‘short shipment’ that is not?

The Act says that the amount the assured can expect to recover is to the full extent of the value fixed by the policy (in the case of a valued policy) or to the full extent of the insurable value (i.e. the formula, section 16) in the case of an unvalued policy, (MIA section 67). Thus for a total loss the full sum insured or the full insurable value would be payable.

For partial loss (MIA section 71) the Act draws a distinction between the measure of indemnity for goods lost and goods damaged. When part of the consignment is totally lost the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole.

When the whole or any part of the goods is delivered damaged calculating the difference between the gross sound and damaged values at the place of arrival and applying the answer to the gross sound value produces the measure of indemnity.

Another feature of maritime trade is that not only can the property insured become lost or damaged but also irrespective of own damage, the owner of property can be asked to contribute towards the losses sustained by others. In circumstances where other parties
sacrifice their property in order to save the overall adventure the loss is said to be general and the costs apportioned between the parties who benefited.

The Act refers to such acts in section 73 and confirms that an assured is able to recover his general average (average meaning loss) contribution providing the goods are insured for their full contributory value.

**The right of subrogation**

Subrogation is one of the first principles of insurance.

Upon payment by the insurer of a claim the insurer is allowed by The Marine Insurance Act 1906 (MIA), section 79, to stand in the place of the assured to the extent that settlement has been paid. This means that the insurer can take over the interest of the assured in whatever may remain of the goods so paid for and take over all the rights and remedies of the assured in respect of those goods.

It is important to emphasize that where the insurer settles a claim for partial loss he cannot take over the rights etc of the whole consignment but only to the extent that the assured has been indemnified.

In practice the assured is offered to sign over his rights at the time of settlement thus allowing the insurer the opportunity to proceed to recover some or all of his outlay from carriers and other third parties. In the absence of a signed form of subrogation third parties would have no obligation to respond to insurers with whom they had no contract.

Insurers, at the time of commencing cover would have an expectation of receiving a right of subrogation. If the assured has agreed in contract with a road carrier, for example, to waive the right of recovery then this fact is material to an insurer.

On the other hand where an insurer manages to recover more from a third party than he actual settled the claim for, he is required to pass back the difference to the assured and retain only to the extent that he has paid.
Evolution of Marine Insurance:
The oldest form of insurance was that of marine insurance. This seems to have originated in Rhodes, to have been adopted by the commercial cities of Italy and by the towns of the Hanseatic League between the twelfth and fourteenth centuries, and to have been introduced into England in the sixteenth century. The law of insurance was a branch of the law merchant and vary greatly out of harmony with the principles of the common law. Early insurance cases were generally either submitted to the arbitration of a merchant court or tried before a special court created for that purpose in the first year of the seventeenth century. Only about fifty cases had come before the common law courts up to the middle of the eighteenth century. The business of marine insurance was in its early stages mainly conducted at Lloyd's Coffee House in London, and it was here that much of the law and custom governing marine insurance was developed.

Maritime insurance was the earliest well-developed kind of insurance, with origins in the Greek and Roman maritime loan. Separate marine insurance contracts were developed in Genoa and other Italian cities in the fourteenth century and spread to northern Europe. Premiums varied with intuitive estimates of the variable risk from seasons and pirates.

The modern origins of marine insurance law in English law were in the law merchant, with the establishment in England in 1601 of a specialized chamber of assurance separate from the other Courts. Lord Mansfield, Lord Chief Justice in the mid-eighteenth century, began the merging of law merchant and common law principles. The establishment of Lloyd's of London, competitor insurance companies, a developing infrastructure of specialists (such as shipbrokers, admiralty lawyers, bankers, surveyors, loss adjusters, general average adjusters, et al), and the growth of the British Empire gave English law a prominence in this area which it largely maintains and forms the basis of almost all modern practice. The growth of the London insurance market led to the standardization of policies and judicial precedent further developed marine insurance law. In 1906 the Marine Insurance Act was passed which codified the previous common law; it is both an extremely thorough and concise piece of work. Although the title of the Act refers to marine insurance, the general principles have been applied to all non-life insurance.
In the 19th century, Lloyd's and the Institute of London Underwriters (a grouping of London company insurers) developed between them standardized clauses for the use of marine insurance, and these have been maintained since. These are known as the Institute Clauses because the Institute covered the cost of their publication.

Within the overall guidance of the Marine Insurance Act and the Institute Clauses parties retain a considerable freedom to contract between themselves.

"It is known that Lloyd's Coffee House, an inn kept by one Edward Lloyd on Tower Street in London, was, as early as 1688, a popular resort for seafaring men and merchants engaged in foreign trade. It became the custom among those who gathered at Lloyd's to make their gathering an occasion for arranging their mutual contracts of insurance against the sea. In making such contracts it was the custom for the person desiring the insurance to pass around among the company assembled a slip upon which was written a description of the vessel and its cargo, with the name of the master and the character of his crew, and the voyage contemplated. Those desiring to become insurers of the ventures so described would write beneath the description on this slip their names or initials, and opposite thereto the amount which each was willing to be liable for as an insurer? When the total amount of insurance desired by the owner of the vessel was thus underwritten, the contract was complete. From this practice, among those congregating at Lloyd’s is derived the term 'underwriters,' as now applied to insurers. The business of insurance carried on in this informal way at Lloyd's seems to have increased rapidly, and the commercial importance of the house required that it should be removed to a more commodious and convenient site, which was found on Lombard Street, whither Lloyd removed his house in 1692. Both the importance of this coffee house in commercial circles, and the enterprise of its proprietor, was shown by the establishment in 1696 of a newspaper, giving information of commercial transactions and of the movement of shipping throughout the world. While this newspaper was shortly afterwards suppressed by reason of some indiscretion on the part of its publisher, it was yet the progenitor of 'Lloyd's Lists,' the publication of which was begun in 1726, and which continues up to this day as the most important publication in the shipping and commercial world. After various removals, Lloyd's finally found permanent quarters in the Royal Exchange, where it is now located, and remains, probably the greatest and most important single
Marine insurance is the oldest type of insurance. Out of it grew non-marine insurance and reinsurance. It traditionally formed the majority of business underwritten at Lloyd's. Nowadays, Marine insurance is often grouped with Aviation and Transit (cargo) risks, and in this form is known by the acronym 'MAT'.

Marine insurance dates back to the Middle Ages in Europe and is considered to be the oldest form of insurance. Generally, it is applicable to the risk associated with the movement of goods between ports.

Encyclopedia Britannica Online observes its origination in Rhodes, having been “adopted by the commercial cities of Italy and by the towns of the Hanseatic League between the 12th and 14th centuries”, and reaching England by the 16th century.

Lloyd's Coffee House in London was the main location for conducting this type of business. Much of marine insurance law and its governing custom were developed there by seafaring men and merchants engaged in foreign trade, who gathered to arrange “their mutual contracts of insurance against the sea”.

The person seeking insurance would pass around a slip showing a written description of the vessel and its cargo, the name of the master and the character of his crew and the voyage considered. Those wishing to insure the venture would write their names and initials below that description with the amount that each was willing to be liable for as an insurer. When the total amount of insurance sought by the owner of the ship was thus underwritten, the contract was complete, hence the term “underwriters” now applied to insurers.

In 1696, a newspaper was established to publish information about commercial transactions and shipping movements around the world. This initiative gave rise to *Lloyd's Lists*, published since 1726, and still the most important publication in the shipping and commercial world.
Lloyd's eventually moved to its current location of the Royal Exchange and is still considered the greatest and most important single commercial factor in the mercantile world.

Meanwhile, the first marine insurance company in the US was established in the 18th century to cover American clipper ships and their cargoes. Over time, the industry has developed into an assortment of broad property coverage’s, split between land risks (inland marine) and sea risks (ocean marine).

Until the 20th century, marine insurance traditionally did not cover a substantial number of risks, bestowing responsibility on owners of property to look after it themselves as per car accident-insurance policies. Now, ship owners can apply for comprehensive coverage which protects them against virtually all risks including “collision and running down” clauses, war-risk riders, and protection and indemnity insurance.

Ship owners carry hull insurance on their own ships and protect themselves against claims by third parties in various ways. Should a ship or its cargo be damaged, the matter is settled between insurance carriers.

**Organization of Lloyds:**

**Lloyd's of London** (also known simply as **Lloyd's**) is an insurance market located in London's primary financial district, the City of London. It serves as a partially metalized marketplace where multiple financial backers, known as underwriters, or "members", both individuals (traditionally known as "Names") and corporations, come together to pool and spread risk. Unlike most of its competitors in the industry, it is not a company but it is a corporate body governed by the Lloyd's Act of 1871 and subsequent Acts of the Parliament of the United Kingdom.

The insurance business underwritten at Lloyd's is predominantly general insurance and reinsurance, although in 2013 there are five syndicates writing term life assurance. The market has its roots in marine insurance and was founded by Edward Lloyd at his coffee house on Tower Street in the 17th century. Today, it is based at the Lloyd's building on Lime Street. **Fidentia** (Latin for "confidence") is the motto of Lloyd's.
In 2011, over £23.44 billion of gross premiums were transacted in the Lloyd's market and in aggregate it made a pre-tax loss of £516 million, driven by a number of significant natural disasters which gave rise to the highest ever annual level of claims for Lloyd's. In 2012, Lloyd's made a pre-tax profit of £2.77 billion on a record £25.50 billion of gross written premiums.

**Formation**

The market began in Lloyd's Coffee House, opened by Edward Lloyd in around 1688 in Tower Street, London. This establishment was a popular place for sailors, merchants, and ship owners, and Lloyd catered to them with reliable shipping news. The shipping industry community frequented the place to discuss deals among themselves, including insurance. Just after Christmas 1691, the coffee shop relocated to Lombard Street (a blue plaque commemorates this location). This arrangement carried on until 1774, long after Lloyd's death in 1713, when the participating members of the insurance arrangement formed a committee and moved to the Royal Exchange on Cornhill as The Society of Lloyd's.

**First Lloyd's Act**

The Royal Exchange was destroyed by fire in 1838, and, although the building was rebuilt by 1844, many of Lloyd's early records were lost. In 1871, the first Lloyd's Act was passed in Parliament which gave the business a sound legal footing. The Lloyd's Act of 1911 set out the Society's objectives, which include the promotion of its members' interests and the collection and dissemination of information.

The membership of the Society, which had been largely made up of market participants, was realized to be too small in relation to the market's capitalization and the risks that it was underwriting. Lloyd's response was to commission a secret internal inquiry, which produced the Cromer Report in 1968. This report advocated the widening of membership to non-market participants, including non-British subjects and women, and to reduce the onerous capitalization requirements (which created a more minor investor known as a *mini-Name*). The Report also drew attention to the danger of conflicts of interest.
Changes in the UK financial markets

During the 1970s, a number of issues arose which were to have significant influence on the course of the Society. The first was the tax structure in the UK: capital gains were taxed at 40% (0% on gilts), earned income was taxed in the top bracket at 83%, and investment income in the top bracket at 98%. Lloyd's income counted as earned income, even for Names who did not work at Lloyd's, and this heavily influenced the direction of underwriting: in short, it was desirable for syndicates to make a (small) underwriting loss but a (larger) investment profit. The investment profit was typically achieved by 'bond washing' or 'gilt stripping': buying the gilt or other bond 'ex dividend' and selling it 'cum dividend', creating an income loss and a tax-free capital gain. Syndicate funds were also moved offshore (which later created problems through fraud and self-dealing).

Because Lloyd's acted as a tax shelter in addition to being an insurance market, the second issue affecting Lloyd's was an increase in its external membership, such that, by the end of the decade, the number of passive investors dwarfed the number of underwriters working in the markets. Thirdly, during the decade a number of scandals had come to light, including the collapse of the Sass syndicate, which had highlighted both the lack of regulation and the lack of legal powers of the Committee of Lloyd's (as it was then) to manage the Society.

Arising simultaneously with these developments were wider issues: firstly, in the United States, an ever-widening interpretation by the Courts of insurance coverage in relation to workers' compensation for asbestos-related losses, which created a huge, and initially not recognized and then not acknowledged, hole in Lloyd's reserves. Secondly, by the end of the decade, almost all of the market agreements, such as the Joint Hull Agreement, which were effectively cartels mandating minimum terms, had been abandoned under pressure of competition. Thirdly, new specialized policies had arisen which had the effect of concentrating risk: these included "run-off policies", under which the liability of previous underwriting years would be transferred to the current year, and "time and distance" policies, whereby reserves would be used to buy a guarantee of future income.
Second Lloyd's Act

In 1980, Sir Henry Fisher was commissioned by the Council of Lloyd's to produce the foundation for a new Lloyd's Act. The recommendations of his Report addressed the 'democratic deficit' and the lack of regulatory muscle.

The Lloyd's Act of 1982 further redefined the structure of the business, and was designed to give the 'external Names', introduced in response to the Cromer Report, a say in the running of the business through a new governing Council. The main purpose of the 1982 Act was to separate the ownership of the managing agents of the Lloyd's underwriting syndicates from the ownership of the insurance broking firms (which acted as intermediaries, not as underwriters) with the objective of removing conflicts of interest.

Immediately after the passing of the 1982 Act, evidence came to light, and internal disciplinary proceedings were commenced against a number of individual underwriters who had siphoned sums from their businesses to their own accounts. These individuals included a Deputy Chairman of Lloyd's, Ian Posgate, and a Chairman, Sir Peter Green.

In 1986 the UK government commissioned Sir Patrick Neill to report on the standard of investor protection available at Lloyd's. His report was produced in 1987 and made a large number of recommendations but was never implemented in full.

1988–96

In the late 1980s and early 1990s, Lloyd's went through the most traumatic period in its history. Unexpectedly large legal awards in U.S. courts for punitive damages led to large claims by insured’s, especially on APH (asbestos, pollution and health hazard) policies, some dating as far back as the 1940s. Many of these policies were designed to cover all liabilities not excluded on broad form liability policies.

Also in the 1980s Lloyd's was accused of fraud by several American states and the external "names" (investors in underwriting syndicates). Some of the more high profile accusations included:

- Lloyd's withheld their knowledge of asbestosis and pollution claims until they could recruit more investors to take on these liabilities that were unknown to investors prior to investing in Lloyd's;
Enforcement officials in 11 U.S. states charged Lloyd's and some of its associates with various wrongs such as fraud and selling unregistered securities;

Ian Postage, one of Lloyd's leading underwriters, was charged with skimming money from investors and secretly trying to buy a Swiss bank; he was later acquitted.

'Recruit to dilute'

How "reinsurance to close" works

It may be wondered how the current Members of Lloyd's could be liable to pay these historical losses. This came about as a result of the Lloyd's accounting practice known as 'reinsurance-to-close' (RITC).

Membership of a Lloyd's syndicate was not like owning shares in a company. An individual "joined" for one calendar year only – known as the Lloyd's annual venture. At the end of the year, the syndicate as an ongoing trading entity was effectively disbanded.

However usually the syndicate re-formed for the next calendar year with more or less the same membership and the same identifying number. In this way, a syndicate could have a continuous existence going back (in some cases) fifty years or more, but each year was accounted for separately. There would have been fifty separate incarnations of the syndicate, each one a separate trading entity that underwrote insurance for one calendar year only.

Claims take time to be reported and paid, so the profit or loss for each Syndicate took time to become apparent. The practice at Lloyd's was to wait three years (that is, 36 months from the beginning of the year in which the business was written) before "closing" the year for accounting purposes and declaring a result.

For example, a 2003 syndicate would ordinarily declare its results following the end of December 2005. The syndicate's members would be paid any underwriting (and investment) profit during the 2006 calendar year, in proportion to their participation in the syndicate; conversely, they would have to reimburse the syndicate during 2006 for their share of any loss.

To arrive at the profit or loss, reserves were set aside for future claims payments; that is, both reserves for claims that had been notified but not yet paid, and also estimated
amounts required for claims which had been "incurred but not reported" (IBNR). The estimation process is difficult and can be inaccurate; in particular, liability (or long-tail) policies tend to produce claims long after the policies is written.

The reserve for future claims liabilities were set aside in an unusual way. The syndicate bought a reinsurance policy to pay any future claims; the premium was equal to the amount of the reserve. In other words, rather than putting the reserve into a bank to earn interest, the syndicate transferred its (strictly, its members’) liability to pay future claims to a reinsurer. This was "reinsurance-to-close" – a transaction that allowed the syndicate to be closed, and a profit or loss declared.

The reinsurer was always another Lloyd's syndicate(s), often the succeeding year of the same syndicate. The members of Syndicate X in 2004 reinsured the future claims liabilities for members of Syndicate X in 2003. The membership might be the same, or might have changed.

In this manner, liability for past losses could be transferred year after year until it reached the current syndicate. A member joining a syndicate with a long history of such transactions could – and often did – pick up liability for losses on policies written decades previously. So long as the reserves had been correctly estimated, and the appropriate RITC premium paid every year, then all would have been well, but in many cases this had not been possible. No one could have predicted the surge in APH losses. Therefore, the amounts of money transferred from earlier years by successive RITC premiums to cover these losses were insufficient, and the current members had to pay the shortfall.

(By contrast, within a stock company, an initial reserve for future claims liabilities is set aside immediately, in year 1. Any deterioration in that initial reserve in subsequent years will result in a reduced profit in the later years, and a consequently reduced dividend and/or share price for shareholders in those later years, whether or not those shareholders in the later year are the same as the shareholders in year 1. Arguably, Lloyd's practice of using reserves in year 3 to establish the RITC premiums should have resulted in a more equitable handling of long-tail losses such as APH than would the stock company
approach. Nevertheless, the difficulties in correctly estimating losses such as APH overwhelmed even Lloyd's extended process.)

As a result a great many individual members of syndicates underwriting long-tail liability insurance at Lloyd's faced financial loss by the mid-1990s.

**Dilution of liabilities and the consequences**

It is alleged that, in the early 1980s, some Lloyd's officials began a recruitment programme to enroll new Names to help capitalize Lloyd's prior to the expected onslaught of APH claims. This allegation became known as "recruit to dilute": in other words, recruit Names to dilute losses. When the huge extent of asbestosis losses came to light in the early 1990s, for the first time in Lloyd's history large numbers of members refused or were unable to pay the claims, many alleging that they were the victims of fraud, misrepresentation, and negligence. The opaque system of accounting at Lloyd's made it difficult, if not impossible, for many Names to understand the extent of the liability that they personally and their syndicates subscribed to.

The market was forced to restructure. In 1996 the ongoing Lloyd's was separated from its past losses. Liability for all pre-1993 business was compulsorily transferred (by reinsurance-to-close) into a special vehicle called Equitas at a cost of over $21 billion and enormous personal losses for many Names.

The "recruit to dilute" fraud allegations were heard in court in 2000 in the case *Sir William Jaffray & Others v. The Society of Lloyd's*, and the appeal was heard in 2002. On each occasion the allegation that there had been a policy of "recruit to dilute" was rejected; however, at first instance the judge described the Names as "the innocent victims [...] of staggering incompetence" and at appeal the Court found that representations that Lloyd's had a rigorous auditing system were false ([item 376 of the judgment:] [...] *the answer to the question [...] whether there was in existence a rigorous system of auditing which involved the making of a reasonable estimate of outstanding liabilities, including unknown and unnoted losses, is no. Moreover, the answer would be no even if the word 'rigorous' were removed.*) and strongly hinted that one of Lloyd's main witnesses, Murray Lawrence, a previous Chairman, had lied in his testimony ([item
405 of the judgment: We have serious reservations about the veracity of Mr. Lawrence's evidence

Links:

- First Instance judgment
- Appeal judgment

Lloyd's then instituted some major structural changes. Corporate members with limited liability were permitted to join and underwrite insurance. No new "unlimited" Names can join (although a few hundred existing ones remain). Financial requirements for underwriting were changed, to prevent excess underwriting that was not backed by liquid assets. Market oversight has significantly increased. Lloyd's has rebounded and started to thrive again after the September 11 attacks, but it has not regained its past importance as newly created companies in Bermuda captured a large share of the reinsurance market.

**Structure**

Lloyd's is not an insurance company. It is an insurance market of members. As the oldest continuously active insurance marketplace in the world, Lloyd's has retained some unusual structures and practices that differ from all other insurance providers today. Originally created as a non-incorporated association of subscribing members in 1774, it was incorporated by the Lloyd's Act 1871, and it is currently governed under the Lloyd's Acts of 1871 through to 1982.

Lloyd's itself does not underwrite insurance business, leaving that to its members (see below). Instead the Society operates effectively as a market regulator, setting rules under which members operate and offering centralized administrative services to those members.

**The Council of Lloyd**

The Lloyd's Act 1982 defines the management structure and rules under which Lloyd's operates. Under the Act, the **Council of Lloyd's** is responsible for the management and supervision of the market. It is regulated by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000.
The Council normally has six working, six external and six nominated members. The appointment of nominated members, including that of the Chief Executive Officer, is confirmed by the Governor of the Bank of England. The working and external members are elected by Lloyd's members. The Chairman and Deputy Chairmen are elected annually by the Council from among the working members of the Council. All members are approved by the FSA.

The Council can discharge some of its functions directly by making decisions and issuing resolutions, requirements, rules and byelaws. The Council delegates most of its daily oversight roles, particularly relating to ensuring the market operate successfully, to the Franchise Board.

The Franchise Board lays down guidelines for all syndicates and operates a business planning and monitoring process to safeguard high standards of underwriting and risk management, thereby improving sustainable profitability and enhancing the financial strength of the market.

Lloyd's syndicates write a diverse range of policies, both direct insurance and reinsurance, covering casualty, property, marine, energy, motor, aviation and many other types of risk. Lloyd's has a unique niche in unusual, specialist business such as kidnap and ransom, fine art, aviation, marine, and other insurances.

Types of Policies:

The general public knows Lloyd's for some unusual or notable policies it has written. For example, Lloyd's has insured:

- silent film comedian Ben Turpin's eyes against uncrossing
- Marlene Dietrich's, Betty Grable's,[19] Brooke Shields's, and Tina Turner's legs
- cricketer Merv Hughes's trademark walrus mustache while playing for Australia between 1985 and 1994[20]
- Jimmy Durante's nose
- the hands of the 1932 World Yo-Yo Champion Harvey Lowe[20]
- Keith Richards' fingers
- food critic and gourmet Egon Ronay's taste buds for £250,000[19]
Whitney Houston's, Toni Braxton's, Celine Dion's, Bob Dylan's and Bruce Springsteen's vocal cords\footnote{20}

Michael Flatley's legs for $47 million\footnote{20} (the policy was only in effect when he was touring, and forbade him from dancing except on stage)

America Ferrera's smile for $10 million

Ken Dodd's teeth for $7.4 million\footnote{20}

Tempest Storm's breasts

Steve Fossett's life for $50 million

the bodies of several professional wrestlers, including Bret Hart, Ric Flair, Curt Hennig, Rick Rude, Brian Adams, and Joe Laurinaitis, better known as Road Warrior Animal

Diana Lee's hair

Troy Polamalu's hair for $1 million

Holly Madison's breasts for $1 million

participating automobiles in the carpools involved in the Montgomery Bus Boycott

a grain of rice with a portrait of the Queen and the Duke of Edinburgh engraved on it for $20,000

a confident comedy theatre group against the risk of a member of their audience dying of laughter

the development of the new World Trade Center with workers' compensation, general liability, excess liability and speciality insurance programmes

Lloyd's is in talks with Virgin Galactic to insure spaceflights.

INSTITUTE OF LONDON UNDERWRITERS

The Institute of London Underwriters (ILU) is the body to which most companies writing London Market Marine insurance belong and the ILU provides the same sort of services to its members that Lloyd's provides to syndicates.

It was founded in 1884 to act as a trade association and to provide a forum for underwriters to discuss current affairs and the problems of the moment; at first Lloyd's underwriters were also members but in 1909 the Lloyd's underwriters Association was set
up as it had become apparent that separate bodies were needed to represent the Lloyd's and company markets. Matters which concern the Marine market in London as a whole are still dealt with by joint (Lloyd's and ILU) committees which normally have equal membership from each side and an arrangement whereby a chairman from one side will be succeeded by one from the other side. Nowadays the ILU's functions extend beyond acting as a trade association. The London Market being a subscription market where insurers each accept small parts of large risks, the ILU provides a service to its members by issuing policies signed by one of its officials on behalf of those members subscribing to the particular insurance; though it should be noted that these are policies of co-insurance and each underwriter is responsible only for the share of the risk (the line) which he has accepted. It also provides a settlement service so that brokers will make one net payment, supported by all the necessary details, to the ILU monthly (or receive one), as will each of its members. "Special" cash settlements, in the case of large losses, are similarly handled.

At present the ILU has approximately 110 members. Membership of the ILU has always been thought to add prestige to a member and applications for membership are examined thoroughly. The accounts of member companies are carefully vetted, with associate members (those who have been members for less than 5 years, or whose ownership has changed in the last 5 years) submitting quarterly returns and providing business plans in advance. A relatively high standard of solvency is required of ILU members and where a member is a subsidiary of another (often overseas) company, a substantial guarantee is required from the parent. In consequence the ILU is able to boast proudly that no ILU company has ever defaulted on its obligations. Two years ago the ILU building was opened. This is a centre for underwriting in which member companies can rent space and most have chosen to do so. As with Lloyd's this certainly makes it easier for brokers placing marine risks and probably gives a competitive advantage to those companies in the building because of the extra convenience for brokers. It has been estimated that it now takes half a day to place a risk that used to take 2-3 days.

The ILU companies' premium income (excluding aviation) for 1987 was around £1.5bn, of which a third was cargo, the remainder being liability, energy and hull.
b) P & I CLUBS

Protection and Indemnity Clubs were formed to provide mutual insurance of the various liabilities of ship owners. The first one was founded in 1855. The concept is that ship owners pay a standard rate per ton and this is adjusted to reflect the experience. However, divergence has resulted in individual rating by the club's full time management. Payment is by initial deposit with later adjustment. The policy year traditionally runs from 12.00 noon on 20th February (this date relates to the annual resumption of Baltic navigation).

The reinsurance arrangements for 1988 are as follows:-

(i) club retention US$1.2m per loss,
(ii) pool of $12m xs $1.2m per loss amongst members of clubs,
(iii) outwards reinsurance of $1bn xs $12m.

P & I club work has changed with shipping becoming "big business". Expenses of running P & I clubs are normally met by fees. Claims are rising because of:-

(i) increasing social awareness,
(ii) increasing legislation,
(iii) increasing wages and costs (incl legal fees)
(iv) more hostile and business-like Marine insurance environment.

The annual premiums taken by P & I clubs is around $650m, while a breakdown of claims paid is roughly:-

Cargo 45%
Personal Injury 20%
Pollution 10%
Remainder 25%

P & I clubs differ from companies in the way they get directly involved in helping shipowners manage the risk, advising on contracts, providing legal assistance in claims and organizing reports and conferences to increase their awareness. Their history has enabled P & I clubs to be strong, both technically and financially, as well as flexible to changing market conditions.
C) LLOYD'S UNDERWRITERS' ASSOCIATION'(LUA)

Lloyd's is now estimated to insure about 25% of world shipping and marine forms about 30% of Lloyd's total business. Few major marine risks in the world are placed without at least checking terms quoted in the London market. LUA represents the interests of Lloyd's marine underwriters at Lloyd's and provides half the members of committees such as the Joint Hull Committee and the Technical and Clauses Committee; the latter has during the early 1980's replaced the ancient Lloyd's policy form with a new simpler version.

d) LLOYD'S POLICY SIGNING OFFICE (LPSO)

After a risk has been circulated around the Underwriting room at Lloyd's, and each participating Underwriter has signed the "slip" indicating the share he wishes to accept, the details are checked and the policy document is prepared and signed at LPSO. As documents are passed backwards and forwards between the broker and LPSO for agreement and queries are resolved, there is generally 2 to 3 months delay between risk inception and policy signing, but it is the latter date which determines the underwriting year of account to which premium and corresponding claims are allocated.

LPSO's principal functions are:-

i) To check transactions and sign policies and endorsements ensuring that the terms on the "slip" are correctly followed through and that various Lloyd's and statutory requirements are met.

ii) To provide a central accounting scheme whereby monetary transactions between the many syndicates and brokers are settled on a balance basis. Settlements were made at regular fixed intervals with specific terms of credit until the recent introduction of flexible settlement whereby the settlement date is agreed at the time of placing the risk. LPSO effectively acts as a clearing house collecting premiums and paying claims and refunds, including syndicate reinsurance transactions, once agreement has been reached between broker and lead underwriter.

iii) To extract and record accounting and limited statistical information on a per policy basis for use by brokers and underwriters. The records are made available both in a form
suitable for data processing (on punched cards and magnetic tape) and also in a visual narrative form on the aforementioned cards.

iv) To provide statistical files for use by various Corporation of Lloyd's departments.

e) LLOYD'S UNDERWRITERS' CLAIMS & RECOVERIES OFFICE (LUCRO)
LUCRO's main function is to provide an integrated claims and recoveries service for Lloyd's marine business and has absolute authority from the vast majority of Lloyd's Marine Underwriters to administer and settle claims on their behalf. Claims are handled on the various risks written by Marine Underwriters including Non-Marine, Aviation etc. LUCRO also operates a computer system called OMCAS (Outstanding Marine Claims Advice Scheme) which enables the underwriters to be kept informed of any outstanding claims amounts advised.

f) LLOYD'S REGISTER OF SHIPPING
Nearly half the world's ships are classified by Lloyd's Register; other marine craft such as oil rigs may also be included. When a new risk is proposed to a Hull underwriter he is likely to refer to this Register for important details of the ship. The Register is entirely separate from the Corporation of Lloyd's and is controlled by a committee drawn from a wide range of shipping interests. Ships reaching a certain standard are classified and others may be included without classification; certain vessels are specially designated to show their plans were approved before work began and were surveyed at every stage of construction. For a ship's classification to be maintained, annual surveys are required with a special survey every fourth year appear in the Register with different symbols if surveyed by other bodies; some foreign standards do not match Lloyd's and this is a matter to be considered in rating a risk.

g) SALVAGE ASSOCIATION
The Salvage Association is a non profit-making body which has over 100 surveyors around the world and its main role is to assess the nature and extent of damage to a ship or cargo and recommend appropriate repairs or salvage. Association surveyors are often involved where a warranty to a policy requires a surveyor to approve fitness of a vessel
for proposed activity, in negotiation of ship repair contracts, in checking stranded cargo and in approving arrangements for the laying up of ships.

h) ASSOCIATION OF AVERAGE ADJUSTERS
This is a professional body which is very important in marine insurance and members follow the Association's Rules of Practice which have been built up over many years. Nearly all claims for damage to ships and general average claims are adjusted by them, whereas cargo and total loss claims tend to be more straightforward and can often be handled by brokers.

i) PSAC
Although the London Market, non-Lloyd's, Policy Signing and Accounting Centre system has the capability to process Marine business, little is transacted this way. Most companies use the ILU systems instead.

USEFUL ORGANISATIONS
The following are links to organizations that may be of use if you are interested in broader insurance issues or historical shipping information.

Association of British Insurers (ABI)
This is a trade association which represents and holds information on most UK insurers.
www.abi.org.uk

The British Standards Institution (BSI)
This organization provides information on ISO standards.
www.bsi.org.uk

Chartered Insurance Institute (CII)
This is the professional and educational body for insurance and financial services companies. Lloyd's training and development is provided by the CII. They work together to deliver and develop a range of high-quality services for all market participants.
www.cii.co.uk
Financial Services Authority (FSA)
Lloyd's is regulated by the FSA, an independent non-governmental body with statutory powers under the Financial Services and Markets Act 2000. www.fsa.gov.uk

Guildhall Library
The library contains all Lloyd's shipping records prior to 1985, plus other historical records. Guildhall Library

Lloyd's Choir
Since its formation in 1922, Lloyd's Choir has traditionally drawn its membership from the insurance community of the City of London where it is based, maintaining a close association with Lloyd's insurance market after which the choir was named. www.lloydschoir.plus.com

Lloyd's Register
Lloyd's Register provides information on surveys, inspections, construction and classification, issues related to ISO Standards and some historical shipping records. www.lr.org

Informal
Formerly known as Lloyd's of London Press, provides shipping periodicals, insurance titles, records on marine casualties, ship owners and ship movements. www.group.informa.com

Insurance Institute of London
The Insurance Institute of London was established to ensure the cultivation of knowledge and information in all matters relating to the various branches of insurance. www.iilondon.co.uk
International Underwriting Association of London (IUA)
The IUA represents insurance and reinsurance companies operating in or through London, in order to protect and strengthen their business environment.
www.iua.co.uk

Lloyd's Market Association (LMA)
The LMA provides representation, information and technical services to underwriting businesses in the Lloyd's market.
www.lmalloyds.com

London Market Insurance Brokers' Committee (LMBC)
LMBC is a trade body representing the interests of Lloyd's brokers operating in the London and worldwide insurance and reinsurance markets.
www.lmbc.co.uk

The National Maritime Museum
The National Maritime Museum (NMM) provides useful resources on historical shipping. In particular, the NMM hosts Port, an online catalogue of maritime resources.
www.port.nmm.ac.uk

Exchanging - XIS/XCS
XIS/XCS are responsible for Lloyd's market processing.
www.xchanging.com

International Maritime Bureau:
The ICC International Maritime Bureau (IMB) is a specialized division of the International Chamber Of Commerce (ICC). The IMB is a non-profit making organization, established in 1981 to act as a focal point in the fight against all types of maritime crime and malpractice. The International Maritime Organization (IMO) in it’s resolution A 504 (XII) (5) and (9) adopted on 20 November 1981, has inter alia, urged governments, all interests and organizations to cooperate and exchange information with
each other and the IMB with a view to maintaining and developing a co-ordinated action in combating maritime fraud. The IMB has a MOU with the World Customs Organization (WCO) and has observer status with Interpol (ICPO).

The **International Maritime Bureau** is a specialized department of the International Chamber of Commerce. The IMB's responsibilities lie in fighting crimes related to maritime trade and transportation, particularly piracy and commercial fraud, and in protecting the crews of ocean-going vessels. It publishes a weekly piracy report and maintains a 24-hour piracy reporting centre in Kuala Lumpur, Malaysia.

The IMB is part of ICC Commercial Crime Services whose other divisions include The Counterfeiting Intelligence Bureau, The Financial Investigation Bureau and Fraud Net.

Fraud Net is the world's leading network of fraud and asset recovery lawyers with 63 lawyers in 56 different jurisdictions.

The bureau, endorsed by the UN's International Maritime Organization, was founded in 1981. The body has observer status with Interpol and a MOU with the World Customs Organization

IMB’s main task is to protect the integrity of international trade by seeking out fraud and malpractice. For over 25 years, it has used industry knowledge, experience and access to a large number of well-placed contacts around the world to do this: identifying and investigating frauds, spotting new criminal methods and trends, and highlighting other threats to trade.

The information gathered from sources and during investigations is provided to members in the form of timely advice via a number of different communication routes. It lists the threats and explains how members can reduce their vulnerability to them. Over the years, this approach has thwarted many attempted frauds and saved the shipping and trading industry many millions of dollars.

The IMB provides an authentication service for trade finance documentation. It also investigates and reports on a number of other topics, notably documentary credit fraud, charter party fraud, cargo theft, ship deviation and ship finance fraud.
As well as helping to prevent crime, the IMB also has a duty to educate both the shipping community and a wider audience that comprises just about every entity engaged in trade. To this end, the IMB runs a regular series of courses and training programmed that have a wide-ranging syllabus and many proven benefits. It also offers bespoke consultancy services in areas such as ship and port security.

One of the IMB’s principal areas of expertise is in the suppression of piracy. Concerned at the alarming growth in the phenomenon, this led to the creation of the IMB Piracy Reporting Centre in 1992. The Centre is based in Kuala Lumpur, Malaysia. It maintains a round-the-clock watch on the world’s shipping lanes, reporting pirate attacks to local law enforcement and issuing warnings about piracy hotspots to shipping.

With its multi-lingual and multi-disciplined staff, experience, unique structure, industry support and well-placed contacts, the IMB can rightly claim to be the world’s premier independent crime-fighting watchdog for international trade.

IMB serves the International Maritime Community by providing the technical supervision of ships and Classification Services. This supervision is based on our maritime expertise and in the IMB Rules which were prepared by our professional staff taking into consideration the marine experience and hard work of our Network of Surveyors around the world. As part of IMB services, our surveyors can assess the Vessel’s seaworthiness amongst other services. We are also proud to team up with shipyards and other marine facilities to evaluate their equipments condition and work including the assessment that their job meets all technical requirements and it is completely in a professional manner.

The main services provided by IMB are, as follows:

1. Class Hull Certificates
2. Class Machinery Certificates
3. Class Boilers Certificates
4. Class Refrigerating Installations Certificates
5. Class Fishing Vessel Certificates
IMB is a well known Classification Society by both Insurance Brokers and Underwriters. IMB is aware that good quality Condition Surveys and high standards in the selection of our vessels is what the marine insurance industry seeks worldwide.

Vessels classed by IMB have been insured by the following markets:

1. The South of England P&I Association (Bermuda).
2. Osprey P & I Underwriting Agency
3. AGF Marine Aviation Transport
4. Club P & I The Ship-owners (Luxemburg)
5. Navigators P & I Insurance Group
6. Lloyd’s Syndicates.
7. AXA Group
8. Intercostals Ship owners P& I B.V.
9. Campania de Seguros La Chilena Consolidada S.A.
10. British Marine Luxembourg
11. Southern Seas Protection And Indemnity
12. International Marine Protection Ltd.
13. Andrew Lie & Company Ltd. (Hong Kong)
14. Ship-Owner Mutual Protection And Indemnity Associations S.M.P.
15. Insurance & Reinsurance Company Astra S.A.

**Tariff Advisory Council:**

**Tariff Advisory Council** a statutory body created under the Insurance Act of 1938, the main insurance legislation in effect during the pre-liberalization period. Under this tariff system, premiums were fixed at the same rate for all companies, products were undifferentiated and coverage was limited in almost every segment. Non-life products were classified by whether they were regulated by tariffs: fire, insurance, motor vehicle insurance, engineering insurance and workers’ compensation, among others that came under tariff; and burglary insurance, medic aim, personal accident insurance, among others that did not. In addition, specialized insurance (eg racehorse insurance) did not fall under tariff regulations. Further, the monopoly structure and the closing of the market to
foreign and domestic private companies enabled domestic public insurers to freely conduct business without having to face any competitive challenges. Under this market structure, there was no need for brokers. Besides, brokers were effectively kept out of the country by regulations that prevented them from charging fees or commissions for their services.

The Tariff Advisory Committee ascertains and regulates the rates, advantages, terms and conditions offered by insurers in respect of General Insurance Business relating to Fire, Marine, Motor, Engineering and Workmen Compensation. There are several regulations framed under the Tariff Advisory Committee, such as Workmen’s Compensation Tariff, All India Fire Tariff, Engineering Tariff, India Motor Tariff, Consequential Loss (Fire) Tariff etc. Insurance Regulatory Development Authority has deputed the Tariff Advisory Committee as the data repository for the Non-Life Insurance industry.

**Establishment of Tariff Advisory Committee**

(1) With effect from the commencement of the Insurance (Amendment) Act, 1968, there shall be established a Committee, to be called the Tariff Advisory Committee (hereafter in this Part referred to as the Advisory Committee) to control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of general insurance business.

(2) The Advisory Committee shall be a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both moveable and immoveable, and to contract, and may, by the said name, sue and be sued.

**Composition of the Advisory Committee**

(1) The Advisory Committee shall consist of the following members, namely:—

(a) the Chairperson of the Authority ex officio, who shall be the Chairman;
(b) a senior officer of the office of the Authority nominated by the Authority, who shall be the Vice Chairman;
(c) not more than ten representatives of Indian insurers, elected (In their individual capacities) by such insurers in such manner, from such areas and from
among such insurers or groups of insurers as may be prescribed; (d) not more than four representatives of insurers incorporated or domiciled elsewhere than in India but registered in India elected (in their individual capacities) by such insurers in such manner, and from among such insurers or groups of insurers as may be prescribed.

(2) The Secretary to the Advisory Committee shall be an officer of the office of the Authority, nominated by the Authority.

**Power to make rules in respect of matters in this part**

(1) The Authority may by notification in the official Gazette may make regulations to carry out the purposes of this part.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the functions to be discharged by the Advisory Committee;
(b) the term of office of the members of the Advisory Committee, the procedure for their election and the manner of filling casual vacancies in the Advisory Committee;
(c) the traveling and other allowances payable to the members of the Advisory Committee;

(d) the procedure for holding the meeting of the Advisory Committee and for transaction of business thereat.

(3) The Advisory Committee may, by notification in the Official Gazette with the previous approval of the Authority, make regulations for all or any of the following matters, namely,—

(a) the constitution, powers and duties of Regional Committees and of sub committees constituted by the Advisory committee or any Regional Committee;

(b) the method of election of candidates for Regional Committees and of sub committees, their eligibility, term of office and method of filling casual vacancies;
(c) the procedure for convening meetings and transaction of business by Regional committees and sub committees;

(d) the appointment of officers and other employees of the Advisory Committee and of Regional Committees or sub committees constituted by or under the Advisory Committee or any Regional Committee and the terms and conditions of their service including travelling and other allowances;

(e) such other matters pertaining to procedure as are not inconsistent with the provisions of this Act or of rules made there under, and may, from time to time, with the previous approval of the Authority, add to, amend or vary any such regulations.

(4) The regulations made by the Tariff Committee of the General Insurance Council under Section 64-O as they were in force immediately before the commencement of the Insurance (Amendment) Act, 1968, shall, after such commencement, continue to be in force until rules are made by the Central Government under sub section (1) and immediately after such rules have come into effect, the regulations aforesaid shall cease to be valid.

(5) The Chairperson of the Authority shall be in direct charge of the establishment of the Advisory Committee and the Secretary of the Advisory Committee shall work under his direction and control.

**Power of the Advisory Committee to regulate rates, advantages**

(1) The Advisory Committee may, from time to time and to the extent it deems expedient, control and regulate the rates, advantages, terms and conditions that may be offered by insurers in respect of any risk or any class or category of risks, the rates, advantages, terms and conditions of which, in its opinion, it is proper to control and regulate, and any such rate, advantages, terms and conditions shall be binding on all insurers:

Provided that the Authority may, permit any insurer to offer, during such period (being not more than two years but which may be extended by periods of not more than two
years at a time) and subject to such conditions as may be specified by him, rates, advantages, terms or conditions different from those fixed by the Advisory Committee in respect of any particular category of risks, if he is satisfied that such insurer generally issues policies only to a restricted class of the public or under a restricted category of risks.

(2) In fixing, amending or modifying any rates, advantages, terms or conditions, relating to any risk, the Advisory Committee shall try to ensure, as far as possible, that there is no unfair discrimination between risk of essentially the same hazard, and also that consideration is given to past and prospective loss experience: Provided that the Advisory Committee may, at its discretion, make suitable allowances for the degree of credibility to be assigned to the past experience including allowances for random fluctuations and may also, at its discretion, make suitable allowances for future fluctuations and unforeseen future contingencies including hazards of conflagration or catastrophe or both.

(3) Every decision of the Advisory Committee shall be valid only after and to the extent it is ratified by the Authority, and every such decision shall take effect from the date on which it is so ratified by the Authority, or if the Authority so orders in any case, from such earlier date as he may specify in the order.

(4) The decisions of the Advisory Committee in pursuance of the provisions of this section shall be final.

(5) Where an insurer is guilty of breach of any rate, advantage, term or condition fixed by the Advisory Committee, he shall be deemed to have contravened the provisions of this Act. Provided that instead of proceeding against the insurer for such contravention, the Authority may, if the insurer removes the contravention by recovering the deficiency in the premium, or where it is not practicable to do so, modifies suitably or cancels the contract of insurance, compound the offence on payment to the Advisory Committee of such fine, not exceeding rupees one thousand, as he may decide in consultation with the Advisory Committee.
Transitional provisions

64UD. (1) Notwithstanding anything contained in this Part, until the names of the members of the Advisory Committee elected for the first time after the commencement of the Insurance (Amendment) Act, 1968, are notified, the Tariff Committee of the General Insurance Council appointed under regulations made under sub section (2) of Section 64-0 as it was in force immediately before the commencement of the Insurance (Amendment) Act, 1968, and in existence on such commencement (hereafter in this Part referred to as the Tariff Committee) shall continue to function and shall be deemed to be the Advisory Committee duly elected under this Part and the Authority of Insurance shall become the Chairman of that Committee with effect from the commencement of the Insurance (Amendment) Act, 1968, and function as such, and any chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman thereof from the date of such commencement but shall continue to be an ordinary member of the Advisory Committee.

Provided that the Chairperson of the Authority shall become the Chairman of the Advisory committee with effect from the commencement of the Insurance Regulatory and Development Authority Act, 1999 and function as such, and any chairman of the Tariff Committee holding office immediately before such commencement shall cease to be the Chairman.

(2) Notwithstanding anything contained in this Part, the constitution of the Regional Councils established under Section 64 P, as in force immediately before the commencement of the Insurance (Amendment) Act, 1968 (hereafter referred to as the Regional Councils), and of the Sectional Committees formed there under, existing immediately before such commencement, shall continue to be in full force and be of full effect until the regulations made by the Advisory Committee for the first time under Section 64UB come into effect and as soon as such regulations have come into effect such constitutions shall cease to have effect.

(3) Notwithstanding anything contained in this Part, until the Secretary to the Advisory Committee is nominated under sub section (2) of Section 64UA, the Secretary to the Tariff Committee holding office immediately before the commencement of the Insurance
(Amendment) Act, 1968, shall function as the Secretary and shall be deemed to have been duly nominated under this Part.

(4) All rates, advantages, terms and conditions fixed by the Tariff Committee or the Regional Councils prior to the commencement of the Insurance (Amendment) Act, 1968, and in force immediately before such commencement shall continue, except to such extent as they may be altered, replaced or abolished by the Advisory Committee, to be valid and fully in force as if they were rates, advantages, terms and conditions fixed by the Advisory Committee.

**General Insurance Council**

The General Insurance Council is a statutory body constituted under Section 64 C of Part II-A of the Indian Insurance Act 1938. It consisting of all the members and associate members of the Association who carry on general insurance business in India. The General Insurance Council is an industry body funded by contribution from member companies. Its membership is automatically extended by invitation to all insurance companies authorized to underwrite non-life insurance business of any class in India. Role of General Insurance Council The General Insurance Council represents the collective interests of the Non-life Insurance companies in India. The Council speaks out on issues of common interest; helps to inform and participate in discussions related to policy formation; and acts as an advocate for high standards of customer service in the insurance industry. General Insurance Council leads a number of initiatives by bringing together experts from its member companies, the national re-insurers and the regulator in a common forum for debating specific issues from time to time and helps resolve them in a structured fashion

**General Insurance Corporation of India**

**GIC of India (GIC Re)** is the sole reinsurance company in the Indian insurance market with over three decades of experience. GIC has its registered office and headquarters in Mumbai. The entire general insurance business in India was nationalized by the Government of India (GOI) through the General Insurance Business (Nationalization) Act (GIBNA) of
1972. 55 Indian insurance companies and 52 other general insurance operations of other companies were nationalized through the act.

The **General Insurance Corporation of India** (GIC) was formed in pursuance of Section 9(1) of GIBNA. It was incorporated on 22 November 1972 under the Companies Act, 1956 as a private company limited by shares. GIC was formed to control and operate the business of general insurance in India.

The GOI transferred all the assets and operations of the nationalized general insurance companies to GIC and other public-sector insurance companies. After a process of mergers and consolidation, GIC was re-organized with four fully owned subsidiary companies: National Insurance Company Limited, New India Assurance Company Limited, Oriental Insurance Company Limited and United India Insurance Company Limited.

GIC and its subsidiaries had a monopoly on the general insurance business in India until the landmark **Insurance Regulatory and Development Authority Act** (IRDA Act) of 1999 came into effect on 19 April 2000. This act also amended the GIBNA Act and Insurance Act of 1938. The act along with the amendments ended the monopoly of GIC and its subsidiaries and liberalized the insurance business in India.

In November 2000, GIC was refortified as India's Reinsurer, but its supervisory role over its subsidiaries was ended. This was followed by the **General Insurance Business (Nationalization) Amendment Act** of 2002. Coming into effect from 21 March 2003, this amendment ended GIC's role as a holding company of its subsidiaries. The ownership of the subsidiaries was transferred to the Government of India, which in turn divested its stake in the companies through listings on Indian stock exchanges.

As a result of these reforms, GIC became the sole Re-Insurer in India, and is now called **GIC Re**. Indian insurance companies are required by law to cede 5% of every policy value to GIC Re weft. 1st April 2013, subject to some limitations and exceptions. GIC Re has diversified its operations and is now emerging as an important Re-Insurer in SAARC countries, Southeast Asia, Middle East and Africa. GIC Re has also expanded its international operations through branches in London and Moscow.
GIC Re has a rating of A- (Excellent) from A. M. Best for its financial strength.

**Marine Insurance Act 1906**

The **Marine Insurance Act 1906** (8 Edw. 7 c.41) is a UK Act of Parliament regulating marine insurance. The Act was drafted by Sir Mackenzie Dalzell Chalmers, who had earlier drafted the Sale of Goods Act 1893. The Marine Insurance Act 1906 is of huge significance, as it does not merely govern English Law, but dominates marine insurance worldwide. The Act applies not only to "commercial" marine insurance, but also to protection and indemnity insurance (P&I clubs). This hundred-year-old act is reaching the end of its life and is expected to be repealed and reenacted before long.

The most important sections of this Act include:

- s.4: a policy without insurable interest is void.
- s.17: imposes a duty on the insured of *uberrimae fides* (as opposed to *caveat emptor*); ie. that questions must be answered honestly and the risk not misrepresented.
- s.18: the proposer of the insurer has a duty to disclose all material facts relevant to the acceptance and rating of the risk. Failure to do so is known as *non-disclosure* or *concealment* (there are minor differences in the two terms) and renders the insurance voidable by the insurer.
- s.33(3): If [a warranty] be not [exactly] complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.
- s.34(2): where a warranty has been broken, it is no defense to the insured that the breach has been remedied, and the warranty complied with, prior to the loss.
- s.34(3): a breach of warranty may be *waived* (ie. ignored) by the insurer.
- s.50: a policy may be assigned. Typically, a ship-owner might assign the benefit of a policy to the ship-mortgagor.
- ss.60-63: deals with the issues of a constructive total loss. The insured can, by notice, claim for a constructive total loss with the insurer becoming entitled to the
ship or cargo if it should later turn up. (By contrast an *actual total loss* describes the physical destruction of a vessel or cargo.)

s.79: deals with subrogation; ie. the rights of the insurer to stand in the shoes of an indemnified insured and recover salvage for his own benefit.

Schedule 1 of the Act contains a list of definitions; schedule 2 contains the model policy wording.
Fundamental Principle of Marine Insurance Contract

8 main Elements of Marine Insurance Contract

The marine insurance has the following essential features which are also called fundamental principles of marine insurance, (1) Features of General Contract, (2) Insurable Interest, (3) Utmost Good Faith, (4) Doctrine of Indemnity, (5) Subrogation, (6) Warranties, (7) Proximate cause, (8) Assignment and nomination of the policy. (9) Return of premium.

1. Features of General Contract:

(a) Proposal:

The broker will prepare a slip upon receipt of instructions to insure from ship owner, merchant or other proposers. Proposal forms, so common in other branches of insurances, are unknown in the marine insurance and only the 'slip' so called 'the original slip' is used for the proposal.

The original slip is accompanied with other material information which the broker deems necessary for the purpose. The brokers are expert and well versed in marine insurance law and practice.

The various kinds of marine proposals are altogether too diverse, so elaborate rating schedules are not possible and the proposals are considered on individual merits.

(b) Acceptance:

The original slip is presented to the Lloyd's Underwriters or other insurers or to the Lead of the insure, who initial the slip and the proposal is formally accepted. But the contract cannot be legally enforced until a policy is issued.
The slip is evidence that the underwriter has accepted insurance and that he has agreed subsequently to sign a policy on the terms and conditions indicated on the slip. If the underwriter should refuse to issue or sign a policy, he could not legally be forced to do so.

(c) Consideration:

The premium is determined on assessment of the proposal and is paid at the time of the contract. The premium is called consideration to the contract.

(d) Issue of Policy:

Having effected the insurance, the broker will now send his client a cover note advising the terms and conditions, on which the insurance has been placed. The broker's cover note is merely an insurance memorandum and naturally has no value in enforcing the contract with the underwrites.

The policy is prepared, stamped and signed without delay and it will be the legal evidence of the contract. However, after issue of the policy the court has power to order the rectification of the policy to express the intention of the parties to the contract as evidenced by the terms of the slip.

2. Insurable Interest:

Section 7, 8 and 9 to 16 provide for insurable interest. An insured person will have insurable interest in the subject-matter where he stands in any legal or equitable relation to the subject-matter in such a way that he may benefit by the safety or due arrival of insurable property or may be prejudiced by its loss, or by damage thereto or by the detention thereof or may incur liability in respect thereof.

Since marine insurance is frequently affected before the commercial transactions to which they apply are formally completed it is not essential for the assured to have an insurable interest at the time of effecting insurance, though he should have an expectation of acquiring such an interest. If he fails to acquire insurable interest in due course, he does not become entitled to indemnification.
Since the ownership and other interest of the subject matter often change from hands to hands, the requirement of the insurable interest to be present only at the time of loss makes a marine insurance policy freely assignable.

**Exceptions:**

There are two exceptions of the rule in marine insurance.

1. **Lost or Not Lost:**

   A person can also purchase policy in the subject-matter in which it was known whether the matters were lost or not lost. In such cues the assured and the underwriter are ignorant about the safety or otherwise of the goods and complete reliance was placed on the principle of Good Faith.

   The policy terminated if anyone of the two parties was aware of the fact of loss. In this case, therefore, the insurable interest may not be present at the time of contract because the subject-matter would have been lost.

2. **P.P.I. Policies:**

   The subject-matter can be insured in the usual manner by P.P.I. (Policy Proof of Interest), e., interest proof policies. It means that in the event of claim underwriters may dispense with all proof of insurable interest.

   In this case if the underwriter does not pay the claims, it cannot be enforced in any court of law because P.P.I, policies are equally void and unenforceable. But the underwriters are generally adhering on the terms and pay the amount of claim.

   The insurable interest in marine insurance can be of the following forms:

1. **According to Ownership**

   The owner has insurable interest up to the full value of the subject-matter. The owners are of different types according to the subject-matter.
(a) In Case of Ships:

The ship-owner or any person who has purchased it on charter-basis can insure the ship up to its full price.

(b) In Case of Cargo:

The cargo-owner can purchase policy up to the full price of the cargo. If he has paid the freight in advance, he can take the policy for the full price of the goods plus amount of freight plus the expense of insurance.

(c) In Case of Freight:

The receiver of the freight can insure up to the amount of freight to be received by him.

II. Insurable Interest in Re-insurance;

The underwriter under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it.

III. Insurable Interest in other Cases:

In this case all those underwriters are included who have insurable interest in the salary and own liabilities. For example, the master or any member of the crew of a ship has insurable interest in respect of his wages. The lender of money on bottom or respondent a has insurable interest in respect of the loan.

3. Utmost Good Faith:

Section 19, 20, 21 and 22 of the Marine Insurance Act 1963 explained doctrine of utmost good faith. The doctrine of caveat emptor (let the buyer beware) applies to commercial contracts, but insurance contracts are based upon the legal principle of uberrimae fides (utmost good faith). If this is not observed by either of the parties, the contract can be avoided by the other party.

The duty of the utmost good faith applies also to the insurer. He may not urge the proposer to affect an insurance which he knows is not legal or has run off safely.
But the duty of disclosure of material facts rests highly on the insured because he is aware of the material common in other branches of insurance are not used in the marine insurance.

Ships and cargoes proposed for insurance may be thousands of miles away, and surveys on underwriters' behalf are usually impracticable. The assured, therefore, must disclose all the material information which may influence the decision of the contract.

Any non-disclosure of a material fact enables the underwriter to avoid the contract, irrespective of whether the non-disclosure was intentional or inadvertent. The assured is expected to know every circumstance which in the ordinary course of business ought to be known by him. He cannot rely on his own inefficiency or neglect.

The duty of the disclosure of all material facts falls even more heavily on the broker. He must disclose every material fact which the assured ought to disclose and also every material fact which he knows.

The broker is expected to know or inquire from the assured all the material facts. Failure in this respect entitles the underwriter to avoid the policy and if negligence can be held against the broker, he may be liable for damages to his client for breach of contract. The contract shall be an initio if the element of fraud exists.

**Exception:**

In the following circumstances, the doctrine of good faith may not be adhered to:

(i) Facts of common knowledge.

(ii) Facts which are known should be known to the insurer.

(iii) Facts which are not required by the insurers.

(iv) Facts which the insurer ought reasonably to have in furred from the details given to him.

(v) Facts of public knowledge.
4. Doctrine of Indemnity:

Under Section 3 of the Act at is provided 'A contact of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured in the manner and the extent agreed upon.

The contract of marine insurance is of indemnity. Under no circumstances an insured is allowed to make a profit out of a claim. In the absence of the principle of indemnity it was possible to make a profit.

The insurer agrees to indemnify the assured only in the manner and only to the extent agreed upon. Marine insurance fails to provide complete indemnity due to large and varied nature of the marine voyage.

The basis of indemnity is always a cash basis as underwriter cannot replace the lost ship and cargoes and the basis of indemnification is the value of the subject-matter.

This value may be either the insured or insurable value. If the value of the subject matter is determined at the time of taking the policy, it is called 'Insured Value'. When loss arises the indemnity will be measured in the proportion that the assured sum bears to the insured value.

In fixing the insured value, the cost of transportation and anticipated profits are added to original value so that in case of loss the insured can recover not only the cost of goods or properties but a certain percentage of profit also.

The insured value is called agreed value because it has been agreed between the insurer and the insured at the time of contract and is regarded as sacrosanct and binding on both parties to the contract. In marine insurance, it has been customary for the insurer and the assured to agree on the value of the insured subject-matter at the time of proposal.

Having, agreed of the value or basis of valuation, neither party to the contract can raise objection after loss on the ground that the value is too high or too low unless it appears that a fraudulent evaluation has been imposed on either party.
Insured value is not justified in fire insurance due to moral hazard as the property remains within the approach of the assured, while the subject-matter is movable from one place to another in case of marine insurance and the assured value is fully justified there. Moreover, in marine insurance, the assured value removes all complications of valuation at the time of loss.

Technically speaking the doctrine of indemnity applies where the value of subject-matter is determined at the time of loss. In other words, where the market price of the loss is paid, this doctrine has been precisely applied.

Where the value for the goods has not been fixed in the beginning but is left to be determined the time of loss, the measurement is based on the insurable value of the goods. However, in marine insurance insurable value is not common because no profit is allowed in estimating the insurable value.

Again if the insurable value happens to be more than the assured sum, the assured would be proportionately uninsured. On the other hand, if it is lower than the assured sum, the underwriter would be liable for a return of premium of the difference.

**Exceptions:**

There are two exceptions of the doctrine of indemnity in marine insurance.

**1. Profits Allowed:**

Actually the doctrine says that the market price of the loss should be indemnified and no profit should be permitted, but in marine insurance a certain profit margin is also permitted.

**2. Insured Value:**

The doctrine of indemnity is based on the insurable value, whereas the marine insurance is mostly based on insured value. The purpose of the valuation is to predetermine the worth of insured.
5. **Doctrine of Subrogation:**

Section 79 of the Act explains doctrine of subrogation. The aim of doctrine of subrogation is that the insured should not get more than the actual loss or damage.

After payment of the loss, the insurer gets the light to receive compensation or any sum from the third party from whom the assured is legally liable to get the amount of compensation.

The main characteristics of subrogation are as follows:

1. The insurer subrogates all the remedies rights and liabilities of the insured after payment of the compensation.

2. The insurer has right to pay the amount of loss after reducing the sum received by the insured from the third party. But in marine insurance the right of subrogation arises only after payment has been made, and it is not customary as in fire and accident insurance, to alter this by means of a condition to provide for the exercise of subrogation rights before payment of a claim.

At the same time the right of subrogation must be distinguished from abandonment. If property is abandoned to a marine insurer, he is entitled to whatever remains to the property irrespective of value of subrogation.

3. After indemnification, the insurer gets all the rights of the insured on the third parties, but insurer cannot file suit in his own name. Therefore, the insured must assist the insurer for receiving money from the third party.

If the insured is revoking from filing suit against the third party, the insurer can receive the amount of compensation from the insured. Section 80 of the Act deals with the right of contribution between two or more insurers where there is over insurances by double insurance. It is corollary of principle indemnity.
6. Warranties:

A warranty is that by which the assured undertakes that some particular thing shall or shall not be done, or that some conditions shall be fulfilled or whereby he affirms or negates the existence of a particular state of facts.

Warranties are the statement according to which insured person promises to do or not to do a particular thing or to fulfill or not to fulfill a certain condition. It is not merely a condition but statement of fact.

Warranties are more vigorously insisted upon than the conditions because the contract comes to an end if a warranty is broken whether the warranty was material or not. In case of condition or representation the contract comes to end only when these were material or important. Warranties are of two types:

(1) Express Warranties, and (2) Implied Warranties.

1. Express Warranties:

Express warranties are those warranties which are expressly included or incorporated in the policy by reference.

2. Implied Warranties:

These are not mentioned in the policy at all but are tacitly understood by the parties to the contract and are as fully binding as express warranties.

Warranties can also be classified as (1) Affirmative, and (2) Promissory. Affirmative warranty is the promise which insured gives to exist or not to exist certain facts. Promissory warranty is the promise in which insured promises that he will do or not do a certain thing up to the period of policy. In marine insurance, implied warranties are very important. These are:

1. Seaworthiness of Ship.

2. Legality of venture.
3. Non-deviation.

All these warranties must be literally, complied with as otherwise the underwriter may avoid all liabilities as from the date of the breach.

However, there are two exceptions to this rule when a breach of warranty does not affect the underwriter's liability: (1) where owing to a change of circumstances the warranty is no longer applicable. (2) Where compliance would be unlawful owing to the enactment of subsequent law.

1. Seaworthiness of ship:

The warranty implies that the ship should be seaworthy at the commencement of the voyage, or if the voyage is carried out in stages at the commencement of each stage. This warranty implies only to voyage policies, though such policies may be of ship, cargo, freight or any other interest. There is no implied warranty of seaworthiness in time policies.

A ship is seaworthy when the ship is suitably constructed, properly equipped, officered and manned, sufficiently fuelled and provisioned, documented and capable of withstanding the ordinary strain and stress of the voyage. The seaworthiness will be clearer from the following points:

1. The standard to judge the seaworthiness is not fixed. It is a relative term and may vary with any particular vessel at different periods of the same voyage. A ship may be perfectly seaworthy for Trans-ocean voyage.

A ship may be suitable for summer but may not be suitable for winter. There may be different standard for different ocean, for different cargo, for different destination and so on.

2. Seaworthiness does not depend merely on the condition of the ship, but it includes the suitability and adequacy of her equipment, adequacy and experience of the officers and crew.
3. At the commencement of journey, the ship must be capable of withstanding the ordinary strain and stress of the sea.

4. Seaworthiness also includes "Cargo-Worthiness". It means the ship must be reasonably fit and suitable to carry the kind of cargo insured. It should be noted that the warranty of seaworthiness does not apply to cargo. It applies to the vessel only. There is no warranty that the cargo should be seaworthy.

It cannot be expected from the cargo-owner to be well-versed in the matter of shipping and overseas trade. So, it is admitted in seaworthiness clause that the cargo would be seaworthy of the vessel and would not be raised as defense to any claim for loss by insured perils.

It should be noted that the ship should be seaworthy at the port of commencement of voyage or at the different stages if voyage is to be completed in stages.

2. Legality of Venture;

This warranty implies that the adventure insured shall be lawful and that so far as the assured can control the matter it shall be carried out in a lawful manner of the country. Violation of foreign laws does not necessarily involve breach of the warranty. There is no implied warranty as to the nationality of a ship.

The implied warranty of legality applies total policies, voyage or time. Marine policies cannot be applied to protect illegal voyages or adventure. The assured can have no right to claim a loss if the venture was illegal. The example of illegal venture may be trading with an enemy, violating national laws, smuggling, breach of blockade and similar ventures prohibited by law.

Illegality must not be confused with the illegal conduct of the third party e.g., barratry, theft, pirates, rovers. The waiver of this warranty is not permitted as it is against public policy.
3. Other Implied Warranties:

There are other warranties which must be complied in marine insurance.

(a) No Change in Voyage:

When the destination of voyage is changed intentionally after the beginning of the risk, this is called change in voyage.

In absence of any warranty contrary to this one, the insurer quits his responsibility at the time of change in voyage. The time of change of voyage is determined when there is determination or intention to change the voyage.

(b) No Delay in Voyage:

This warranty applies only to voyage policies. There should not be delay in starting of voyage and laziness or delay during the course of journey. This is implied condition that venture must start within the reasonable time.

Moreover, the insured venture must be dispatched within the reasonable time. If this warranty is not complied, the insurer may avoid the contract in absence of any legal reason.

(c) Non deviation:

The liability of the insurer ends in deviation of journey. Deviation means removal from the common route or given path. When the ship deviates from the fixed passage without any legal reason, the insurer quits his responsibility.

This would be immaterial that the ship returned to her original route before loss. The insurer can quit his responsibility only when there is actual deviation and not mere intention to deviation.

Exceptions:

There are following exceptions of delay and deviation warranties:
1. Deviation or delay is authorized according to a particular warranty of the policy.

2. When the delay or deviation was beyond the reasonable approach of the master or crew.

3. The deviation or delay is exempted for the safety of ship or insured matter or human lives.

4. Deviation or delay was due to barratry.

7. **Proximate Cause:**

According to Section 55 (1) Marine Insurance Act,' Subject to the provisions of the Act and unless the policy otherwise provides the insurer is liable for any loss proximately caused by a peril insured against, but subject to as aforesaid he is not liable for any loss which is not proximately caused by a peril insured against.'

Section 55 (2) enumerates the losses which are not payable are (i) misconduct of the assured (ii) delay although the delay be caused by a peril insured against (iii) ordinary wear and tear, ordinary leakage and breakage inherent vice or nature of the subject matter insured, or any loss proximately caused by rates or vermin or any injury to machinery not proximately caused by maritime perils

1. The insurer is not liable for any loss attributable to the willful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against.

2. The insurer will not be liable for any loss caused by delay unless otherwise provided.

3. The insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

Dover says "The cause proximate of a loss is the cause of the loss, proximate to the loss, not necessarily in time, but in efficiency. While remote causes may be disregarded in
determining the cause of a loss, the doctrine must be interpreted with good sense." So as to uphold and not defeat the intention of the parties to the contract.

Thus the proximate cause is the actual cause of the loss. There must be direct and non-intervening cause. The insurer will be liable for any loss proximately caused by peril insured against.

8. Assignment:

A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss. A marine policy may be assigned by endorsement thereon or on other customary manner.

A marine policy is freely assignable unless assignment is express prohibited. A marine policy is not an incident of sale. So, if there is intention to assign a policy when interest passes, there must be an agreement to this effect.

Sections 53 of the Marine Insurance Act, 1963 states, Where the assured has parted with or lost his interest in the subject-matter insured and has not, before or at time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative. '

Section 17 of the Act states, "Where the asserted assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contracts of insurance.

Insurable Interest

Insurable interest exists when an insured person derives a financial or other kind of benefit from the continuous existence of the insured object (or in the context of living persons, their continued survival). A person has an insurable interest in something when loss-of or damage-to that thing would cause the person to suffer a financial loss or other kind of loss.

Typically, insurable interest is established by ownership, possession, or direct relationship. For example, people have insurable interests in their own homes and
vehicles, but not in their neighbors' homes and vehicles, and certainly not those of strangers.

Insurable interest developed in order to distinguish indemnity insurance from wager policies and to satisfy the requirement of the indemnity principle itself that the assured should suffer a loss against which he can be indemnified. In recent years it has been suggested that the requirement of a legal or equitable relation for insurable interest to exist, be abolished. Moreover, the enactment of the Gambling Act 2005 since September 1, 2007 has impliedly repealed the requirement for an insurable interest in that the principle of indemnity holds the assured to recovering his actual loss on the happening of the insured peril.

The question is whether we need strict requirements as to the existence of insurable interest nowadays or whether we should move towards a more liberal and relaxed approach. This article examines the exact needs of the modern market and whether the traditional position of the law with regards to the requirement for an insurable interest meets them. The discussion concludes that this trend towards a less strict requirement for insurable interest, which is already being established by the market and the courts, has already acted as the starting point for a law reform to be enacted by the legislature.

The "factual expectancy test" and "legal interest test" are the two major concepts of insurable interest.

The development of the concept of insurable interest as a prerequisite for the purchase of insurance distanced the insurance business from gambling, thereby enhancing the industry's reputation and leading to greater acceptance of the insurance industry. The United Kingdom was a leader in that trend by passing legislation that prohibited insurance contracts if no insurable interest could be proven, notably the Life Assurance Act 1774 which renders such contracts illegal, and the Marine Insurance Act 1906, s.4 which renders such contracts void.

People have an insurable interest in their property up to the value of the property, but not more. The principle of indemnity dictates that the insured be compensated for a loss of property, but not for more than what the property was worth. A lender who accepts a
house as a mortgage, has an insurable interest on the property used as security, but the insurable interest is not in excess of the value of the loan.

**UTMOST GOOD FAITH IN MARINE INSURANCE:**

The principle of ‘Utmost Good Faith’ has always been the crown of the field of Marine Insurance Law, which derived from the case of Carter v Boehm (1766).1 with the codification of the Marine Insurance Act 1906, the principle found expression in ss 17 to 20: s 17 presents the general duty to observe the utmost good faith, with the following sections introducing particular aspects of the doctrine, namely, the duty of the assured (s 18) and the broker (s 19) to disclose material circumstances, and to avoid making misrepresentations (s 20).

"A contract of marine insurance is a contract 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."

In practice these good faith duties are significantly more onerous for the insured than for the insurer. The Law Commissions of England and Scotland are engaged in an ongoing review of insurance law. As part of that review they have identified several potentially unfair aspects of the current law:

- The insured can be unaware of their duty to volunteer information which applies to information not specifically asked for by the insurer on the proposal form;
- The law requires the insured to assess whether information would be relevant to the assessment of risk by a "prudent underwriter". This test for materiality, which underlies the rules on disclosure and misrepresentation, assesses the insured by reference to the professional knowledge of the insurer;
- The insured can still be in breach even if their error was reasonable in the circumstances; for example if a question was unclear or required specific technical knowledge which they did not have;
- The only remedy for breach of the good faith duties is retrospective avoidance of the entire contract;
• The insurer does not require to show that the non-disclosure / misrepresentation had any causal link to the claim in order to avoid the contract. For example, if a claim was submitted relating to flood damage the insurer could avoid the whole contract if the insured had failed to disclose that their alarm system was not functioning;

• Intermediaries, including brokers, are generally treated as being agents of the insured. As such, the insured is held responsible for any failings on their part. That is so even where in practice the intermediary is most closely connected with the insurer.

**Warranties in Marine Insurance**

The foundation of the insurance business is that the insurer promises in return for a money consideration (the premium) to pay the assured a sum of money or provide him with some corresponding benefit (the cover), upon the occurrence of one or more specific events (the risks). To better face these risks, there are provisions to afford the insurer protection against pre- and post contractual alterations of risks. By incorporating a so-called warranty into the insurance contract, the insurer can estimate the risk more properly and adjust the premium accordingly.

Different types of warranties play an important role in marine insurance and especially in how to settle disputes concerning the responsibility between the insurer and the assured. The assured must get the opportunity to overview its needs of cover and especially its right to compensation when accidents arise. On the other hand, the insurer must get the opportunity to calculate the risks of insuring the concerned property.

Another cornerstone of the insurance business is that most buyers are risk averse; that is why they buy insurance in the first place. They want to minimize their exposure to risks, or transfer it to the insurer at the cost of an increased premium or stricter undertakings such as warranties.

When trying to define what a warranty is, one must start by differentiating it from other similar concepts such as representations, conditions and innominate terms. The outcome is also different if the comparison is made under contract law or insurance law. The great use of warranties in common law countries, such as England, and the lack thereof in civil
law countries, such as Sweden, sometimes makes it hard and confusing to understand the similarities and the differences between the two systems.

**THE CONCEPT OF WARRANTIES, WHAT CONSTITUTES A WARRANTY**

To start with, there is an important difference between the general English contract law position and the English marine insurance position. In contract law, warranties have been described to be used as a sword to impose liability on one party to the contract. In sales law, one often finds extended warranties that work as prolonged guarantees offered to consumers. This kind of warranty, which also exists in Sweden, resembles an insurance cover. In English marine insurance, warranties signify that the assured undertakes certain obligations and that the insurer becomes liable only if those obligations are complied with. Here, warranties have been described as being used by the insurer as a shield against liability.

There are two major kinds of warranties; that states that certain facts exist, and the promissory warranty which is a true promise that pertains to the future as well as the present. These types of strict warranties used in the English marine insurance market do not exist in Sweden. Instead of having several statutory warranties, Sweden has, together with other Scandinavian countries, developed its own warranty-like regime, with a softer approach in view of the assured’s burden in case of breach of its duties. The Scandinavian approach is primarily based upon safety provisions and the assured’s alteration of risk followed by an amendment of the insurance policy instead of risking having it null and void. The types of warranties that do exist in Scandinavia are found in contract law, e.g. contractual guarantees, and in consumer law, e.g. product warranties, that their products are functioning.

**WHICH SANCTION?**

After a breach of warranty there is always some kind of sanction. The most severe sanction, from the assured’s point of view, is when the insurer is freed from liability to cover the damage. In England, it follows from the doctrine of absolute compliance that there is freedom from liability regardless of materiality, fault, or causation, if there has not been absolute compliance. Even the smallest breach, no matter the materiality, has no exonerating effect. It also means that even if the assured is not at fault, the warranty is
still breached and and the assured is not covered. Finally and most important, it means that the cover is lost even if there does not exist any causation between the breach and the loss. Due to the harsh consequences of the breach and the requirement of absolute compliance, the English insurers have come to soften the system by choosing to waive the breach or to hold the assured covered despite a breach of warranty. This is called “held covered clauses” and it has, together with later judicial practice in England, led to different approaches to warranties. In Scandinavia, the sanction of breach of certain policy clauses grants the insurer freedom from liability as a main rule, but in some cases only where there is causation between the breach and the loss.

Reinsurance:

**Reinsurance** is insurance that is purchased by an insurance company (the "ceding company" or "cedant" or "cedent" under the arrangement) from one or more other insurance companies (the "reinsurer") as a means of risk management, sometimes in practice including tax mitigation and other reasons described below. The ceding company and the reinsurer enter into a **reinsurance agreement** which details the conditions upon which the reinsurer would pay a share of the claims incurred by the ceding company. The reinsurer is paid a "reinsurance premium" by the ceding company, which issues insurance policies to its own policyholders.

The reinsurer may be either a specialist reinsurance company, which only undertakes reinsurance business, or another insurance company.

For example, assume an *insurer* sells 1000 policies, each with a $1 million policy limit. Theoretically, the *insurer* could lose $1 million on each policy – totaling up to $1 billion. It may be better to pass some risk to a reinsurer as this will reduce the ceding company’s exposure to risk.

*The contract made between an insurance company and a third party to protect the insurance company from losses. The contract provides for the third party to pay for the*
loss sustained by the insurance company when the company makes a payment on the original contract.

A reinsurance contract is a contract of indemnity, meaning that it becomes effective only when the insurance company has made a payment to the original policyholder. Reinsurance provides a way for the insurance company to protect itself from financial disaster and ruin by passing on the risk to other companies. Reinsurance redistributes or diversifies the risk or threat associated with the business of issuing policies by allowing the reinsured to show more assets by reducing its reserve requirements. The reinsurance industry became more popular during the late 1990s and early 2000s because natural disasters and mass TORT litigation resulted in large payouts by insurance companies. Because of the large size of the payments, some insurance companies became insolvent.

The parties to the reinsurance contract are the reinsurer, the reinsured, and the original policyholder. The reinsurer is the third party or the company issuing the reinsurance policy. Typically, reinsurers engage solely in the business of issuing reinsurance policies; however, any company that meets the requirements and is authorized to issue insurance may issue such policies. The reinsured is the insurance company that issued the first policy and is applying for reinsurance. The original policyholder or original insured is the party who purchased the original policy. When the reinsurance contract is between just the two insurance companies (the reinsured and the reinsurer), the original policyholder usually has no rights against the reinsurer. The reinsurance policy covers the risk or liability associated with the original policy issued. The reinsurance policy must be for a specific insurable interest. The interest to be insured must exist at the time the reinsurance policy is issued; it cannot be created later. All or part of the liability of the original policy can be covered by the reinsurance, but nothing greater. The reinsurance policy cannot cover a period longer than the original policy. Generally, because the reinsurance is not a promise to pay the debt of another but to indemnify a potential liability, the Statute of Frauds does not require the agreement to be in writing. Most often in practice, however, reinsurance policies are written to avoid problems later.
The two basic types of reinsurance are facultative reinsurance and treaty reinsurance. Facultative reinsurance is issued on an individual analysis of the situation and facts of the underlying policy. It may cover all or part of the underlying policy. By deciding coverage case by case, the reinsurer can determine if it wants the risk associated with that particular policy. Facultative reinsurance is used by the reinsured to reduce the chance of loss or risk associated with a certain policy.

Treaty reinsurance, on the other hand, is written to cover a particular class of policies issued by the reinsured. Examples of classes covered by treaty reinsurance are all property insurance policies or all casualty insurance policies written by the reinsured. Treaty reinsurance automatically passes the risk to the reinsurer for all policies that are covered by the treaty, not just one particular policy. Treaty policies are more general than facultative policies because the reinsurance decision is based on general potential liability rather than on a specific enumerated risk.

In addition to the two types of reinsurance issued, there are two ways that coverage can be allotted between the parties: either proportionally or non-proportionally. In the case of proportional reinsurance, the reinsured obtains coverage for only a portion or percentage of the loss or risk from the reinsurer. The proportion of coverage is typically based on the percentage of premiums paid to the reinsurer. For example, if the reinsured pays 40 percent of the premiums to the reinsurer, then the reinsured recovers 40 percent of its losses when it pays the original policyholder according to the original policy terms. The reinsured can only recover a portion of its total loss, not the entire amount. The amount actually paid by the reinsurer is not figured into the reinsurance contract, only the percentage of loss the policy will cover.

In contrast, non-proportional reinsurance covers a set amount of loss. A base or deductible amount is set in the reinsurance policy, and any loss exceeding that amount is paid by the reinsurer. The amount being paid by the reinsurer has no relationship to the premiums received. The reinsured, in effect, is reimbursed for all payments made under the original policy that exceed the deductible amount. The deductible amount can be figured either by each event or in the aggregate. Either type of coverage can be used in
either facultative or treaty insurance contracts. The terms of the policy depend on the situation and the relationship the reinsured and the reinsurer have had in the past. Reinsurance policy terms can be made to be flexible for the appropriate facts at the time.

Although the terms of the policies can be flexible, several doctrines help to define the nature of the reinsurer and reinsured relationship. These doctrines are the duty of utmost Good Faith and the doctrine of "follow the fortunes." The duty of utmost good faith has several facets, including the requirement that both parties to the reinsurance contract deal with each other with candor and honesty. The duty assumes that both parties are sophisticated and knowledgeable in the insurance industry. As a result, they should be aware of what is relevant and necessary for the other party to know. The reinsured must follow the duty by disclosing all material facts to the reinsurer that relate to or affect the original policy and its calculated risk. The reinsured must essentially put the reinsurer in the same position as it would be in when deciding about the risks and the possibility of coverage on the original policy.

In addition, the duty requires that the reinsured act with honesty in negotiating any settlement with the original policyholder. If the settlement is not handled by following the appropriate business procedures, the reinsurer may not be bound by its terms and then does not have to pay under the policy coverage.

Lastly, the duty of utmost good faith requires the reinsured to provide adequate notice of any claim or potential claim to the reinsurer. For notice to be adequate, it should be given as soon as the reinsured becomes aware of a potential claim. To be aware, the reinsured must investigate with diligence to discover these possible claims. Notice is required to make the reinsured aware of the possible need for available funds in case a claim is filed. Notice also allows the reinsured to participate, if desired, in the defense of the underlying claim. Practically, reinsurers may also use the notice of potential claims to determine renewal of, or change in, premiums under the reinsurance contract. The duty of utmost good faith that is part of reinsurance policies requires the reinsured and reinsurer to deal honestly with each.
Also implicit to reinsurance policies is the follow-the-fortunes doctrine. "Follow the fortunes" means the reinsurer should follow along with the reinsured's payment to the original policyholder. Provided the reinsured makes a good faith payment that reasonably falls within the terms of the original policy to the policyholder, the reinsurer is then required to make payment according to the terms of the reinsurance policy. The reinsurer should make the payment even if payment is not specifically mandated under the terms of the policy but is arguably within the meaning of its terms. The doctrine is meant to encourage coverage by reinsurers and discourage unnecessary litigation by the parties over interpretation of the policy.

The follow-the-fortunes doctrine does have limits to protect the reinsurer from excessive payments. The reinsurer is not obligated to cover payments made by the reinsured that are clearly outside of the policy language. Also, the reinsurer is not obligated to follow the business fortune of the reinsured, only the insurance-related fortune of the company. The reinsurer need only indemnify for the type of loss intended by the policy, not losses due to uncollectible premiums. Losses clearly related to the business decision and not the policy are not within the scope of the doctrine. The follow-the-fortunes doctrine implies a duty by the reinsurer to indemnify reasonable payments made by the reinsured under the underlying insurance policy.

Once the policy terms and the parties' relationship are defined, several defenses are available to the parties to avoid liability. Defenses that may be available include normal contract defenses, inadequate notice and failure to disclose, or Misrepresentation. Usually any defense available to either party to a contract would be available to either the reinsurer or the reinsured. Those defenses can include impossibility of performance, an act outside the parties' authority, actions by a party that are inconsistent with the policy, actions by a party that unreasonably increase the risk, or misconduct by the parties. Any defense that would be an option for a party under the original insurance policy is available for the parties to the reinsurance policy.

The defense of inadequate notice is available to the reinsurer. If the reinsured has violated its duty to give prompt and reasonable notice to the reinsurer, the reinsurer may be able to
reduce or refuse payment under the policy. Because of the relationship between the parties, the reinsured is required to comply fully with all the terms of the policy or the reinsurer is not necessarily obligated. However, the reinsurer must often show that it has been prejudiced or hurt by the lack of notice in order to avoid liability on the policy.

The most common defense available to the parties is the failure to disclose (also referred to as Fraud, misrepresentation, or concealment). This defense is tied heavily to the duty of utmost good faith because both deal with the disclosure of material facts. For the reinsurer to assert the defense of failure to disclose, the reinsured must have concealed some relevant or important information. Relevant information would include facts such as a claim previously filed under the original policy or an unusually high risk related to the original policy. The failure to disclose need not be an intentional statement known to be false; it could be the reinsured's failure to investigate and determine the truth of a fact. When deciding if a fact or information is material or relevant, the courts ask if the misrepresented or withheld information, if disclosed, would have changed the reinsurer's decision to issue the policy. The false statement alone is not enough to avoid liability; the reinsurer must have acted upon that misrepresentation in such a way that it was prejudiced. If the reinsurer's decision or action would have been different regarding the risk, it may be relieved of liability.

Generally, the original policyholder has no rights against the reinsurer. Because the original policyholder has no contract with the reinsurer, they have no obligations to each other. This arrangement can be altered by inserting language into the reinsurance policy allowing the original policyholder to obtain payment directly from the reinsurer. Such language often is effective only when the reinsured becomes insolvent or unable to pay. These clauses are not often used because a reinsured can view such clauses as a lack of confidence in its ability to pay. The clause may be used in the case of a reassignment or sale of the policy to another insurance company to protect the original insured.

Without specific language in the policy, the original policyholder has few rights with the reinsured. If the reinsured becomes overly active in the claim process and defense, it could open itself to a direct claim. The original insured can bring an action against the
reinsurer if the reinsurance policy requires the reinsurer to pay any claim directly to the original policyholder. The original policyholder is considered a third-party beneficiary and can sue either the reinsured or the reinsurer. The recovery obtained by the original policyholder cannot be more than the total loss.

**Marine insurance risks may be reinsured in a number of ways.** These types will be the same as for reinsurance of property/casualty:-

(i) **Facultative** - this includes all risks that are individually reinsured whether by an underwriter directly or by the delegation of underwriting authority. The run off of claims, from the actuarial viewpoint, will be very similar to primary business. Examples are binders, lines lips. Another feature of Marine business is the use of reinsurance on a more restricted basis than the original, e.g. Hull TLO (Total Loss Only).

(ii) **Treaty Proportional** - including quota share and surplus reinsurance. The emphasis is on the reinsurer following the fortunes of the reinsured (albeit on premium net of ceding commission).

(iii) **Treaty Non-Proportional** - excess of loss and stop loss reinsurance, taking a slice of a layered programmed will give a reinsurer a very different underwriting result from the reinsured. Excess of loss may be affected on each account separately (e.g. Hull, Cargo) or combined in the form of a whole account cover. The skill of the reinsurance underwriter is of great importance in setting the correct rate.

(iv) **Retrocessional** - mainly London Market Excess of Loss (LMX) reinsuring London Market companies' and Lloyd's syndicates' marine reinsurances. In addition, retrocessional business covers the reinsurance of foreign companies' reinsurance, both proportional and non-proportional. Care is necessary here because of the spiralling effect of losses. The incestuous nature of the market can turn a $5m gross loss to a $30m gross to all LMX writers combined.

**Assignment and passage of interest in Marine Insurance:**

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

**Marine policy assignable**

51. (1) A marine policy is assignable either before or after a loss, unless it expressly prohibits assignment.

(2) A marine policy may be assigned by endorsement on the policy or in any other customary manner.

(3) Where a marine policy is assigned so as to transfer the beneficial interest in the policy, the assignee of the policy is entitled to sue on it in the assignee’s name and, in any such action, the defendant is entitled to raise any defence arising out of the contract that the defendant would have been entitled to raise if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

52. (1) Where an insured transfers or loses an interest in the subject-matter insured and does not, before or at the time of so doing, expressly or impliedly agree to assign the marine policy, no subsequent assignment of the marine policy is operative.

(2) Subsection (1) does not apply in respect of an assignment of a marine policy after a loss.

**Indemnity:**

One of the basic tenets of insurance, that the insured should not profit from a loss or damage but should be returned (as near as possible) to the same financial position that existed before the loss or damage occurred. In other words, the insured cannot recover more than his or her actual loss from the insurer. There are, however, certain exceptions to this rule, such as personal accident and life insurance policies where the policy amount is paid on occurrence of accident or death and the question of profit does not arise. Some marine insurance policies also constitute an exception because the settlement of a total loss is based on a sum agreed upon at the time the insurance policy was written. Marine insurance is contract of indemnity and the insurance company is liable only to the extent of actual loss suffered. If there is no loss there is no liability even if there is
operation of insured peril. Example: If the property under marine (transit) insurance is insured for Rs 20 lakhs and during transit it is damaged to the extent of Rs 10 lakhs then the insurance company will not pay more than Rs 10 lakhs.

**Measure of indemnity**

The measure of indemnity in respect of a loss under a marine policy is the amount that the insured can recover in respect of the loss under the policy, such amount not exceeding

\[(a)\] in the case of an unvalued policy, the insurable value of the subject-matter insured; or

\[(b)\] in the case of a valued policy, the value of the subject-matter insured specified by the policy.

**Protection & Indemnity**

The origin of this policy came about in the early 1800’s as a result of changes in hull policies (physical damage to the vessel). Marine underwriters instituted a clause in the hull policy, which limited their losses by collision to three-fourths of the ship owners’ collision liability. Believing ship owners would be more careful if held liable for one-fourth of the damages, this limitation, which came to be known as the British three-fourths running down clause, led to the formation of ship owners associations for the purpose of mutually insuring their exposure. These associations were known as Protection & Indemnity (P&I) clubs and as members, ship owners were able to pool their losses left uncovered by the hull policies. Over time these P&I clubs have grown to represent approximately 95 percent of the world’s maritime P&I insurance. In the USA however, most P&I is purchased from insurance companies.

Modern typical P&I policies provide for loss due to injury, illness and loss of life (normally defined broadly enough to provide damages required under maintenance and cure, Jones Act, and general maritime law) to which the Insured is legally obligated to pay. P&I also extends benefits for hospital and medical expenses incurred by the Insured beyond those he is legally obligated to pay as well as, repatriation and other medically
necessary transportation expenses; damage to other vessels caused by collision or other non-collision losses such as the dropping of cargo on the deck of the vessel or forcing another vessel aground; damage to property other than vessels; wreckage removal; damage to cargo; fines and penalties; expenses related to the prosecution of mutiny or misconduct; quarantine expenses and defense costs.

Crew cover, loosely and informally explained is an extension of the P&I to cover the liability of a vessel owner/operator to the crew, similar to the way that Workers' Compensation covers employees in non-marine environments. Specific wordings are in each policy to define the Insurer's intent regarding the coverage of Captains and/or crew and should be consulted in all cases.

Valued and Unvalued Policies:

Valued policy

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

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

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

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

A type of insurance coverage that places a specific value on the insured property, such as the hull or cargo of a shipping vessel. A valued marine policy pays up to, or in its entirety, the specified value in the event of a total loss. It differs from an unvalued marine policy where the value of the property would be determined following the event of a loss.
Marine insurance provides coverage against losses sustained by ships, cargo and terminals.

The value is determined ahead of time in a valued marine policy, and there is generally no reassessment or revaluation necessary in the event of an insured event or loss. A valued policy pays a pre-determined amount regardless of the extent of the damages, as long as it is considered a total loss. It is important to note that if the insured item depreciates in value, it will not affect the amount which can be claimed in the event of a total loss. The same is also true if the value of the item appreciates - the insured is unable to receive any addition damages based on the increase value of the item.

**Unvalued policy**

An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore specified.

**Subrogation:**

Subrogation is the right of insurers, once they have paid the insurance money due, to exercise any rights or remedies of the insured arising out of the insured event to recover their outlay from a culpable third party.

That right is almost invariably enshrined expressly in the wording of the insurance policy but, even if not written in to the policy, applies in any event. There are two key underlying principles to bear in mind when dealing with subrogation. The first is that subrogation is a doctrine founded on the indemnity principle, namely that an insured has a right to be indemnified against his loss but cannot make a profit from it by getting paid his insurance money as well as obtaining compensation from a third party. By way of example therefore and as illustrated by one of the leading subrogation cases, *Castellain v Preston [1883] 11 QBD 380*, if an insured vendor of a property suffers fire damage between exchange and completion and is indemnified by his insurers, the insured must then account back to insurers when the sale of the house is completed and he receives the full purchase price to which he was entitled in spite of the fire.
There are qualifications to this principle. For example, a gift from a third party, intended as extra compensation, will not be taken into consideration when accounting to insurers. Also, an insured can retain any surplus sum received from a third party once it has accounted to insurers. In *Yorkshire Insurance Co. Ltd v Nisbet Shipping Co. Ltd [1962] 2 QB 330*, insurers had paid the insured for the total loss of his ship in a collision. The insured then sued the owner of the other ship responsible for the collision. The damages were recovered in Canadian dollars but by the time the damages had been paid, the pound sterling had been devalued and as a result, the damages, when converted back to sterling, exceeded the insurance money paid. The High Court held that, once the insured reimbursed insurers in full, it was entitled to retain any surplus. Therefore windfalls belong to the insured.

Secondly, insurers cannot pursue a claim in the name of their insured until the insured has been fully indemnified, unless agreed otherwise. The majority of policies will include an express condition permitting insurers to commence a subrogated claim in the insured's name even if negotiations over the extent of the entitlement to an indemnity have not been concluded. If not, such terms may need to be specifically agreed if urgent action needs to be taken in pursuing the recovery. Insurers must, of course, agree to indemnify the insured in respect of costs associated with bringing a subrogated claim.

It is also likely that the policy will include an express term giving insurers the right to control any legal proceedings brought against a third party. In the absence of a specific term or agreement to that effect, if the insured has suffered a loss over and above the amount for which they have been indemnified, the insured is entitled to control the proceedings and can settle the claim without reference to the insurer. However, the insured must still act in good faith, which means including both insured and uninsured losses and not compromising any claim insurers may have when negotiating a settlement. Should the insurer's claim be prejudiced, the insurer would be able to seek reimbursement from the insured. It is important to remember that, following a loss, there can only be one claim made in the name of the insured, only 'one bite at the cherry', so it is important to ensure that all insured and uninsured losses are included.
Right of subrogation

(1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he or she thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he or she is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he or she acquires no title to the subject-matter insured, or such part of it as may remain, but he or she is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

Abandonment:

The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim, and possession, with the intention of not reclaiming it.

The giving up of a thing absolutely, without reference to any particular person or purpose. For example, vacating property with the intention of not returning, so that it may be appropriated by the next comer or finder. The voluntary relinquishment of possession of a thing by its owner with the intention of terminating ownership, but without vesting it in any other person. The relinquishing of all title, possession, or claim, or a virtual, intentional throwing away of property.

Term includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether someone has abandoned property or rights, the intention is the first and paramount object of inquiry, for there can be no abandonment without the intention to abandon.
Abandonment differs from surrender in that surrender requires an agreement, and also from Forfeiture, in that forfeiture may be against the intention of the party alleged to have forfeited.

In the case of children, abandonment is the willful forsaking or forgoing of parental duties. Desertion as a legal concept, is similar in this respect, although broader in scope, covering both real and constructive situations; abandonment is generally seen as involving a specific and tangible forsaking or forgoing.

In marine insurance parlance, abandonment involves the surrender of a ship or goods to the insurer, who becomes the abandonee. Abandonment can also mean refusal to accept from a delivering carrier a shipment so damaged in transit as to be worthless.

Notice of abandonment

(1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he or she must give notice of abandonment. If he or she fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his or her insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.
(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance.

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

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

(8) Notice of abandonment may be waived by the insurer.

(9) Where an insurer has re-insured his or her risk, no notice of abandonment need be given by him or her.

**Contribution:**

**Right of contribution**

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

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

**Proximate cause:**

This is a Latin word which means the nearest or proximate cause. It helps in deciding the actual cause of loss when a number of causes have contributed to the loss. The immediate cause of loss should be determined to fix the responsibility of the insurer. The remote
cause for a loss is not important in determining the liability. If the proximate cause is insured against, the insurer will indemnify the loss.

The proximate cause in marine insurance is the “dominant cause” of the loss. It was decided per Bingham L J in T M Noten BV v Harding that the dominant cause of the loss is to be determined by “applying the common sense of a business or seafaring man.” In determining the proximate cause of the loss, The Court recognized that it had to find the cause that was proximate in efficiency, and to do so they had to apply the test of the sentence expressed by Bingham LJ. Nevertheless, at the light of the recent decision of the Supreme Court's in Global Process System Inc and another v Syarikat Takaful Malaysia Berhad (The Cendor MOPU) it is interesting to analyze if and how eventually this approach changed.
INTRODUCTION:

Cargo insurance (also called marine cargo insurance) covers physical damage to, or loss of your goods whilst in transit by land, sea and air and offers considerable opportunities and cost advantages if managed correctly.

Unfortunately, many Canadian traders do not want to become involved in arranging this type of insurance because they feel they do not have sufficient knowledge. They see it as an unnecessary expense involving extra administration, and make the mistake of allowing suppliers or customers to control this vital area of business. This loss of control not only increases the difficulties of implementing an effective trade risk management strategy, but can also have far reaching effects on profitability.

Fortunately, this attitude is changing, with more and more companies following the lead of many of the ‘blue-chip’ manufacturing and trading giants of the Canadian economy who tend to take full control of this type of insurance.

When you are looking at the types of cargo insurance available, you may come across the term General Average. This is one of the oldest principles of cargo insurance and relates only to ocean and sea voyages but is still relevant in today’s trading environment. General Average covers the situation where damage or loss of certain goods occurs so that the remaining cargo and the means of transport are saved. For example goods may sustain water damage during fire fighting. In this situation, if General Average is declared, all the parties involved must contribute to covering the loss.

Cargo insurance is usually provided by the means of one of three Institute Cargo Clauses – A, B or C, plus War Clauses and Strikes Clauses. Simply put Cargo Clauses A provide the most cover with B and C giving less coverage which is reflected in reduced premiums for the lower cover (somewhat similar to car insurance cover with comprehensive, third party, fire and theft, and third party policies). Also there is an Institute Cargo Clauses (Air) for movement by air, which is equivalent to the A clauses. Contact us will be able
to give details of exactly what cover is given by each clause so you can choose the most appropriate for your business needs and trading patterns.

**Arranging for Cargo Insurance:**

Ocean cargo insurance is concerned primarily with international commerce. Basically, anyone who has an insurable interest in a cargo shipment (i.e., anyone who would suffer a loss if the cargo were damaged or destroyed or who would benefit from the safe arrival of the cargo) has a need for an ocean cargo policy. The cargo insurance policy indemnifies the exporter or importer in the event of loss or damage to goods due to a peril insured against while at risk under the policy.

Historically, each voyage of an ocean-going vessel is a joint venture of the ship owner and all the cargo owners. Centuries of tradition, trade practices, maritime and international commercial law affect the interests of the international trader.

Cargo insurance protection is an aid to commercial negotiations. It allows traders to proceed with confidence in the knowledge that each party to the transaction is properly protected. In most cases the cost of marine insurance is nominal when compared with the value of the goods and the freight cost. The marine cargo insurance policy can be designed to meet the individual needs of the exporter or importer in an international transaction.

**Incoterms**

One of the many important questions that must be decided in every transaction involving a sale of goods is “Which party to the contract of sale is obligated to arrange marine and war risk insurance protection?” An excellent reference relative to the obligations of buyer and seller under the various terms of sale are the INCOTERMS, most recently revised in 1980. Copies of the pamphlet are available in the United States from the ICC Publishing Corporation Inc., 1212 Avenue of the Americas, New York, N.Y. 10036 for a nominal fee.
The basic function of the INCOTERMS, which have been widely accepted by international traders, is to simplify the quotation of prices in international trade and to define the responsibilities and rights of sellers and buyers under each of the terms of sale. It is important to understand that the terms of sales must be accepted by both seller and buyer as part of the total contract to become legally binding upon all parties.

Some of the most frequently employed terms in international trade are F.O.B. (free on board, named point of shipment), and freight, named point of destination) and C.I.F, (cost, insurance and freight, named point of destination).

In many transactions it is common for exporters, even though selling on F.A.S. or F.O.B. terms, to control the placing or arranging of marine and war risk insurance on a “warehouse-to-warehouse” basis,* for account of whom it may concern, as an additional provision in the over-all contract of sale. In this situation the cost of the insurance is charged to the buyer as a separate item of expense in addition to the F.A.S. or F.O.B. price. It is often the fact that the exporter has sold the goods on extended payment terms, meaning that he is financially at risk while the goods are in transit to the overseas destination. When financially at risk he can benefit from the security of the marine and war risk insurance arranged through his own insurance agent or broker with a sound insurance company.

Generally, no difficulty should be experienced in fixing the cost of marine and war risk insurance and ocean freight for a reasonable period of time. When there is question about the possibility of a change in insurance or ocean freight rates, a C.I.F. quotation can always be qualified with the words: “Changes in insurance and freight rates shall be for account to the buyer.” Where it is not practical to sell on C.I.F. or buy on C. & F. terms, it is recommended that American traders control the arranging of insurance, particularly when they are financially at risk. Control of the marine and war risk insurance is an advantage to the American trader desiring to compete effectively in world markets. In the section that follows will be found many reasons in support of this statement.
*Generally coverage attaches at commencement of transit at the point of shipment at the risk of the assured and the coverage continues in due course of transit until the goods are delivered into the warehouse at destination.

**The Advantages of Your Own Ocean Cargo Policy**

Marine insurance covering an international transaction may be arranged by either the exporter or importer, depending upon the terms of sale. The terms of sale are all-important in the placing of marine insurance. The subject is a complex one and varies by trade and commodity.

Because marine insurance is a highly competitive business, the trader is well advised to seek the counsel and guidance of his insurance broker or agent who will normally canvass the marine insurance market for the desired terms of coverage at the best rates available. The broker/agent and underwriter will consider the overall interests of the trader, tailor-make the terms of coverage, and then issue the appropriate insurance policy.

Under sales whereby the buyer is obligated to arrange a portion of the insurance protection, there may often be different insurance contracts in effect for different portions of the “warehouse-to-warehouse” movement. In the case of loss or damage, particularly concealed loss or damage, it could become exceedingly difficult to determine which insurer is responsible. This situation could produce delay and dissatisfaction in the handling of claims which would be a disservice to both parties. “Warehouse-to-warehouse” coverage with a single underwriter eliminates this possibility.

Financial institutions that advance credit in international transactions protect their interests at all times. They are likely to be more cautious about extending credit when the insurance is placed with an unfamiliar insurance company overseas; when there is uncertainty as to a foreign insurer’s ability to pay claims in the desired currency; and when the financial status of that insurer is unknown.

The open cargo insurance policy, accompanied by a companion war risk policy, is a continuous contact designed to insure automatically all the Assured’s shipments which
move at his risk. Shipments are reported as soon as practical and amounts declared as soon as known. The inadvertent failure to report a shipment does not void coverage and such shipments are held covered subject to policy conditions.

**Advantages to The Exporter**

Under the usual form of open cargo policy issued to exporters, the Assured has authority to issue his own special policies of insurance (or insurance certificates). In most transactions involving the granting of credit by a bank, one of these is a prerequisite. These constitute evidence of insurance protection on the shipment specifically described therein and provide the means for transferring the insurance protection to other parties at interest. The original and generally the duplicate of such forms become part of the commercial set of documents transmitted to the consignee of an export transaction.

Frequently exporters sell on other than C.I.F. terms and maintain the initiative and control with respect to the terms and placement of marine insurance. Such terms of sale are aggressive, practical salesmanship. They put the strength and influence of the marine insurance market squarely on the side of the exporter.

There are other very clear, practical reasons why the exporter should control the insurance. The exporter is more likely to have complete and necessary knowledge of technicalities and problems pertaining to the goods, rates of insurance and other matters. Furthermore, the worldwide volume of the exporter’s business in his special line may give him an insurance rate advantage.

With an open cargo policy, the exporter knows that his insurable interest in a specific transaction is protected. This explains why his overseas selling is facilitated by arranging insurance protection “for account of who is my concern.”-i.e.,for the benefit of both parties to the sales contract.
Advantages to The Importer

The importer buying under C.I.F. terms must rely upon the seller's insurance, since the insurance is placed by the seller. In general average,* the C.I.F. buyer may find that the sellers' underwriters are not in a position to furnish a general average guarantee or that the general average guarantee is not acceptable to the adjusters in this country. This would mean that the importer can secure possession of his goods only by making a cash deposit to cover the anticipated general average contribution, or by posting security in lieu of a cash deposit.

By purchasing on F.O.B., C. & F., or similar terms that do not include insurance, the importer can control his own insurance. He will then be able to deal with his own underwriters in case of loss.

To sum up, these are the advantages of having your own ocean cargo policy:

~Automatic “warehouse-to-warehouse” protection is provided with proper terms of insurance specifically designed for the Assured’s goods and methods of shipment. Such insurance provides coverage for the full exposure, at proper values and adequate limits.
~Rates will be competitive and reflect the assureds’ own experience.
~Worldwide claims service is available by claims representatives appointed by the underwriter. The Assured has all the advantages of dealing through his own broker or agent; prompt, personal service, dependability and convenience.
~You are free to choose your own insurance company.

* A partial loss involving all the interests in a maritime venture.

Foreign Restrictions on the Free Placement of Cargo Insurance

Although marine insurance services the international trading community and strives to operate to a free, competitive environment, there has been a growing list of countries attempting to inhibit this freedom of marine cargo insurance. The principal barriers to the free placement of cargo insurance take the form of restrictive insurance legislation or
decree, discriminatory taxation or foreign exchange controls. The American Institute of Marine Underwriters publishes periodically for its Members a list, by country, of restrictive marine insurance practices.

**Types of coverage available:**

**Open Cover**

This is the most usual type of cargo insurance, where a policy is drawn up to cover a number of consignments. The policy can be either for a specific value that requires renewal once the insured amount is exhausted or an permanently open policy that will be drawn up for an agreed period, allowing any number of shipments during this time.

**Specific (Voyage) Policy**

Although not the norm for cargo insurance, you may from time to time need to approach an insurance company or your freight forwarder to request an insurance policy for a particular consignment. This is usually referred to as Voyage Policy as the insurance covers only that specific shipment.

**Contingency (seller’s interest) insurance**

As an exporter you may often sell goods on terms where your customer (as the importer) is responsible for insuring (or at least bearing the risk of damage of or loss to) the goods, for example under FOB and CFR Incoterms 2000. In these cases you are exposed to the risk of damage to the goods while in transit and your customer refusing to accept them. In the worse case your customer may not have insured the goods.

If this happens and your customer attempts to avoid liability, you could seek redress through the legal system. However, this can prove very expensive, and may often be pointless. Seller’s interest insurance, usually for a small premium, will cover you for this contingency. For valid commercial reasons you may not wish your customer to know you have taken out such a policy.
**Proposal Form:**

Proposal forms are used to give the insurance company full particulars of the risk against which the insurance protection is desired. This proposal form is the basis of any insurance policy. Any misrepresentation or non-disclosure of facts would make the insurance null and void.

An insurance proposal form will be sent to a prospective insured by an insurer to ask questions in relation to a risk concerning matters that they consider to be material (a material fact is a fact which would affect an underwriters decision to accept a risk or not).

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

This Proposal Form is intended for Pleasurecraft only. If a vessel is operated commercially but the scope of operation is purely recreational then it may be considered Pleasurecraft. Other commercially operated vessels are considered Commercial craft and should be insured accordingly. Please ask QBE or your agent broker for further details.

Name or Account Number of Insurance Agent or Broker (where applicable): Ratana Tabuless #00004990

Section 1 – Owner

<table>
<thead>
<tr>
<th>Name of Owner</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Postal Address</td>
<td></td>
</tr>
<tr>
<td>Telephone No.</td>
<td>Fax No.</td>
</tr>
<tr>
<td>Nationality</td>
<td>Occupation</td>
</tr>
</tbody>
</table>

Have you, or any other person or entity who will take charge of the vessel or who has a financial interest in the vessel:

- a) Ever had any insurance refused or cancelled? (If YES, please give details below)
  [ ] YES  [ ] NO

- b) Suffered any accidents or losses in the last 5 years? (If YES, please give details below)
  [ ] YES  [ ] NO

- c) Been charged/convicted of an offence in the last 5 years? (If YES, please give details below)
  [ ] YES  [ ] NO

Section 2 – Hull & Engines

<table>
<thead>
<tr>
<th>Yacht Details</th>
<th>Engine(s) Details</th>
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<tbody>
<tr>
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<tr>
<td>Country of Registration</td>
<td>Manufacturer</td>
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<tr>
<td>Registration ID Number</td>
<td>Make Model</td>
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<tr>
<td>Date of Purchase</td>
<td>Serial Numbers</td>
</tr>
<tr>
<td>Power or Sail</td>
<td>Type of engine</td>
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<tr>
<td>Make &amp; Model</td>
<td>Inboard</td>
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<tr>
<td>No. of Hulls</td>
<td>Jet</td>
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<tr>
<td>Year of Construction</td>
<td>Outboard</td>
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<tr>
<td>Hull Material (e.g., wood, GRP)</td>
<td>Other (specify)</td>
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<tr>
<td>Length (ft)</td>
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<tr>
<td>Beam (ft)</td>
<td>Power (HP)</td>
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<tr>
<td>Draft (ft)</td>
<td>Cruising speed (knots)</td>
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<tr>
<td>Does vessel have stabilizers fitted?</td>
<td>TOPSPEED (knots)</td>
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<tr>
<td>Does vessel have lifting keel or centerboard?</td>
<td>Fuel</td>
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<tr>
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<td>Diesel</td>
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<tr>
<td>[ ] YES  [ ] NO</td>
<td>Gasoline</td>
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Section 3 – Masts, Rigging, Sails

<table>
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<tr>
<th>Type of Rig (e.g., sloops)</th>
<th>Type of Rigging</th>
<th>Wire</th>
<th>Rod</th>
<th>Other (specify)</th>
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<tbody>
<tr>
<td>Type of Main Mast</td>
<td>Wasthead</td>
<td>Fractional</td>
<td>Mast/Construction Material</td>
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</tr>
<tr>
<td>List Sails Carried Onboard</td>
<td>No. of Spreaders</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

QBE INSURANCE (THAILAND) COMPANY LIMITED
A member of the worldwide QBE Insurance Group
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Types of Vessel:

There are many different types of ships, and the differences are mostly based upon the type of cargo the ship transports. Most all ships have some basic things in common. Generally the deck from which the gangway comes off is the main deck. The forward most compartments below the main deck is the forepeak tank used for ballast. Also forward will be found the chain locker for the anchor chain which protrudes down into the forepeak tank. If you spot the main stack and go directly down below the main deck you will find the engine room. Going aft from the engine room at the center of the ship, if it only has one engine, or on both sides if it has two engines, will be the shaft alley. On both sides of the shaft alley you will generally find tanks. What type of tanks those are will depend on the ship. They could be fuel oil, lube oil, fresh water and so on.

On most all general cargo ships, and on any number of other ships, going forward from the engine room to the end of number two hold will be a pipe tunnel. In the pipe tunnel you will find steam pipes going to fuel oil tanks. Most ships use bunker oil for fuel. Bunker oil is almost as thick as tar and needs steam to heat it in order for it to be able to be pumped. Some will burn the fuel directly in the engines, while others will burn it in large boilers, and the steam created runs the engines, these are called steamships.

Upon the stern of the ship you will find written the ship's homeport, and the flag of the country in which the ship is registered. Upon the stack you will find, in most cases, a design that identifies the shipping line that owns the ship, If you see a red flag flying off the mast that means that the ship is taking on fuel. The following is a rundown of the major types of commercial ships:

1). General cargo ships (sometimes called Break bulk Carriers).

These ships will mostly have four or five holds (a hold is the cargo space in a ship), with one or, in a few cases, two holds aft of the engine room, and four to five holds generally forward of the engine room. They have long protruding rigging for winches by each hold. These winches are used to load and unload the cargo. The cargo is usually packaged and
moved as single parcels, or assembled together on pallet boards. Longshoremen go down into the holds to hook up the cargo to be lifted out. Some general cargo ships may also have refrigerated spaces for perishable cargo. The average general cargo ship is about 500 feet long.

2). Bulk carriers.

Like general cargo ships bulk carriers will have large hydraulic hatches covering the holds, but will not have any overhead rigging. Bulk carriers are used for things such as grain, ore, wood chips, etc, that can be poured down into a hold. They will load and off-load at special port terminals for whatever cargo they may carry. Sometimes the holds must be steamed cleaned by laborers when the ship is set to carry a different cargo than the one that it unloaded. The average bulk carrier ship is around 800 feet long.

3). Container ships.

These ships are designed to carry large steel containers that are usually 20 feet or 40 feet long, eight feet wide and eight feet tall. These ships are loaded and off loaded by large cranes to and from trucks. There are some that are also designed where the bow opens up and barges are pulled in that have containers on them. Container ships are limited to ports that have container terminals.

The advantage of using containers is that all the cargo in each container will be destine for some location away from the port taken there by either truck or rail. This does away with the warehouses that are needed for general cargo ships where the cargo is divided up and loaded into truck trailers or railcars. Container ships come in many different sizes; some now are incredibly huge.

4). Auto carriers.

These are huge ships that are nothing more than floating parking garages. They can hold between 2,000 and 4,000 vehicles. Ramps are lowered out of the side of the ship and the vehicles are driven off. The average auto carrier is about 600 feet long, 100 feet wide, and over 100 feet tall.
5). Tankers.

These are little more than oil drums with an engine. Though the most common tanker hauls oil, there are other tankers that haul many different types of liquids and gases. You can spot a tanker by the large amount of piping forward of the bridge on the main deck. The piping is for loading and off loading the cargo. There will be no large hatch covers like there is on general cargo ships and bulk carries, but there will be much smaller manholes at each tank for workers who need to climb down into the holds to work.

Just forward of the bridge is the pump room, where the pumps for the ballast system will be found. Tankers come in all sizes, with the largest ones being supertankers that are nearly a quarter of a mile long and wider than a football field. There are few ports that supertankers can enter and thus they are mostly loaded and off-loaded from pumping stations off shore.

6). Fishing vessels.

Most people think of fishing vessels as being just boats, but in today's industrial world many of these vessels are as large as some ships and, in some cases, they are converted general cargo ships. The following are different types of fishing vessels:

A. Fishing boats - These may be as long as 90 feet and will have refrigerated holds.
B. Processors - These ships not only catch fish, but also within them there is a factory to completely process the fish. The factory deck will be right under the main deck and the fish come in and they are cleaned, filleted and packaged.
C. Non-fishing processors - These are a rather new type of ship that a few multinational corporations use. All that I have seen have been converted general cargo ships that have huge factory decks and refrigerated holds.

7) Oil industry vessels.

These are the vessels that are used by the oil industry in offshore drilling. These include work and living barges, supply boats, and pipeline vessels. The pipeline vessels will have
huge rolls of pipe that they roll out into the water to connect the offshore oil well with an onshore facility.

8.) **Passenger ships.**

Today passenger ships are mostly used as cruise ships, but there are still a few passenger ships that transport people from port to port for the purpose of transportation, rather than sightseeing. I have worked on only one such ship that took people from New Orleans to the Panama Canal.

Some cargo ships will also include rooms for passengers, because if a ship has passengers, in many ports, it is allowed to dock before other ships. I have known a few people who have used this as a cheap means to travel to different parts of the world.

9). **Ferryboats.**

These are still in use in places where bridges cannot be built or are not constructed, for one reason or another. Some cross short bodies of water, while some sail long distances, like the Alaskan ferry. Ferries come in all sizes; from small passenger only ferries to the huge ferries the size of container ships that are used in northern Europe.

10). **Tow and tug boats.**

These are small vessels that generally have two powerful engines. Towboats are used for moving barges while tugboats are used to move ships, in most cases to dock them.

11). **Barges.**

These are unpowered vessels that require a towboat to move. Barges are used to transport different cargoes of which there are three basic types: there is the sunken hold type for such things as grain and ore, the flat top type for such things as containers and the tanker barges for liquids and gases. There are also barges for many other purposes; living barges, work barges, crane barges to name a few.
12). Specialized ships.

There are many ships that are constructed or converted for specialized purposes, like dredging, exploration, offshore construction, work gang ships (these are for housing workers in areas where there is no onshore living quarters), or for specialized cargo. For example, banana boats that are not much more than small general cargo ships. Banana boats are nasty damn ships, for down in their holds one may come across very large spiders.

As a pipefitter, there are few, if any, compartments, tanks, voids, tunnels and holds that we do not, at some time, have to work in. Along with shipfitters, marine pipefitters will have more direct experience in all the parts of a ship than even the seamen who sail the ship.

The Voyage or Transit:

The Marine Insurance Act includes, as a schedule, a standard policy (known as the "SG form"), which parties were at liberty to use if they wished. Because each term in the policy had been tested through at least two centuries of judicial precedent, the policy was extremely thorough. However, it was also expressed in rather archaic terms. In 1991, the London market produced a new standard policy wording known as the MAR 91 form and using the Institute Clauses. The MAR form is simply a general statement of insurance; the Institute Clauses are used to set out the detail of the insurance cover. In practice, the policy document usually consists of the MAR form used as a cover, with the Clauses stapled to the inside. Typically each clause will be stamped, with the stamp overlapping both onto the inside cover and to other clauses; this practice is used to avoid the substitution or removal of clauses.

Because marine insurance is typically underwritten on a subscription basis, the MAR form begins: *We, the Underwriters, agree to bind ourselves each for his own part and not one for another […].* In legal terms, liability under the policy is *several* and not *joint*, i.e., the underwriters are all liable together, but only for their share or proportion of the risk. If
one underwriter should default, the remainders are not liable to pick his share of the claim.

Typically, marine insurance is split between the vessels and the cargo. Insurance of the vessels is generally known as "Hull and Machinery" (H&M). A more restricted form of cover is "Total Loss Only" (TLO), generally used as a reinsurance, which only covers the total loss of the vessel and not any partial loss.

Cover may be on either a "voyage" or "time" basis. The "voyage" basis covers transit between the ports set out in the policy; the "time" basis covers a period of time, typically one year, and is more common.

**Voyage and Mode of Transit:** Information will be required on the following points:

i. the name of the place from where transit will commence and the name of the place where it is to terminate.

ii. mode of conveyance to be used in transporting goods, (i.e.) whether by rail, lorry, air, etc., or a combination of two or more of these. The name of the vessel is to be given when an overseas voyage is involved. In land transit by rail, lorry or air, the number of the consignment note and the date thereof should be furnished. The postal receipt number and date thereof is required in case of goods sent by registered post.

iii. If a voyage is likely to involve a trans-shipment it enhances the risk. This fact should be informed while seeking insurance. Trans-shipment means the change of carrier during the voyage.

Cargo policies are issued for specified voyage or transit whatever the time taken. It is necessary to be clear as to when exactly risk commences and terminates under a voyage policy. The duration of cover is defined in the Transit Clause (popularly known as Warehouse to Warehouse Clause or WW clause) of the ICC.
Type of Cargo Insurance:
Cargo (or freight) is goods or produce transported, generally for commercial gain, by ship or aircraft, although the term is now extended to intermodal train, van or truck. In modern times, containers are used in most long-haul cargo transport.

Open Cover
This is the most usual type of cargo insurance, where a policy is drawn up to cover a number of consignments. The policy can be either for a specific value that requires renewal once the insured amount is exhausted or an permanently open policy that will be drawn up for an agreed period, allowing any number of shipments during this time.

Specific (Voyage) Policy
Although not the norm for cargo insurance, you may from time to time need to approach an insurance company (or broker, or other intermediary) to request an insurance policy for a particular consignment. This is usually referred to as Voyage Policy as the insurance covers only that specific shipment.

Contingency (seller's interest) insurance
As an exporter you may often sell goods on terms where your customer (as the importer) is responsible for insuring (or at least bearing the risk of damage of or loss to) the goods, for example under FOB and CFR Incoterms 2000. In these cases you are exposed to the risk of damage to the goods while in transit and your customer refusing to accept them. In the worse case your customer may not have insured the goods.
If this happens and your customer attempts to avoid liability, you could seek redress through the legal system. However, this can prove very expensive, and may often be pointless. Seller's interest insurance, usually for a small premium, will cover you for this contingency. For valid commercial reasons you may not wish your customer to know you have taken out such a policy.

a) Special Declaration Policy
This is a form of floating policy issued to clients whose annual estimated dispatches (i.e. turnover) by rail / road / inland waterways exceed Rs 2 crores. Declaration of dispatches shall be made at periodical intervals and premium is adjusted on expiry of the policy
based on the total declared amount. When the policy is issued sum insured should be based on previous year’s turnover or in case of fresh proposals, on a fair estimate of annual dispatches. A discount in the rates of premium based on turnover amount (e.g. exceeding Rs.5 crores etc.) on a slab basis and loss ratio is applicable.

b) Special Storage Risks Insurance
This insurance is granted in conjunction with an open policy or a special declaration policy. The purpose of this policy is to cover goods lying at the Railway premises or carrier’s go downs after termination of transit cover under open or special declaration policies but pending clearance by the consignees. The cover terminates when delivery is taken by the consignee or payment is received by the consignor, whichever is earlier.

c) Annual Policy
This policy, issued for 12 months, covers goods belonging to the insured, which are not under contract of sale, and which are in transit by rail / road from specified depots /processing units to other specified depots / processing units.

d) “Duty” Insurance
Cargo imported into India is subject to payment of Customs Duty, as per the Customs Act. This duty can be included in the value of the cargo insured under a Marine Cargo Policy, or a separate policy can be issued in which case the Duty Insurance Clause is incorporated in the policy. Warranty provides that the claim under the Duty Policy would be payable only if the claim under the cargo policy is payable.

e) “Increased Value” Insurance
Insurance may be ‘goods at destination port’ on the date of landing if it is higher than the CIF and Duty value of the cargo.

Types may include following inputs:
The initial policy may be written on one of a number of direct ‘type’ bases:-
(i) time - the policy commences one day and ceases at another specified date. It is irrelevant where the insured ship goes during this period.
(ii) voyage - the policy commences when the ship is at one location and expires when another prescribed location is reached, irrespective of the time taken.
(iii) time and voyage - the policy covers a voyage and also time spent in port before and/or after the voyage.

(iv) floating - this general cargo policy covers shipments carried in a period of time. The shipments are defined during the duration of the policy.

(v) Construction or building - this policy insures the building of a ship no matter how long it takes.

**Packing forms:**

Packaging of cargo is one of the most important areas of international trade & also one of the most overlooked resulting in cargo damage, loss & costly insurance claims.

Packing and Preparation form an important part of Marine Cargo Insurance. It is highly essential for every Marine Cargo Insurance practitioner, be it an Underwriter, Claims Manager, or a Surveyor, to know the importance of packing vis-à-vis Marine Insurance. It is pertinent to note that the Marine Insurance Act does not specifically mention anything about the ‘Packing’ or ‘Packaging’. However, Insurance covers only ‘fortuity’, and losses arising out of insufficient or unsuitable packing are not considered to be *fortuitous* and hence excluded.

The aspect of *packing* being done by *independent contractors* after the attachment of insurance needs analysis. Claims arising out of insufficiency of packing in such cases may be payable. However, the aspect of recovery rights will have to be examined. Maritime law absolves the carrier from liability where the packing was done by the shipper or his agents/employees. Thus, whether the Insurance Companies after making good the loss, can recover from the *Contracted Packers* will have to be examined.

Hence, underwriters have to be very clear when specifying the coverage under the revised clauses and also whilst processing claims arising out of insufficient or unsuitable packing. It is pertinent to note that if the Insurance Company denies liability on the grounds of inadequate or unsuitable packing, the onus of proving the same lies on them.

In principle the underwriter has reason to suppose that the goods will be soundly packed. Thus if the goods are supposed to be normally packed in a certain manner, and in a
particular risk they are packed less soundly, the underwriters may avoid the contract on the basis of non-disclosure, even if the insufficiency of packing does not contribute to the loss.

The criteria for suitable packing is, whether the packing of the subject matter is such that it can “withstand the ordinary incidents of the insured transit” Notwithstanding the above, it is the responsibility of the insured to ensure that the subject matter of marine insurance is suitably and adequately packed before the transit begins.

Let us examine the literary meaning of the words Packaging, Packing and Preparation. The dictionary meaning of ‘Packaging’ is wrapping or covering. It is the science, art and technology of enclosing or protecting products for distribution, storage, sale, and use. Packaging also refers to the process of designing, evaluation, and production of packages. Packaging can be described as a coordinated system of preparing goods for transport, warehousing, logistics, sale, and end use. The functions of packaging can be broadly classified as protection, preservation, transportation, information and marketing. Package labeling is an associated term and is any written, electronic, or graphic communications on the packaging.

Packing, on the other hand, is a broader concept which in addition to packaging, also encompasses stuffing or the way the material is fitted into an enclosure. It also refers to the dunnage or wadding used to prevent movements. One of the basic functions of packing is to CONTAIN the goods within an enclosure.

Preparation is the groundwork done for protection and preservation of the subject matter.

**Determination of Suitable and Sufficient Packing**

I. Conformity to Legislations

IATA and Railways have formulated rules and regulations for carriage of goods by air and rail which includes norms for packing and preparation. Likewise, the Heavy Package Act and Rules enforced by the Dock safety Inspectorate of the Government prescribe essential Packing and marking of exports.

The Indian explosives act, Gas cylinder rules, post office rules, defence services packaging code, export inspection rules for engineering goods prescribe packing marking and labelling rules.
Pharmaceuticals, and perishable commodities, which are supposed for human consumption have different regulations in different countries, governing their packing, transportation and use.

II. Physical Factors of Packing

a. The strength of the packaging material
b. The weight of the package unit
c. Handling mobility of the package unit.

The aforesaid factors are relevant vis-à-vis the following:

1. Nature of Cargo

Each class of cargo is exposed to different sets of hazards based on its properties and uniqueness. The precautions to be taken while packing or stowing varies according to these inherent properties. For determining suitable packing the following factors need to be considered.

a. Weight of the commodity
b. Perishability /Scope for deterioration of the commodity
c. State (Solid, Liquid Gas) of the commodity
d. Unique properties of the commodity

Example, Coffee and cocoa beans are carried in sacks. Cement or chemicals can be carried in multiply paper bags. Polythene lined jute bags are often used for chemicals. Liquids are carried in drums, jars or barrels depending on the type of liquid. Jars or carbuoys can be used for corrosive liquids, such as acids, but these present a high risk of breakage, possibly with disastrous results for not only will some liquids corrode the ship and cargo, but their combination with other chemical substances may result in fire or explosion. Such containers are usually packed in strong baskets with a straw lining to absorb shock.

Goods which have their own individual containers, such as canned goods, (the can being the container) can generally be carried with reasonable safety in such a crton, provided it is not too big to be handled manually.

It is pertinent to note the term ‘preparation’ of subject matter. Preparation is the process the subject matter undergoes for prevention of damages. E.g. The addition of ammonia to
liquid latex to prevent coagulation. Or a consignment of dry fruits subject to nitrogen flushes before shrink wrapping.

2. **Method of Transportation**

The cargo carried can also be broadly classified based on the method of carriage as follows.

a. Bulk Cargo
b. Break Bulk Cargo
c. Liquid bulk Cargo
d. Containerised cargo
e. Refrigerated Cargo
f. Over Dimensional Cargo

The aspect of packaging is relevant in the case of containerized cargo, refrigerated cargo and ODC (where lashing and binding are of paramount importance).

3. **Journey Involved and the Mode of Transit**

The details of the journey (from where to where) and the specific hazards pertaining to that particular journey also influence the kind of packing required. Moreover, transshipments increase the hazards of the journey where the goods will have to be reloaded on to the new conveyance. The movement of the vehicles and the road conditions result in jerks and jolts which have to be absorbed by the packing.

Goods, which are transported by ship, encounter the six-degree freedom of movement of a vessel. By virtue of its innate characteristics and the properties of water, a ship has a six degree freedom of movement. They can be enumerated as follows.

1. Heaving - Vertical motion
2. Surging - Longitudinal motion
3. Swaying - Transverse motion
4. Yawing - Surging, heaving and swaying all of which impose severe strains on the container and the cargo
5. Rolling - Side to side movement sometimes through an arc of 50 to 60 degrees
6. Pitching - Bow and stern rising and falling alternatively, with a compressive stress of 2G acting on some containers. Shunting operations of railway wagons and landing of aircraft result in huge vibrations which can affect the cargo and only the packaging can act as a cushioning agent. Cargo is also subject to a lot of dynamic and vibratory stresses while in transit. The packing should be suitable to withstand these stresses.

4. Susceptibility to Theft and Pilferage
Pilferage can be discouraged if the packing is such that opening and repacking is made difficult. For e.g. It is easy for a pilferer to remove nails from a box, pilfer the contents and replace the nails giving the appearance that the box has not been disturbed.

ESSENTIALS OF SUFFICIENT PACKING
Packing should be suitable “to withstand the ordinary incidents of the insured transit”. It should protect the cargo from the ordinary hazards of the transit (specified above) and should be commensurate with the nature of the cargo. Inadequate packaging, packing, or marking of goods is the most frequent cause of loss and damage. Poor preparation and inadequate packing may result in cargo being crushed, squashed, soiled, separated, broken, water-damaged or stolen. If the marking is unclear or misleading, the cargo may be forwarded to the wrong destination or be mistaken for another package, which may result in cases of non-delivery.

The best packing is not the heaviest, the most solid or the most expensive. To be adequate, packing must be suited to the type of goods in need of protection, and must be able to withstand the ordinary stresses to which goods in transit are subject.

For instance, seaworthy packing must not only be able to withstand pressure, heat and dampness that often prevail in the holds of a vessel or in a warehouse, it is also subject to frequent and sometimes rough handling in ports. In addition, the packing must be adapted to the value, weight and size of the carried goods, as well as to external factors, such as weather conditions, port congestion (highly valuable goods are more likely to be stolen during transit or storage in warehouses) and storage out in the open in congested ports.

When goods are bound for land-locked countries or remote, hard-to-get-to places, seaworthy packing must be specially reinforced. The same rule holds for goods carried by
road, air or inland waterways, which are subject to specific risks and damage and must be packed accordingly. Prudent underwriters may also insist for ‘professional packing” and may incorporate an express warranty on the policy for the same.

We now have a number of Institutions that undertake testing and consultation projects on packing and packaging. The Indian Institute of Packaging is one such Institution. There are innumerable varieties of tests conducted to ascertain the suitability of packing. Some of them are the Vibration test, Stacking test, Impact drop test, Rolling test, Compression test, Water Spray test, water permeability test, toppling test, and many others that are trade and commodity specific.

**Packing Includes Storage into the Containers**

While stowing, adequate care should be taken to ensure that proper lashing and wedging is done to restrain movements. Different type of cargo should be stowed differently suitable to its basic packaging. For example sacks can be stored by giving a three-dimensional brick wall effect. Drums to be stowed with their tap openings at the top. Heavy lifts must be placed on strong wooden skids, which are tightly fastened. The Containers must be thoroughly cleaned and free of nails and particles to prevent losses due to tearing of bags, or contamination, stain or other leakages. There should be proper ventilation to prevent condensation.

It is pertinent to note that ‘Containerization’ is not a substitute to good packing. There has been no concrete reduction in losses due to ‘containerization’. It only makes transit more convenient due to ease of handling, loading and unloading.

**Unit Loads**

The type of materials used for shipping will vary according to the product, the type of transportation (ocean or air), and the ultimate destination. However, the basic principle of packaging is known as the "unit load' concept or "unitization." Unitization is based upon the theory that all shippers should pack their cargo so it may be moved and handled entirely by mechanical equipment, such as lifts and cranes, throughout the distribution network. This practice reduces the need for labor, the handling of boxes, and the amount of damage. Also, it allows for faster loading and unloading by transportation equipment,
more efficient distribution centre operations and a reduced level of pilferage. The reduced costs of the distributor in terms of labor and time often result in cost discounts for the exporter.

In practice, the unit load concept means that small, highly expensive items, such as calculators, should first be totally enclosed in cartons, or double, even triple wall containers to avoid pilferage and damage. Second, the boxes or containers should be secured to pallets with shrink-wrap & plastic strapping. Large items can be secured directly to pallets, assuring that they are adequately protected from damage.

Considerations

- Type of carrier - What are the various types of carriers to be used before the goods arrives at their foreign destination? Usually, truck and ship are used.
- Types of hazard - For each type of carrier, what hazards are the shipments likely to encounter? For ocean shipping, this would include the type of storage, loading and unloading facilities, route, time of year (summer, winter, monsoon, etc.) port reputation, etc.
- Cost factors - As well as ensuring maximum protection for the goods being shipped, the exporter should minimize transportation costs by using lightweight, least bulky materials etc.

In some importing countries, import duties are based on the gross weight of the item, including the interior and exterior containers and packing material. An allowance for tariff purposes is given for "tare" (the difference between the gross and net weights) and so both weights should be shown on the commercial invoice.

Containerization

Containerization is a system of intermodal freight transport using intermodal containers (also called shipping containers and ISO containers) made of weathering steel. The containers have standardized dimensions. They can be loaded and unloaded, stacked, transported efficiently over long distances, and transferred from one mode of transport to another—container ships, rail transport flatcars, and semi-trailer trucks—
without being opened. The system, developed after World War II, reduced transport costs, supported the post-war boom in international trade, and was an element in globalization.

Containerization has its origins in early coal mining regions in England beginning in the late 18th century. In 1795, Benjamin Outram opened the Little Eaton Gangway, upon which coal was carried in wagons built at his Butterley Ironwork. The horse-drawn wheeled wagons on the gangway took the form of containers, which, loaded with coal, could be transshipped from canal barges on the Derby Canal, which Outram had also promoted.

By the 1830s, railroads on several continents were carrying containers that could be transferred to other modes of transport. The Liverpool and Manchester Railway in the United Kingdom was one of these. "Simple rectangular timber boxes, four to a wagon, they were used to convey coal from the Lancashire collieries to Liverpool, where they were transferred to horse-drawn carts by crane." Originally used for moving coal on and off barges, "loose boxes" were used to containerize coal from the late 1780s, at places like the Bridgewater Canal. By the 1840s, iron boxes were in use as well as wooden ones. The early 1900s saw the adoption of closed container boxes designed for movement between road and rail.

From 1926 to 1947 in the United States, the Chicago North Shore and Milwaukee Railway carried motor carrier vehicles and shippers' vehicles loaded on flatcars between Milwaukee, Wisconsin, and Chicago, Illinois. Beginning in 1929, Seatrain Lines carried railroad boxcars on its sea vessels to transport goods between New York and Cuba. In the mid-1930s, the Chicago Great Western Railway and then the New Haven Railroad began "piggyback" service (transporting highway freight trailers on flatcars) limited to their own railroads. By 1953, the CB&Q, the Chicago and Eastern Illinois, and the Southern Pacific railroads had joined the innovation. Most cars were surplus flatcars equipped with new decks. By 1955, an additional 25 railroads had begun some form of piggyback trailer service.
During World War II, the Australian Army used containers to help overcome the various breaks of gauge. These non-stackable containers were about the size of the later 20-foot ISO container and perhaps made mainly of wood.

Toward the end of World War II, the US Army used specialized containers to speed the loading and unloading of transport ships. The army used the term "transporters" to identify the containers, for shipping household goods of officers in the field. A transporter was a reusable container, 8.5 feet (2.6 m) long, 6.25 feet (1.91 m) wide, and 6.83 feet (2.08 m) high, made of rigid steel and with a carrying capacity of 9,000 pounds. During the Korean War the transporter was evaluated for handling sensitive military equipment and, proving effective, was approved for broader use. Theft of material and damage to wooden crates convinced the army that steel containers were needed. In 1952 the army began using the term CONEX, short for "container express". The first major shipment of CONEXes, containing engineering supplies and spare parts, was made by rail from the Columbus General Depot in Georgia to the Port of San Francisco, then by ship to Yokohama, Japan, and then to Korea, in late 1952; shipment times were almost halved. By the time of the Vietnam War the majority of supplies and materials were shipped by CONEX. After the US Department of Defense standardized an 8-foot by 8-foot cross section container in multiples of 10-foot lengths for military use, it was rapidly adopted for shipping purposes.

The railways of the USSR had their own small containers.

In 1955, former trucking company owner Malcom McLean worked with engineer Keith Tantlinger to develop the modern intermodal container. The challenge was to design a shipping container that could efficiently be loaded onto ships and would hold securely on long sea voyages. The result was a 8 feet (2.4 m) tall by 8 ft (2.4 m) wide box in 10 ft (3.0 m)-long units constructed from 2.5 mm (0.098 in) thick corrugated steel. The design incorporated a twistlock mechanism atop each of the four corners, allowing the container to be easily secured and lifted using cranes. After helping McLean make the successful design, Tantlinger convinced him to give the patented designs to industry; this began international standardization of shipping containers.
The first vessels purpose-built to carry containers began operation in Denmark in 1951.[9]-[11] In the United States, ships began carrying containers in 1951, between Seattle and Alaska.[10] However, none of these services was particularly successful. Firstly, the containers were rather small, with 52% of them having a volume of less than 3 cubic metres (110 cu ft). Almost all the European ones were made of wood and used canvas lids. Furthermore, they required additional loading into rail or truck bodies.

The world's first purpose-built container ship was the Clifford J. Rodgers, built in Montreal in 1955 and owned by the White Pass and Yukon Route. Its first trip carried 600 containers between North Vancouver, British Columbia, and Skagway, Alaska, on November 26, 1955; in Skagway, the containers were unloaded to purpose-built railroad cars for transport north to the Yukon, in the first intermodalservice using trucks, ships, and railroad cars.[11] Southbound containers were loaded by shippers in the Yukon and moved by rail, ship, and truck to their consignees without opening. This first intermodal system operated from November 1955 until 1982.

The first truly successful container shipping company dates to April 26, 1956, when American trucking entrepreneur McLean put 58 containers aboard a refitted tanker ship, the SS Ideal X, and sailed them from Newark to Houston. Independently of the events in Canada, McLean had the idea of using large containers that never opened in transit and that were transferable on an intermodal basis, among trucks, ships, and railroad cars. McLean had initially favored the construction of "trailerships"—taking trailers from large trucks and stowing them in a ship’s cargo hold. This method of stowage, referred to as roll-on/roll-off, was not adopted because of the large waste in potential cargo space on board the vessel, known as broken stowage. Instead, McLean modified his original concept into loading just the containers, not the chassis, onto the ship; hence the designation "container ship" or "box" ship.

As of 2009, approximately 90% of non-bulk cargo worldwide is moved by containers stacked on transport ships; 26% of all container transhipment is carried out in China.[18] For example, in 2009 there were 105,976,701 transshipments in China (both international and coastal, excluding Hong Kong), 21,040,096 in Hong Kong (which is listed separately), and only 34,299,572 in the United States. In 2005, some 18 million
containers made over 200 million trips per year. Some ships can carry over 14,500 twenty-foot equivalent units (TEU), such as the *Emma Mærsk*, 396 m long, launched in August 2006. It has been predicted that, at some point, container ships will be constrained in size only by the depth of the Straits of Malacca, one of the world's busiest shipping lanes, linking the Indian Ocean to the Pacific Ocean. This so-called Malaccamax size constrains a ship to dimensions of 470 m (1,540 ft) in length and 60 m (200 ft) wide.

However, few initially foresaw the extent of the influence of containerization on the shipping industry. In the 1950s, Harvard University economist Benjamin Chinitz predicted that containerization would benefit New York by allowing it to ship its industrial goods more cheaply to the Southern United States than other areas, but he did not anticipate that containerization might make it cheaper to import such goods from abroad. Most economic studies of containerization merely assumed that shipping companies would begin to replace older forms of transportation with containerization, but did not predict that the process of containerization itself would have a more direct influence on the choice of producers and increase the total volume of trade.

The widespread use of ISO standard containers has driven modifications in other freight-moving standards, gradually forcing removable truck bodies or swap bodies into standard sizes and shapes (though without the strength needed to be stacked), and changing completely the worldwide use of freight pallets that fit into ISO containers or into commercial vehicles.

Improved cargo security is also an important benefit of containerization. The cargo is not visible to the casual viewer and thus is less likely to be stolen; the doors of the containers are usually sealed so that tampering is more evident. Some containers are fitted with electronic monitoring devices and can be remotely monitored for changes in air pressure, which happens when the doors are opened. This reduced the thefts that had long plagued the shipping industry. Recent developments have focused on the use of intelligent logistics optimization to further enhance security.

The use of the same basic sizes of containers across the globe has lessened the problems caused by incompatible rail gauge sizes in different countries. The majority of the rail
networks in the world operate on a 1,435 mm (4 ft 8 1⁄2 in) gauge track known as standard gauge, but many countries (such as Russia, India, Finland, and Lithuania) use broader gauges, while many others in Africa and South America use narrower gauges on their networks. The use of container trains in all these countries makes transshipment between different trains of different gauges easier.

Containers have become a popular way to ship private cars and other vehicles overseas using 20- or 40-foot containers. Unlike roll-on/roll-off vehicle shipping, personal effects can be loaded into the container with the vehicle, allowing for easy international relocation.

Container Insurance product encompasses the main hazard of accumulation of financial risk facing New Zealand operators, whether they own or lease cargo containers. Invariably a marine casualty will involve containers, whether it be at sea or on land, or an earthquake at a port.

Marine provides two covers, based on the

- Institute Container Clauses (Time) Clauses; or the
- Institute Container Clauses (Time) (Total Loss, GA&S, Sue & Labour).

Sums insured and deductibles are usually stated in US$.

Principal exclusions include:

- wear and tear / lack of maintenance;
- mysterious disappearance over time / inventory loss.

To avoid extensive work load, Vero Marine’s policy incorporates an Additions and Deletions Clause. Many New Zealand container operators have a designated economic useful life for containers, and the policy schedule and wording can be specifically amended to suit specific accounting practices.
Hazards

Containers have been used to smuggle contraband. The vast majority of containers are never subjected to scrutiny due to the large number of containers in use. In recent years there have been increased concerns that containers might be used to transport terrorists or terrorist materials into a country undetected. The US government has advanced the Container Security Initiative (CSI), intended to ensure that high-risk cargo is examined or scanned, preferably at the port of departure.

Empty containers

Containers are intended to be used constantly, being loaded with new cargo for a new destination soon after having been emptied of previous cargo. This is not always possible, and in some cases, the cost of transporting an empty container to a place where it can be used is considered to be higher than the worth of the used container. Shipping lines and container leasing companies have become expert at repositioning empty containers from areas of low or no demand, such as the US West Coast, to areas of high demand, such as China. Repositioning within the port hinterland has also been the focus of recent logistics optimization work. However, damaged or retired containers may also be recycled in the form of shipping container architecture, or the steel content salvaged. In the summer of 2010, a worldwide shortage of containers developed as shipping increased after the recession, while new container production had largely ceased.

Loss at sea

Containers occasionally fall from ships, usually during storms; according to media sources, between 2,000 and 10,000 containers are lost at sea each year. The World Shipping Council states in a survey among freight companies that this claim is grossly excessive and calculated an average of 350 containers to be lost at sea each year, or 675 if including catastrophic events. For instance, on November 30, 2006, a container washed ashore on the Outer Banks of North Carolina, along with thousands of bags of its cargo of Doritos Chips. Containers lost in rough waters are smashed by cargo and waves, and often sink quickly. Although not all containers sink, they seldom float very high out of the water, making them a shipping hazard that is difficult to detect. Freight from lost
containers has provided oceanographers with unexpected opportunities to track global ocean currents, notably a cargo of Friendly Floaters.

In 2007 the International Chamber of Shipping and the World Shipping Council began work on a code of practice for container storage, including crew training on parametric rolling, safer stacking, the marking of containers, and security for above-deck cargo in heavy swell.

In 2011, the MV Rena ran aground off the coast of New Zealand. As the ship listed, some containers were lost, while others were held on board at a precarious angle.

**Trade union challenges**

Some of the biggest battles in the container revolution were waged in Washington, DC. Intermodal shipping got a huge boost in the early 1970s, when carriers won permission to quote combined rail-ocean rates. Later, non-vessel-operating common carriers won a long court battle with a US Supreme Court decision against contracts that attempted to require that union labor be used for stuffing and stripping containers at off-pier locations.

**Conditions of Insurance:**

Cargo insurance can be affected on different conditions by using various clauses. All the conditions have one thing in common; the goods can only be insured against unexpected, fortuitous losses. A loss which can be considered a certainty rather than an accident – such as normal wear and tear – cannot be insured against.

A peculiarity of marine insurance and insurance law generally, is the use of the terms **condition** and **warranty**. In English law, a condition typically describes a part of the contract that is fundamental to the performance of that contract, and, if breached, the non-breaching party is entitled not only to claim damages but to terminate the contract on the basis that it has been repudiated by the party in breach. By contrast, a warranty is not fundamental to the performance of the contract and breach of a warranty, while giving rise to a claim for damages, does not entitle the non-breaching party to terminate the contract. The meaning of these terms is reversed in insurance law. Indeed, a warranty if not strictly complied with will automatically discharge the insurer from further liability
under the contract of insurance. The assured has no defense to his breach, unless he can prove that the insurer, by his conduct has waived his right to invoke the breach, possibility provided in section 34(3) of the Marine Insurance Act 1906 (MIA). Furthermore in the absence of express warranties the MIA will imply them, notably a warranty to provide a seaworthy vessel at the commencement of the voyage in a voyage policy (section 39(1)) and a warranty of legality of the insured voyage.

Important Conditions:

1. ADDITIONAL PAYMENTS

When loss is covered and exceeds the applicable deductible shown in the Declarations, we will also pay:

a. the cost of transporting the insured watercraft or its parts to the nearest reasonable place of repair. Transporting will be by the least costly reasonable means;

b. reasonable costs other than salvage charges incurred in providing protection for the insured watercraft after a loss;

c. up to 14 days for storage of the insured watercraft when it is stolen and recovered or damaged from a covered loss.

d. salvage charges that:

(1) we agree to pay;

(2) are awarded by a United States Court; or

(3) are determined by an arbitration board in the United States that you and we agree to authorize for this purpose.

2. ADDITIONAL EXCLUSIONS

We will not pay for loss arising out of:

a. mechanical, engine, transmission, electrical, or structural failure;

b. wear and tear, deterioration, weathering, corrosion, rust, metal fatigue, or electrolysis;

c. dampness of atmosphere, rot, dry rot, mold, or mildew;

d. marring, scratching, denting, chipping, delamination, or osmotic blistering;
e. engine overheating, inadequate lubrication, fuel contamination, abnormal combustion, misalignment of mechanical components, or improper shifting of transmission gears at high speed;
f. faulty manufacture or defect in design;
g. improper repair;
h. freezing, thawing, or contact with ice, when the condition is expected or anticipated and the insured watercraft was not prepared for cold weather storage or winterized to the standards of the manufacturer or accepted marine standards;
i. birds, rodents, insects, animals, vermin, and marine life except if loss is caused by collision;
j. power surge or interruption to electrical device, other than lightning;
k. ingestion not caused by an accident;
m. unseaworthiness;
n. diminution in value;
o. transportation of the insured watercraft over land when:
   (1) the weight of the insured watercraft exceeds the registered weight capacity of the transporting trailer;
   (2) the weight of the insured watercraft and transporting trailer exceed the maximum towing weight recommended for the towing vehicle;
   (3) the width or beam of the insured watercraft exceeds the trailering allowances of the state and necessary permits were not obtained prior to loss;
   (4) the transporting trailer fails during transport of the insured watercraft because of lack of maintenance.
p. legal or illegal seizure or confiscation, or during detention, by any governmental body;

q. a taking, holding, hiding, repossession or sale by:
   (1) anyone to whom was given the insured watercraft's care, custody, control, or use;
   (2) anyone making a claim for or against the insured watercraft under contract, agreement or law.

Exclusions "a." through "k." shall not apply to ensuing loss caused by consequential sinking, burning, or collision of the insured watercraft.
Inco Terms:

The **Incoterms** rules or **International Commercial Terms** are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) that are widely used in International commercial transactions or Procurement processes. A series of three-letter trade terms related to common contractual sales practices, the Incoterms rules are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods.

The Incoterms rules are accepted by governments, legal authorities, and practitioners worldwide for the interpretation of most commonly used terms in international trade. They are intended to reduce or remove altogether uncertainties arising from different interpretation of the rules in different countries. As such they are regularly incorporated into sales contracts\(^1\) worldwide.

First published in 1936, the Incoterms rules have been periodically updated, with the eighth version—**Incoterms 2010**—having been published on January 1, 2011. "Incoterms" is a registered trademark of the ICC.

Incoterms are standard definitions used in international trade.

- Incoterms reduce uncertainties arising from differing interpretations of such terms in different countries.
- Incoterms are published by the International Chamber of Commerce.
- They were first devised in 1936.
- Incoterms 1990 was a popular standard.
- Incoterms 2000 was the standard for a decade.

The eighth published set of pre-defined terms, **Incoterms 2010** defines 11 rules, reducing the 13 used in Incoterms 2000 by introducing two new rules ("Delivered at Terminal", DAT; "Delivered at Place", DAP) that replace four rules of the prior version ("Delivered at Frontier", DAF; "Delivered Ex Ship", DES; "Delivered Ex Quay", DEQ; "Delivered Duty Unpaid", DDU).\(^2\) In the prior version, the rules were divided into four categories, but the 11 pre-defined terms of **Incoterms 2010** are subdivided into two categories based only on method of delivery. The larger group of seven rules applies regardless of the
method of transport, with the smaller group of four being applicable only to sales that solely involve transportation over water.

**Any mode of transport**

The 7 rules defined by *Incoterms 2010* for any mode(s) of transportation are:

**EXW – Ex Works (named place of delivery)**

The seller makes the goods available at his/her premises. The buyer is responsible for uploading. This term places the maximum obligation on the buyer and minimum obligations on the seller. The Ex Works term is often used when making an initial quotation for the sale of goods without any costs included. EXW means that a seller has the goods ready for collection at his premises (works, factory, warehouse, plant) on the date agreed upon. The buyer pays all transportation costs and also bears the risks for bringing the goods to their final destination. The seller does not load the goods on collecting vehicles and doesn't clear them for export. If the seller does load the goods, he does so at buyer's risk and cost. If parties wish seller to be responsible for the loading of the goods on departure and to bear the risk and all costs of such loading, this must be made clear by adding explicit wording to this effect in the contract of sale.

**FCA – Free Carrier (named place of delivery)**

The seller delivers goods, cleared for export, to the buyer-designated carrier at a named and defined location. This is used for any mode of transport. The seller must load goods onto the buyer's carrier. The key document signifying transfer of responsibility is receipt by carrier to exporter.

**CPT – Carriage Paid To (named place of destination)**

The seller pays for carriage. Risk transfers to buyer upon handling goods over to the first carrier at place of shipment in the country of export.

This term is used for all kind of shipments.
CIP – Carriage and Insurance Paid to (named place of destination)

The containerized transport/multimodal equivalent of CIF. Seller pays for carriage and insurance to the named destination point, but risk passes when the goods are handed over to the first carrier.

DAT – Delivered at Terminal (named terminal at port or place of destination)

Seller pays for carriage to the terminal, except for costs related to import clearance, and assumes all risks up to the point that the goods are unloaded at the terminal.

DAP – Delivered at Place (named place of destination)

Seller pays for carriage to the named place, except for costs related to import clearance, and assumes all risks prior to the point that the goods are ready for unloading by the buyer.

DDP – Delivered Duty Paid (named place of destination)

Seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. The seller is not responsible for unloading. This term is often used in place of the non-Incoterms "Free In Store (FIS)". This term places the maximum obligations on the seller and minimum obligations on the buyer.

Sea and inland waterway transport

To determine if a location qualifies for these four rules, please refer to 'United Nations Code for Trade and Transport Locations (UN/LOCODE)'. [Link below]

The four rules defined by Incoterms 2010 for international trade where transportation is entirely conducted by water are:

FAS – Free alongside Ship (named port of shipment)

The seller must place the goods alongside the ship at the named port. The seller must clear the goods for export. Suitable only for maritime transport but NOT for multimodal sea transport in containers (see Incoterms 2010, ICC publication 715). This term is typically used for heavy-lift or bulk cargo.
**FOB – Free on Board (named port of shipment)**

The seller must load the goods on board a vessel designated by the buyer. Cost and risk are divided when the goods are actually on board of the vessel. The seller must clear the goods for export. The terms are applicable for maritime and inland waterway transport only but NOT for multimodal sea transport in containers (see *Incoterms 2010*, ICC publication 715). The buyer must instruct the seller the details of the vessel and the port where the goods are to be loaded, and there is no reference to, or provision for, the use of a carrier or forwarder. This term has been greatly misused over the last three decades ever since *Incoterms 1980* explained that FCA should be used for container shipments.

It means the seller pays for transportation of goods to the port of shipment, loading cost. The buyer pays cost of marine freight transportation, insurance, uploading and transportation cost from the arrival port to destination. The passing of risk occurs when the goods pass the ship's rail at **port of shipments**.

**CFR – Cost and Freight (named port of destination)**

Seller must pay the costs and freight to bring the goods to the port of destination. However, risk is transferred to the buyer once the goods are loaded on the vessel. Insurance for the goods is **NOT** included. This term is formerly known as CNF (C&F, or C+F). Maritime transport only.

**CIF – Cost, Insurance and Freight (named port of destination)**

Exactly the same as CFR except that the seller must in addition procure and pay for the insurance.

**Declaration Forms:**

An insurance form filled out by the Assured for reporting / declaring individual shipments under an Open Cargo Policy. It is usually used for declaring import shipments where evidence of insurance is not required. A multi-entry declaration is called a bordereau.
Marine Cover Note

Where a policy in accordance with this Act has been issued nothing in this Act shall prevent reference being made in legal proceedings to the slip or covering note or other customary memorandum of a contract of marine insurance.

– Policy Form

Be it known that as well in own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance and cause and them, and every of them, to be insured lost or not lost, at and from Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munitions, artillery, boat, and other furniture, of and in the good ship or vessel called the whereof is master under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship, upon the said ship, etc., and so shall continue and endure, during her abode there, upon the said ship, etc. And further, until the said ship, with all her ordnance, tackle, apparel, etc., and goods and merchandises whatsoever shall be arrived at upon the said ship, etc., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, etc., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever and wheresoever for all purposes without prejudice to this insurance. The said ship, etc., goods and merchandises, etc., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire. Enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprises, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever. Baratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in the case of any loss or misfortune it shall be lawful to the assured,
their factors, servants and assigns to sue, labor, and travel for, in and about the defense. safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of.

Rules for Construction of Policy

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

1. Where the subject-matter is insured “lost or not lost”, and the loss has occurred before the contract is concluded, the risk attaches unless, at such time the assured was aware of the loss and the insurer was not.

2. Where the subject-matter is insured “from” a particular place, the risk does not attach until the ship starts on the voyage insured.

3. (a) Where a ship is insured “at and from” a particular place, and she is in that place in good safety when the contract is concluded, the risk attaches immediately;

(b) If she be not at that place when the contract is concluded. the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

(c) Where chartered freight is insured “at and from” a particular place, and the ship is at that place in good safety when the contract
is concluded, the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(d) Where freight, other than chartered freight, is payable without special conditions and is insured “at and from” a particular place, the risk attaches as the goods or merchandise are shipped:

Provided that if there be cargo in readiness which belongs to the ship-owner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo. Thereof”, the risk does not attach until such goods or moveable’s are actually on board, and the insurer is not liable for them while intrinsic from the shore to the ship.

5. Where the risk on goods or other moveable’s continues until they are “safely landed”, they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases. Touch and stay “at any port or place whatsoever” does not authorize the ship to depart from the course of her voyage from the port of departure to the port of destination.

7. The term “perils of the seas” refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of wind and waves.

8. The term “pirates” includes passengers who mutiny and rioters who attack the ship from the shore.

9. The term “thieves” does not cover clandestine theft or a theft committed by anyone of the ship’s company, whether crew or passengers.

10. The term “arrests, etc., of kings, princes and people” refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11. The term “barratry” includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

12. The term “all other perils” includes only perils similar

13. The term “average unless general” means a partial loss of the subject-matter insured other than a general average loss, and does not include “particular charges”. losses, although the loss is not attributable to the stranding: and, if the policy be on goods, that the damaged goods are on board.
and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade.

**Endorsements**

An endorsement is a written document attached to an insurance policy that modifies the policy by changing the coverage afforded under the policy. An endorsement can add coverage for acts or things that are not covered as a part of the original policy and can be added at the inception of the policy or later during the term of the policy.

**Container Transport**

Seaport terminals handle a wide range of maritime cargo.

- Automobiles are handled at many ports and are usually carried on specialized roll-on/roll-off ships.
- Break bulk cargo is typically material stacked on pallets and lifted into and out of the hold of a vessel by cranes on the dock or aboard the ship itself. The volume of break bulk cargo has declined dramatically worldwide as containerization has grown. One way to secure break bulk and freight in intermodal containers is by using Dunnage Bags.
- Bulk cargo, such as salt, oil, tallow, and scrap metal, is usually defined as commodities that are neither on pallets nor in containers. Bulk cargoes are not handled as individual pieces, the way heavy-lift and project cargoes are. Alumina, grain, gypsum, logs, and wood chips, for instance, are bulk cargoes.
- Neo-bulk cargo comprises individual units that are counted as they are loaded and unloaded, in contrast to bulk cargo that is not counted, but that are not containerized.
- Containers are the largest and fastest growing cargo category at most ports worldwide. Containerized cargo includes everything from auto parts, machinery and manufacturing components to shoes and toys to frozen meat and seafood.
• Project cargo and the heavy lift cargo include items like manufacturing equipment, air conditioners, factory components, generators, wind turbines, military equipment, and almost any other oversized or overweight cargo which is too big or too heavy to fit into a container.

**Multi-Modal Transport:**
Multimodal transport is a very interesting approach that solves a big part of cargo mobility problems.

Combining private and state transport in a multimodal transport system offers the opportunity to capitalize the best rates and transit time possible.

As many understand, multimodal transport refers to a transport system usually operated by one carrier with more than one mode of transport under control or ownership of one operator. It involves the use of more than one means of transport such as a combination of truck, railcar, railways, airplane or ship in succession to each e.g. a. container line which operates both a ship and rail system of double stack trains.

The needs / advantages of multimodal transport:

• coordinated and planned as a single operation, it minimizes the loss of time and risk of loss, pilferage and damage to the cargo at trans-shipment points.

• The market is psychologically reduced by faster transit of goods; Reference to Globalization challenge, the distance between origin or source materials and customers is getting to be insignificant thanks to the development of multimodal transport.

• The burden of issuing multiple documentation for each segment of transport is reduced to minimum.

• The consignor / consignee has to deal with only the MTO (multimodal transport operator) in all matters related to the goods transportation.
E.g. of multimodal transport system:

One out of gauge power transformer was loaded on a platform wagon till Constanta port; the trans board was made on a Ro-Ro vessel till Iskenderun port, and afterwards the taro was loaded on a special trailer till Jordan.

**Multimodal transport** (also known as combined transport) is the transportation of goods under a single contract, but performed with at least two different means of transport; the carrier is liable (in a legal sense) for the entire carriage, even though it is performed by several different modes of transport (by rail, sea and road, for example). The carrier does not have to possess all the means of transport and in practice usually does not; the carriage is often performed by sub-carriers (referred to in legal language as "actual carriers"). The carrier responsible for the entire carriage is referred to as a multimodal transport operator, or MTO.

Multimodal transport is essentially an international through-transport combination with various modes of transport such as ship, rail, truck, airplane, etc., primarily through the use of containers. Containers will ensure the transport of unitized cargo from its origin to its final destination, with efficiency and least possible risk. According to Woxenius (1998), the concept of using freight containers dates from Roman times but container transport by rail was introduced by the Liverpool & Manchester Railway that used Roll-on/Roll-off containers for the hauling of coal back in 1830. The Birmingham & Derby Railway introduced an early form of multimodal transport with the transfer of containers between rail wagons and horse carriage in 1839. New York Central Railway developed and inaugurated the first dedicated container service from Cleveland and Chicago on March 19, 1921. Containerisation grew further as a means of ‘door-to-door’ transport, spurred on by the development of the Piggy Back System where trailers themselves were carried aboard specialised ‘Flat cars’.

Where the carrier organising the transport takes responsibility for the entire door-to-door transport and issues a multimodal transport document. Multimodal transport is therefore a concept which places the responsibility for transport activities under one operator, who then manages and coordinates the total task from the shipper’s door to the consignee’s door, ensuring the continuous movement of the goods along the best route, by the most
efficient and, cost-effective means, to meet the shippers requirements of delivery. This means simplified documentation, and increasingly by electronic means such as electronic data interchange (EDI)

In practice, freight forwarders have become important MTOs; they have moved away from their traditional role as agents for the sender, accepting a greater liability as carriers. Large sea carriers have also evolved into MTOs; they provide customers with so-called door-to-door service. The sea carrier offers transport from the sender's premises (usually located inland) to the receiver's premises (also usually situated inland), rather than offering traditional tackle-to-tackle or pier-to-pier service. MTOs not in the possession of a sea vessel (even though the transport includes a sea leg) are referred to as Non-Vessel Operating Carriers (NVOC) in common law countries (especially the United States).

A multimodal transport operator (MTO) acts as a principal and therefore as a “carrier”, because the MTO contracts with the shipper to carry goods by one or more modes of transport as may be necessary. The MTO has accepted total responsibility and liability to perform the transport contract; he has become the sole interface point for the shipper’s transport function. The concept of multimodal transport is not new, the first efforts to establish a suitable legal regime for multimodal transport was made by the International Institute for the Unification of Private Law (UNIDROIT) in the 1930s. At that time, these efforts were considered more theoretical than practical in commercial circles (UNCTAD, 1994a). illustrates the evolution of transport terminology related to multimodal transport. Even though the term multimodal transport was officially introduced in 1980 with the United Nations sponsored Multimodal Transport Convention; the term attained legal recognition on 1 January 1992 with the introduction of the 1992 UNCTAD/ICC Rules for Multimodal Transport.

Multimodal transport developed in connection with the "container revolution" of the 1960s and 70s; as of 2011, containerized transports are by far the most important multimodal consignments. However, it is important to remember that multimodal transport is not equivalent to container transport; multimodal transport is feasible without any form of container. The MTO works on behalf of the supplier; it assures the supplier (and the buyer) that their goods will be effectively managed and supplied.
Multimodal transport research is being conducted across a wide range of government, commercial and academic centers. The Research and Innovative Technology Administration (RITA) within the U.S. Department of Transportation (USDOT) chairs an inter-agency Research, Development and Technology (RD&T) Planning Team. The University Transportation Center (UTC) program, which consists of more than 100 universities nationwide conducts multi-modal research and education programs. The European Commission's Freight Transport Logistics Action Plan has placed special emphasis on researching and developing multimodal freight transport networks in Europe, leading to focused research efforts such as e-Freight and FLAGSHIP.

From a legal standpoint, multimodal transport creates several problems. Unimodal transports are currently governed by different, often-mandatory international conventions. These conventions stipulate different bases for liability, and different limitations of liability for the carrier. As of 2011, the solution to this problem has been the so-called network principle. According to the network principle, the different conventions coexist unchanged; the carrier’s liability is defined according to where the breach of contract has occurred (where the goods have been damaged during transport, for example). However, problems arise if the breach of contract is systemic (not localized).

When a multimodal transport service is provided, the multimodal transport operator (MTO) will be liable from the point of origin to the point of destination (UNCTAD, 1995a). He will issue one transport document that will include invoice for freight charges, and also a guarantee for the transit time. From that point onwards, the MTO concludes a number of sub-contracts with individual carriers, road, rail, shipping lines, port authorities, terminal operators, stevedores, etc., on the MTO’s own name, not that of the shipper or the consignee. Only the MTO is entitled to take delivery of the goods from each actual sub-carrier and pass them to the next sub-carrier. The MTO, in acting as a principal, is therefore responsible for the whole transport chain.
The MTO will have to rely on transport system analysis for the design and planning of the multimodal transport operation. According to Manheim (1979), the field of transportation system analysis has the following characteristics:

- It is multimodal, covering all mode of transport.
- It is multi-sectoral, encompassing the problems and viewpoints of government, private industry, and the public.
- It is multi-problem, ranging from rules, regulations, and policies to customer service levels and financial and economic feasibility.
- It is multi-disciplinary, drawing on the theories and methods of engineering, economics, operations research, political science, psychology, other natural and social sciences, management and law.

This means that in the analysis of a transportation system, the total transportation system of a region must be viewed as a single multimodal system. The consideration of the transportation system cannot also be separated from consideration of the social, economic, and political system of a region.

ICDS:

**Integrated Child Development Services (ICDS),** Government of India sponsored programmed, is India's primary social welfare scheme to tackle malnutrition and health problems in children below 6 years of age and their mothers. The main beneficiaries of the programmed were aimed to be the girl child up to her adolescence, all children below 6 years of age, pregnant and lactating mothers. The gender promotion of the girl child by trying to bring her at par with the male child is a key component of the scheme.

Majority of children in India have underprivileged childhoods starting from birth. The infant mortality rate of Indian children is 44 and the under-five mortality rate is 93 and 25% of newborn children are underweight among other nutritional, immunization and educational deficiencies of children in India. Figures for India are substantially worse than the developing country average.

Given such a daunting challenge, ICDS was first launched in 1975 in accordance to the National Policy for Children in India. Over the years it has grown into one of the largest integrated family and community welfare schemes in the world. Given its
effectiveness over the last few decades, Government of India has committed towards ensuring universal availability of the programme.

The predefined objectives of ICDS are:

1. To raise the health and nutritional level of poor Indian children below 6 years of age
2. To create a base for proper mental, physical and social development of children in India
3. To reduce instances of mortality, malnutrition and school dropouts among Indian Children
4. To coordinate activities of policy formulation and implementation among all departments of various ministries involved in the different government programmed and schemes aimed at child development across India.
5. To provide health and nutritional information and education to mothers of young children to enhance child rearing capabilities of mothers in country of India

The following services are sponsored under ICDS to help achieve its objectives:

1. Immunization
2. Supplementary nutrition
3. Health checkup
4. Referral services
5. Pre-school non formal education
6. Nutrition and Health information

The Integrated Child Development Scheme (ICDS) comes under the purview of the Ministry of Women and Child Development (MWCD). Recently MWCD released their annual report (2008-2009) on child development. According to this report the ICDS which was launched in 1975 has been working diligently to eliminate hazards to child health and development. The following are the objectives of ICDS.
• To advance the nutritional and health standing of children in the age-group 0-6 years.
• To create a system that tackles the proper psychological, physical and social development of the child.
• To fight the rate of mortality, morbidity, malnutrition and school dropout.
• To have all the various ministries and departments work in a coordinated fashion to achieve policy implementation and create an effective ECCE system.
• To support the mother and help her become capable of providing the necessary nutritional and development needs of the child and aware of her own needs during pregnancy.

The scheme aims at providing an integrated package of services. These services include supplementary nutrition, immunization, medical check-ups, recommendation services, pre-school non-formal education and nutrition & health awareness. The purpose of providing these services as a package is because each of these issues is dependent on the other. In order to ensure that the overall care and education of the child is addressed the MWCD envisions the scheme as a complete parcel of provisions.

The structure of ICDS is that it is a centrally funded scheme implemented through the States and Union Territories. Originally, financially it was 100% backed by the central government, except the supplementary nutrition, which must be provided by the State's resources. But in 2005-2006 it was noted that many of the States were not capable of providing adequately for supplementary nutrition in view drought, economic slowdown, etc. Hence it was decided to support the States up to 50% of their economic norms or to support 50% of expenses acquired by them on supplementary nutrition, whichever is less. The reason for the Central assistance for Supplementary nutrition is to ensure that all beneficiaries are receiving the supplements for 300 days of the year as has been laid out in the norms of the scheme.

Another modification in the financial responsibility of state and central has been that instead of 100% support in non-supplementary expenses the central government is now only responsibly for 90% in all States and Union Territories. In the 2009-2010 financial
year the sharing pattern of supplementary nutrition in respect of North-eastern States between Centre and States has been changed from 50:50 to 90:10 ratio. In other States and UTs, with regard to supplementary nutrition, the pattern continues to be a 50:50 ratio sharing.

For nutritional purposes ICDS provides 300 calories (with 8-10 grams of protein) every day to every child below 6 years of age. For adolescent girls it is up to 500 calories with up to 25 grams of protein every day. Delivery of services under ICDS scheme is managed in an integrated manner through Anganwadi centres its workers and helpers. The services of Immunization, Health Check-up and Referral Services delivered through Public Health Infrastructure under the Ministry of Health and Family Welfare. UNICEF has provided essential supplies for the ICDS scheme since 1975. World Bank has also assisted with the financial and technical support for the programme. The cost of ICDS programme averages $10–$22 per child a year. The scheme is centrally sponsored with the state governments contributing up to ₹1.00 (1.5¢ US) per day per child.

Furthermore, in 2008, the GOI adopted the World Health Organization (WHO) standards for measuring and monitoring the child growth and development, both for the ICDS and the National Rural Health Mission (NRHM). These standards were developed by WHO through an intensive study of six developing countries since 1997. They are known as New WHO Child Growth Standard and measure of physical growth, nutritional status and motor development of children from birth to 5 years age.
Loss Prevention

Functions of Marine Insurance:

1 Spread of Risk: Share the losses of a few among the many. Indemnity: If a loss occurs, the Insured will be put back into the same financial position as just prior to the loss. The Insured must not profit from the loss. Most policies are on an actual cash value (ACV) basis (the value of an equivalent piece of property of the same age and condition and subject to the same wear and tear as the property that was lost or destroyed).
2 Aid to Security: Removes uncertainty of a potential financial loss; individuals & businesses are more free to expand without need to set aside reserves for future losses.
3 Aid to Credit: Loans are not advanced unless item financed is insured; insurance protects creditors’ investments.


5 Source of Capital: Shareholders’ capital and premiums generated by Insureds are invested in the Canadian economy. Marine Insurance is a necessity to International Trade financing; 1/3 of Canada’s gross national product is exported.
6 Loss Prevention: The industry contributes to the prevention of losses (mostly through research, education, and improved regulations).

Documents of Title to Goods in Transit:

1 Bill of Exchange: Draft or order drawn up by seller on the buyer, requiring buyer to pay the sum stated either on sight (immediately on presentation) or within agreed number of days after presentation of the draft and necessary documents.

2 Bills Of Lading: Evidence of contract of freightment (carriage) between owner of goods and carrier and receipt given by carrier to owner.
3 Export Invoice: Document showing quantity, quality, type and value of the goods.
4 Policy of Marine Insurance: Protects goods in transit from loss or damage.

**Process of Insuring a Risk at Lloyd’s:**

Lloyd’s Brokers: Act in interest of customer, paid commission by Insurer. Brokers approach underwriters and describe the risks and insurance requirements, and try to obtain the best possible price. The broker must be able to find coverage of the whole risk by signing up syndicates at the original agreed price. Brokers also advise clients on loss prevention. Syndicates of Members of Lloyd’s: range in size, each syndicate represented by an underwriter.

Unlimited Liability: Every individual member of Lloyd’s has proved wealth and trades individually with unlimited liability.

Original Slip: Drawn up by the broker; contains details of the risk, insurable interests of the applicant. This is the basis of the contract and is initialed (or stamped) by Insurer. The Slip is evidence that the underwriter has accepted insurance and that he has agreed to sign a policy based on the terms & conditions of the Slip.

The Lead: This is the first underwriter to initial the slip, where more than 1 underwriter used; other underwriters initial the slip, ‘following the lead', until 100% of the risk is covered.

Lloyd’s Underwriters Association: Association of underwriters who meet for consultation on matters affecting the interest of underwriters of Lloyd’s.

Intelligence System of Lloyd’s: Various publications issued by Lloyd’s which are indispensable to any marine underwriter:

1 Lloyd’s Register of Shipping: Annual publication with monthly updates; contains details of virtually all vessels afloat (name, number, flag, nationality, registered owners, managers, tonnage, type of vessel/engine/auxiliary machinery).
2 Confidential Index: Published twice a year; contains record of ownership of all vessels
worldwide.

3 Confidential Ports Record: Lists information on all world ports of significant size (name, country, Lloyd’s agent, approaches to ports, methods of loading/unloading, craft risk, theft & pilferage risk, climate, customs details, fire risk, port congestion, salvage & repair facilities).

4 Daily Shipping Index: Lists information on almost all vessels engaged in ocean trade (name, flag, current voyage, date last sailing, date last report, recent casualty, Lloyd’s casualty reports).

5 Casualty Report Service (Weekly Casualty Reports): Lloyd’s sends subscribers casualty slips with information of all occurrences which are likely to affect underwriting decisions.

6 Lloyd’s Survey Handbook: Contains information on treatment or survey of damaged goods and the susceptibility of certain commodities to loss/damage.

The functions of insurance can be studied into two parts: (i) Primary Functions (ii) Secondary Functions.

**Primary Functions:**

(i) *Insurance provides certainty:* insurance provides certainty of payment at the uncertainty of loss. The uncertainty of loss can be reduced by better planning and administration. But, the insurance relieves the person from such difficult task. Moreover, if the subject matters are not adequate, the self-provision may prove costlier. There are different types of uncertainty in a risk. The risk will occur or not, when will occur, how much loss will be there.

In other words, there are uncertainty of happening of time and amount of loss. Insurance removes all these uncertainty and the assured is given certainty of payment of loss. The insurer charges premium for providing the said certainty.

(ii) *Insurance provides protection:* The main function of the insurance is to provide protection against the probable chances of loss. The time and amount of loss are
uncertain and at the happening of risk, the person will suffer loss in absence of insurance. The insurance guarantees the payment of loss and thus protects the assured from sufferings. The insurance cannot check the happening of risk but can provide for losses at the happening of the risk.

(iii) Risk-Sharing: The risk is uncertain, and therefore, the loss arising from the risk is also uncertain. When risk takes place, the loss is shared by all the persons who are exposed to the risk. The risk sharing in ancient time was done only at time of damage or death, but today, on the basis of probability of risk, the share is obtained from each and every insured in the shape of premium without which protection is not guaranteed by the insurer.

Secondary Functions:

Besides the above primary functions, the insurance works for the following functions:

(i) Prevention of loss: The insurance joins hands with those institutions which are engaged in preventing the losses of the assured and so more saving is possible which will assist in reducing the premium. Lesser premium invites more business and more business causes lesser share to the assured. So again premium is reduced to, which will stimulate more business and more protection to the masses. Therefore, the insurance assist financially to the health organization, fire brigade, educational institution and other organizations which are engaged in preventing the losses of the masses from death or damage.

(ii) It provides Capital: The insurance provides capital to the society. The accumulated funds are invested in productive channel. The dearth of capital of the society is minimized to a greater extent with the help of investment of insurance. The industry, the business & the individual are benefited by the investment & loans of the insurers.
(iii) *It improves Efficiency:* The insurance eliminates worries and miseries of losses at death and destruction of property. The care-free person can devote his body & soul together for better achievement. It improves not only his efficiency, but the efficiencies of the masses are also advanced.

(iv) *It helps Economic Progress:* The insurance by protecting the society from huge losses of damage, destruction and death. Provides an initiative to work hard for the betterment of the masses. The next factor of economic progress, the capital, is also immensely provided by the masses. The property, the valuable assets, and the man the machine & the society cannot lose much at the disaster.

Loss prevention is a crucial activity for insurers and a field of co-operation with their clients as well.

Accidents give rise to financial losses and it is in the joint interest of clients and insurers to put into practice prevention measures that could avoid accidents or mitigate their effects.

Loss prevention is even in the larger interest of the economic system since the fact that the financial burden of the occurrence is transferred from the client to the insurers - insurance as a risk transfer mechanism - does not eliminate its negative consequences and the eventually disruptive effects on the economic activity. Furthermore, if we consider that sometime accidents do not produce material damages only but also, sadly, personal injuries or even loss of lives, it becomes evident that any prevention activity is in the common interest of the society.

The co-operation between insurers and clients finds its reasons also in their different experience: risk management should be in itself in the hands of the client who knows his business and its critical areas, however, whilst large corporations have their in-house risk manager, this is not always the case for all clients, particularly the smaller ones; insurers on the other hand, thanks to the wide range of risks they underwrite and to the specific focus they have on loss prevention, can bring into the scene an added value. Hence the role that the Loss Prevention Committee has within the scope of IUMI, focussing on all lines of marine insurance: with this spirit the effort of the Committee is
to propose during the Annual Conference Workshop a bundle of topics which can attract common interest and provide added value to the delegates: comments and suggestions will help us to make our work more fruitful.

**Reinsurance:**
With access to Lloyd’s we arrange Marine Insurance and Reinsurance Cover for a wide range of companies engaged in the Marine and Cargo Transportation sector. Using our in-house experience of this complex insurance market we deliver a knowledgeable yet personal service to our clients to ensure their specific requirements are met for the following classes of marine business;
Hull and Machinery, Protection and Indemnity, Cargo, War Risks and Loss of Hire, as well as Charterers’ Liabilities. We also have expertise in coverage for Subsea Cables, Overside Equipment, Ports, Terminals, Shipbuilders/Repairers and other “water edge” business’. These insurances will include Builders’ Risks and Ship Building Credit risks.

With well established connections at Lloyd’s we can create tailor-made policies to address the very wide and sometimes exceptional needs of our clients, whether to protect large commercial ships, cargo vessels, shipping agents, shipping manufacturers or other related risks.

**Reinsurance** is insurance that is purchased by an insurance company (the "ceding company" or "cedant" or "cedent" under the arrangement) from one or more other insurance companies (the "reinsurer") as a means of risk management, sometimes in practice including tax mitigation and other reasons described below. The ceding company and the reinsurer enter into a reinsurance agreement which details the conditions upon which the reinsurer would pay a share of the claims incurred by the ceding company. The reinsurer is paid a "reinsurance premium" by the ceding company, which issues insurance policies to its own policyholders.

The reinsurer may be either a specialist reinsurance company, which only undertakes reinsurance business, or another insurance company.
For example, assume an insurer sells 1000 policies, each with a $1 million policy limit. Theoretically, the insurer could lose $1 million on each policy – totaling up to $1 billion. It may be better to pass some risk to a reinsurer as this will reduce the ceding company's exposure to risk.

There are two basic methods of reinsurance:

1. **Facultative Reinsurance**, which is negotiated separately for each insurance contract that is reinsured. Facultative reinsurance is normally purchased by ceding companies for individual risks not covered, or insufficiently covered, by their reinsurance treaties, for amounts in excess of the monetary limits of their reinsurance treaties and for unusual risks. Underwriting expenses, and in particular personnel costs, are higher for such business because each risk is individually underwritten and administered. However as they can separately evaluate each risk reinsured, the reinsurer's underwriter can price the contract to more accurately reflect the risks involved.

2. **Treaty Reinsurance** (not to be confused with the Reinsurance Treaty) means that the ceding company and the reinsurer negotiate and execute a reinsurance contract. The reinsurer then covers the specified share of all the insurance policies issued by the ceding company which come within the scope of that contract. The reinsurance contract may oblige the reinsurer to accept reinsurance of all contracts within the scope (known as "obligatory" reinsurance), or it may require the insurer to give the reinsurer the option to reinsure each such contract (known as "facultative-obligatory" or "fac oblig" reinsurance).

There are two main types of treaty reinsurance, proportional and non-proportional, which are detailed below. Under proportional reinsurance, the reinsurer's share of the risk is defined for each separate policy, while under non-proportional reinsurance the reinsurer's liability is based on the aggregate claims incurred by the ceding office. In the past 30 years there has been a major shift from proportional to non-proportional reinsurance in the property and casualty fields.

Almost all insurance companies have a reinsurance program. The ultimate goal of that program is to reduce their exposure to loss by passing part of the risk of loss to a
reinsurer or a group of reinsurers. In the USA, insurance, which is regulated at the state level, permits an *insurer* only to issue policies with a maximum limit of 10% of their surplus (net worth), unless those policies are reinsured. In other jurisdictions allowance is typically made for reinsurance when determining statutory required solvency margins.

**Risk transfer**

With reinsurance, the *insurer* can issue policies with higher limits than would otherwise be allowed, thus being able to take on more risk because some of that risk is now transferred to the reinsurer. The reason for this is the number of insurers that have suffered significant losses and become financially impaired. Over the years there has been a tendency for reinsurance to become a science rather than an art: thus reinsurers have become much more reliant on actuarial models and on tight review of the companies they are willing to reinsure. They review their financials closely, examine the experience of the proposed business to be reinsured, review the underwriters that will write that business, review their rates, and much more. Almost all reinsurers now visit the insurance company and review underwriting and claim files and more.

**Income smoothing**

Reinsurance can make an insurance company's results more predictable by absorbing larger losses and reducing the amount of capital needed to provide coverage. The risks are diversified, with the reinsurer bearing some of the loss incurred by the insurance company.

**Surplus relief**

An insurance company's writings are limited by its balance sheet (this test is known as the solvency margin). When that limit is reached, an *insurer* can do one of the following: stop writing new business, increase its capital, or (in the USA) buy "surplus relief".

**Arbitrage**

The insurance company may be motivated by arbitrage in purchasing reinsurance coverage at a lower rate than they charge the insured for the underlying risk, whatever the class of insurance.
In general, the reinsurer may be able to cover the risk at a lower premium than the insurer because:

- The reinsurer may have some intrinsic cost advantage due to economies of scale or some other efficiency.
- Reinsurers may operate under weaker regulation than their clients. This enables them to use less capital to cover any risk, and to make less prudent assumptions when valuing the risk.
- Reinsurers may operate under a more favourable tax regime than their clients.
- Reinsurers will often have better access to underwriting expertise and to claims experience data, enabling them to assess the risk more accurately and reduce the need for contingency margins in pricing the risk.
- Even if the regulatory standards are the same, the reinsurer may be able to hold smaller actuarial reserves than the cedant if it thinks the premiums charged by the cedant are excessively prudent.
- The reinsurer may have a more diverse portfolio of assets and especially liabilities than the cedant. This may create opportunities for hedging that the cedant could not exploit alone. Depending on the regulations imposed on the reinsurer, this may mean they can hold fewer assets to cover the risk.
- The reinsurer may have a greater risk appetite than the insurer.

**Reinsurer's expertise**

The insurance company may want to avail itself of the expertise of a reinsurer, or the reinsurer's ability to set an appropriate premium, in regard to a specific (specialised) risk. The reinsurer will also wish to apply this expertise to the underwriting in order to protect their own interests.

**Creating a manageable and profitable portfolio of insured risks**

By choosing a particular type of reinsurance method, the insurance company may be able to create a more balanced and homogeneous portfolio of insured risks. This would lend greater predictability to the portfolio results on net basis (after reinsurance) and would be
reflected in income smoothing. While income smoothing is one of the objectives of reinsurance arrangements, the mechanism is by way of balancing the portfolio.

**Maritime Frauds: Cargo Loss control and prevention:**

On a fine November afternoon in 1992, Italian coastguards found two inflatable rafts by a sinking 76-foot luxury cruiser. Three Americans on board told them they had managed to escape after their crew had mutinied, left the yacht in a speedboat after holing it, locking up the Americans to perish with the yacht. In spite of the coastguards’ attempts to save the yacht, it was eventually lost.

Among the three Americans was Beverly Hills attorney Rex DeGeorge, born Angelos Michael Karageorge on the island of Rhodes. The yacht turned out to be M/Y Principe, owned by Polaris Picture Corporation in which DeGeorge had a leading interest and to which he had recently sold the new-built 1.9 million yacht for 3.6 million US dollars, for which amount the yacht was insured with Cigna Insurance Co.

Totally discarding the explanation of the sinking, Cigna refused to pay and was sued by Polaris. As a result of dogged research, Cigna could show the following background to the Principe sinking.

In 1970, DeGeorge had been trying to sell his 43 foot yacht Tutania to some Peruvian coffee merchants, whom he took out to sea for a nocturnal test-run. Some 35 miles off the Shore DeGeorge with a companion were purportedly drugged but managed to escape and Return to the shore by the yacht’s dingy. The yacht was never seen again, but DeGeorge was well protected by a high insurance cover.

Six years later, DeGeorge was night sailing along the Italian coast with a friend in a new yacht, the Epinicia, when suddenly they struck a “low-profile dark object” in the water, which caused the yacht to sink in about twenty minutes, while DeGeorge and his friend escaped in a dinghy which he had fortunately just bought? After a threatened lawsuit his Lloyd’s insurers paid the insurance amount in full.

In 1983, De George was sailing with his wife off the Californian coast in their new 47-foot Sea Crest II, when he saw a suspicious looking fishing boat circling the yacht, whereupon explosions began to rock the yacht, which sank in about half an hour. DeGeorge and his wife escaped in the dinghy. DeGeorge reported to his insurers that he had had murder threats but did not report the matter to the police. He received the full
amount of the insurance. In addition, Cigna insurance could substantiate eight other cases of claims for various items of valuable property stated to have been lost or stolen as well as twenty-nine insurance disability claims.

Altogether, the circumstances surrounding this new sinking were such that neither the District Court nor, on appeal, the Ninth Circuit Court of Appeals had any difficulty determining that this time there could be no recovery.

**Fraud risk**

It may be tempting for ship owners with strained economy to use high valuations to overcompensate the loss of their vessels. As the premium in such cases is correspondingly high, an attendant danger lies in the ship owner’s obvious interest in seeing that a loss covered by the insurance occurs before substantial premiums have been incurred. Fraud by the assured or on his account will of course never be covered, but how to cope with it is a harder question, and the first problem is to determine the burden of proof.

There is nothing new about maritime crime as a phenomenon, but recent years have seen a constant flux in the dynamics of maritime fraud. The fashionable fraud of yesterday may or may not be perpetrated without any variation today, depending almost entirely on the state of the world economy.

This flux strongly suggests some form of concerted action on the part of an organized syndicated group. Maritime crime has become an area of large scale organized activity and will be closely examined in a follow-up article.

It may be said that here is no existing universal legal definition of maritime fraud, largely due to the fact that rather than being a specific entity, maritime fraud is a collective term easier to recognize than to define. Yet, defining maritime fraud is necessary to provide some guidance in this journey into the murky depths of the world of international maritime fraud.

One possible way of defining maritime fraud will involve defining fraud in general, and then applying a specific maritime case to such a definition. But to view maritime fraud merely as an aspect of fraud is not as simple as at first appears, since the danger exists that one may lose sight of the complexities of the peculiar world of shipping. Any
discussion on the topic of maritime fraud must of necessity take these complexities into account.

Investigating some of the existing definitions would, not only be prudent but very necessary. The International Maritime Bureau (I.M.B.) defines maritime fraud as follows:

'An international trade transaction involves several parties - buyer, seller, shipowner, charterer, ship's master or crew, insurer, banker or agent. Maritime fraud occurs when one of these parties succeeds, unjustly and illegally, in obtaining money or goods from another party to whom, on the face of it, he has undertaken specific trade, transport and financial obligations.

Quoting a number of decisions, Peter Kapoor identifies some of the elements of fraud as follows:

'a) loss or injury to, prejudice or deprivation of property or proprietary rights, b) loss suffered due to deceit, fraudulent misrepresentation, concealment or an act of deliberate dishonesty, and c) the injured party must have acted on the deception or falsehood.' Kapoor then goes on to define maritime fraud as follows:

'Maritime fraud is a generic term commonly used to describe the obtaining of money, or services, or property in the goods, or a pecuniary advantage by one or more parties to a transaction from the other party or parties, by unjust or illegal means.'

These definitions provide excellent guidance, but are wide enough to include maritime crime as well as maritime fraud. They cover, in addition to fraud the commission of a wide array of potential crimes such as theft, duress, undue influence and even extortion. For the purpose of this study, it is necessary to narrow the scope of the above definition to include fraud only. Central to a true fraudulent act must inevitably be the presence of deceit or misrepresentation.

And it is this element of deceit, of convincing the victim party to do, or to abstain from doing something resulting in the latter's pecuniary loss which distinguishes fraud from theft and other related crimes.
In the light of the above, and as a general guide, it would be better to define maritime fraud as follows:

Maritime fraud occurs when, in a maritime context, one party knowing it to be false, and with the intention of obtaining an illegal benefit, makes a misrepresentation to another party who, believing it to be true, acts upon the misrepresentation to his or her potential detriment, or to the potential detriment of an innocent third party or parties.

The misrepresentation may take any form, it may be by word or deed, written or implied, by way of affirmation or denial and may even be constituted by an omission in appropriate circumstances.

It is of paramount importance to couch any definition in as wide a term as possible, in an attempt to cover the great diversity of acts amounting to maritime fraud. At the same time, it is necessary to narrow the definition, so as to exclude any act not amounting to fraud. In terms of the above definition, the basic requirement establishing fraud is the making of a fraudulent misrepresentation.

This could be by way of a positive act or omission knowingly made, which could lead to the potential detriment of any innocent party. It is submitted that this definition is both specific and wide enough to include all possible acts of maritime fraud. It is in addition, fully in step with the law of misrepresentation as applied in England.

It cannot be emphasised enough however, that any definition of maritime fraud should have the sole function of clarifying issues and creating a better understanding of the topic, rather than providing some kind of a legal test. Maritime fraud should be seen as a collective term covering phenomenon which may or may not be defined as an offence in a given legal system. Alternatively, its occurrence may simply expose the limitations of another legal system.

**Cargo Loss Control and Prevention:**

With extended supply chains and global security concerns, the safe and efficient transportation of cargo around the world is an increasingly difficult and complex process. At almost every stage of the transit chain your cargo will inevitably be exposed to risk. Identification and assessment of these risks are vital to the development of an effective cargo loss control strategy.
MMK Loss Control is a viable solution for reducing and preventing losses, protecting assets and enhancing reputations, focusing upon the analysis of cargo exposure during critical transfer points, staging, storage and throughout the transportation chain.

- Cargo Loss Control
- Marine Loss Prevention
- Global Infrastructure Projects
- Corporate Risk Consultancy
- Transportation & Supply Chain Security
- Education, Training and Information Services

It has long been recognised that the need exists for a specialised Cargo Loss Control unit to be established in a bid to reduce or eliminate entirely the losses and subsequent claims traditionally associated with Bulk Cargoes - whether dry bulk or petroleum.

With this in mind Marine Risk Management S.A. was established in 1986 in order to combat such losses - from whatever source - and to guard and protect Clients' interests at all stages of the cargo custody transfer procedure.

It is a further belief that such procedures - and the ongoing development of new techniques - can only adequately be performed by highly skilled, qualified professionals possessing not only extensive shipborne experience as Senior Officers, but also possessing commercial characteristics and awareness. Such a mix clearly implies a thorough understanding of operational matters at all stages, together with the all-important understanding and appreciation of Clients' requirements.

Since inception, the successes recorded on behalf of Clients have proved highly encouraging. Losses have been significantly reduced, and (in the case of petroleum cargoes) diversion of cargo to bunker tanks prevented, mismeasurement (deliberate or otherwise) avoided both ashore and onboard, and several attempts at cargo theft thwarted. So far cargoes handled on behalf of important Producers, Traders and Oil Majors include Crude Oils, Petroleum Products, Chemicals, Fertilisers (liquid and bulk), Grains and Ores. Geographically, MRM operates from Egypt westward, encompassing the Black Sea, Mediterranean, Europe, South America, and along the eastern seaboard of the United States. Clients are located in Italy, Switzerland, UK, France and USA.
In addition to providing an effective service MRM prides itself on its quality and speed of response, together with ongoing backup usually at no extra cost. Basic data in standard format is normally e-mailed within two or three hours of completion of the loading or discharge operation, whilst every effort is made to have the full (and extremely comprehensive) report on Clients' desks within 3 days of completion.

The MRM superintending function necessarily includes a most detailed comprehensive and conscientious survey, often rendering it unnecessary to appoint additional "independent surveyors" who may often be restricted in their actions - and indeed by their capabilities and experience.

As has already been indicated, quality of service is considered of utmost importance. In addition to ensuring prompt arrival at each assignment in sufficient time to undertake all necessary terminal investigations (and, of course, conducting similarly thorough completion observations), Superintendents remain in exclusive attendance throughout the entire loading or discharge operation. No dilution of effort to attend other vessels is permitted, thus ensuring complete and uninterrupted control and supervision throughout and total protection of Clients' interests in a manner not normally experienced.

The comprehensive nature of the Superintendent’s duties includes exhaustive survey procedures as an integral function. Close attention is always paid to sea valves, pumping procedures and, of course, bunkers in the case of tanker operations, whilst the most up-to-date and extensive techniques (developed by MRM) are employed to ensure a high degree of draft survey accuracy in the case of dry bulk shipments.

Such highly individual and exclusive attention is followed up with rapid reporting procedures which ensure Clients are kept fully advised at all times. Whilst MRM has standardized certain aspects of data transmission, the flexibility of our procedures allows adoption of Clients' own particular requirements, thus providing a personalized, exclusive and highly professional approach to the protection of Clients' interests.

Loss control, or damage prevention, is a normal activity in such areas as property, casualty, business interruption, health, aircraft and vessel underwriting; however, it is not widely used in the cargo underwriting. While some marine cargo underwriters do have a
Loss Control Department many other underwriters base their rates or premiums on "Loss Experiences" only.

During the last decade a large percentage of marine cargo policies written were so-called "warehouse to warehouse" policies, which policies increased underwriter's exposure significantly.

Preparation of shipments historically was always performed by the "maritime industry" such as steamship companies, long shore labor, Freight stations and other Port facilities.

For various reasons, including the development of containerization, preparation of shipments, as well as packaging and stowing of cargos in containers, is now often performed by shippers and/or their representatives. Many of these shippers and/or their representatives, however, are not familiar of the exposure to various rigors of transit, such as ocean, rail, truck and barge and often cargo damages are already experienced prior to loading a shipment aboard the ocean vessel.

In addition to the above changes, industries also have adopted the Japanese operational method of not having any supplies in stock unless needed (just in time delivery). This resulted in wood products used for packaging, blocking or bracing only being ordered and delivered to shippers at the time same was needed. As a result often "Green Lumber" is used in the packaging and/or blocking and bracing of cargo in ocean containers which, of course, invites sweat damages to cargo during the transit period which is specifically detrimental to electronic goods.

While there is still some apprehension within the marine industry towards loss control, we should realize that in other areas of underwriting this is an adopted and common practice. One could compare loss control to the annual medical checkup. If an adverse medical condition is noted, preventive steps are undertaken which improves the life expectancy of the patient.
Of course, practicing or providing loss control services does not guarantee that shipments cannot be damaged in transit; however, the odds are much better that a shipment arrives in a sound condition.

It has been our experience that the higher the value of the shipment or the more complicated the design of the shipment is, the least attention is paid towards damage prevention. Often the responsibility of a shipment is given to a design or technical engineer who considers the preparation and packaging of this shipment to be only a secondary function or responsibility.

We show hereunder some common errors made in packaging/preparation of shipments.

1. Improper and/or insufficient packaging material used [example: "Green Lumber").
2. Insufficient or non-existent protection against moisture damages, such as waterproof linings, plastic sheeting, desiccant, etc.
3. Insufficient or non-use of shock absorbing materials in packaging.
4. Insufficient or non-use of international warning labels and signs.
5. Improper or non-use of "G-meters", "Tip n’ Tells" or similar devices.
6. Insufficient or non-existence of blocking, bracing and securing of cargo within ocean containers.

Also, due to the development of containerization, the proper handling of special cargoes, such as heavy lifts and/or volumes equipment, is often inadequate due to lack of experience of handling such cargoes aboard ocean vessels, which can result in transit-related damages due to improper handling end/or insufficient blocking, bracing and/or securing of cargo in stow.

High value cargoes often experience losses due to theft or pilferage. Again, losses can be minimized in the use of a loss control service.
Surveyors providing loss control services should, of course, not only be familiar with the commodity being shipped, but also be familiar with the trade routes, both ocean and inland, as well as the climatic exposures during the transit period.

**Theft:**

Thefts and misappropriations are very common in any industry. Marine industry is certainly no different. At various times, incidences of frauds, thefts, misappropriations of funds and manipulations come forth. Some are minor while others really make an impact on the world. Sometimes, we come across frauds of a scale that has made economists and experts of the marine industry sit and think about the technical aspects, needs and circumstances of such frauds. Here is a sneak peek into what probably goes on behind such frauds.

Thefts by owners are often related to cutting down costs of running the ships. This mainly comes in the form of saving or misappropriating fuel costs. The owners generally have a program for recovering slops and ROB cargo for use as a fuel. However, this otherwise legal procedure becomes a theft when the cargo becomes unsafe for use or the quantities of ROB are artificially being increased on the ship.

This can be done using poor discharge techniques. The owner is responsible for such a theft by encouraging the ship’s crew to increase the amount of ROB at completion of the discharge. Sometimes, they also edge the crew to sell off the cargo en route. And the benefits for the crew for such misappropriations come in form of promises for employment extension, better facilities and cash payments.

Sure, some thefts like these might pay off or look promising to begin with. But they always run a short course. Such tasks are often easily picked up by the vigilance authority and a suitable action against the owner always ensues.

Another clever way of cargo theft is to manipulate cargo calculation on board to be able to wade of a subsequent theft. Crew members pull this theft off by preparing a separate set of ullage tables for the ship’s tanks. These tables necessarily show lesser amount in the tanks than the true quantity. At the discharge port, these tables are presented for cargo calculation. This makes it appear that no cargo has been taken off the tanks when in
reality it is being concealed. Clever as this feat might be, port vigilance staff can easily prevent such a theft by ensuring an imprint of independent petroleum inspection accompanied or other such authorities on the allege tables.

Crew mediated thefts
Sometimes crew members can also mix up their intentions leading into crimes. Thefts by crew members are just as common. Many times, master and officers of a tanker sell off a cargo while en route without authorization from the owner.
This makes for a serious crime and can easily be detected by owners or the managers. Besides, the money made this way is barely enough to grease palms of all those involved. That too, makes it much easier to detect such thefts.
Careful crew selection is fairly important to be able to prevent being skimmed off by crew in charge of the tanker. This is often contradicted by the recruitment policy that focuses more on getting the cheapest employment available.
In such circumstances, it comes as no surprise that employees turn to not so justified means for some extra money. As such, it becomes necessary to carefully select the staff before they are made responsible for anything at all. And since this kind of theft directly hampers with the company and the owner’s image too, it becomes further more important for proper employment practices t be used.

Detection and the aftermath
As it has been made clear, detection of any of these thefts is fairly easy and quick. With improving vigilance, theft and fraud detection has only become quicker and more efficient. Besides the owners’ discretion, independent surveyors and out-turn audit specialists are also involved on a routinely basis for close inspection of cargo shipment. The performance is closely watched, noted and evaluated to spot any anomaly in the functioning.
Computers have made this job further easier as they are now capable of performing extremely detailed ship analysis. With help of these computers and automation systems, performance of everything from individual fleet to a particular company can be evaluated uniformly. Under these evaluations, outrun results of same cargoes going over the same
routes are closely monitored. The institute of Petroleum guide had earlier set an allowance limit between 0.5% to 0.63%. But this limit is no longer acceptable by most cargo owners and clients.

With increased knowledge of risks involved in the same, both owners and clients are aware of the extent of damage that can be expected on a typical cargo voyage. Anything outside that limit can be claimed for. At present, these voyage losses have been placed between 0.35% to 0.15%. The amounts available between best outrun performance and acceptable loss allowance lies around 2000 bbl on a 250,000 DWT tanker. A crew can make a maximum of $20,000 by sneaking this much cargo. Compared against the odds of losing their job, reputation and seriously jeopardizing all future prospects, the sum turns out to be quite negligible.

Since the detection of such cons is extremely easy now, the aftermath is not pretty at all. A cargo theft can lead to loss of career to loss of life in some cases. When crude oil is diverted for use as fuel, the low flash point can lead to engine room fires along with explosions. Such a ship, if in port, will be evicted from the port and the fuel will be removed. This is followed by cleaning the tanks of any remnant fuel or gas. Such an incident leads to strict action against the chief engineer who was in charge of the ship carrying low flash point fuel.

Similar actions are taken against crew involved in cargo theft or fraud. The action involves suspension or revoking license of the engineer, not to mention serious damage to his position in the industry. Penalties are also imposed in case a ship with false cargo allege tables is found. But here, depending on the members involved, responsibility may be borne by the owner of the crew members. In case the chief officer is found guilty of the crime, an arrest can be made for the same. Besides, a fine of USD 250,000 can be imposed on the owner for carrying allege tables on board that did not belong to that ship. Even though at times, thefts and fraud may seem like the easier way out, it becomes clear now that they run an extremely short course. The prudent thing to do will be to stay clean from such thefts. It’s always better to shut a business that no longer is beneficial instead of having to resort to such thefts to cover losses because what remains in end is only the mess to deal with and certainly no gains.
Historically, before there were cargo containers, a practice of theft existed on the docks called "setting aside" which involved a stolen box of merchandise given to the longshoreman supervisor. Patrick Colquhoun first noticed it and other forms of systematic theft among dock workers in 1806. A longshoreman is a dock worker, also called a stevedore, laborer, or wharfie. Traditionally, stevedores would have no fixed job and turn up at the docks in the morning hoping to find someone willing to employ them for the day, and union reps would do the hiring. In America, the labor movement started on the docks. The earliest and biggest union is the ILA (International Longshoremen's Association), founded in 1864, who have some 200 union chapters up and down the East Coast. Their history includes some intermingling with the Wobblies (Industrial Workers of the World), a subversive, socialist, anarchist group. The second biggest union is the ILWU (International Longshore and Warehouse Union), founded in 1934 with some 60 chapters controlling the West Coast and Canada. They are known for going on strike in a heartbeat, and have been investigated by governments for communist infiltration repeatedly. The third biggest union is the Teamsters, founded in 1903, who in terms of controlling ports, pretty much own the Deep South. They are known as the most corrupt union in history. The culture of theft (or bribery) is closely tied to union history, and mostly likely predates it.

The culture of cargo theft also exists wherever "break-bulk" packaging occurs, which means whenever large bulks of cargo are broken down into smaller pieces or boxes on a pallet-by-pallet basis. It's at this point where many workers help themselves to small appliances, electronics, clothing, engine parts, liquor, cosmetics, and cigarettes. Some workers steal to add "invisible wages" to what they consider a low salary; others are more predatory and sell stolen items out of the trunks of their cars. There is an unwritten code about how far one should go in "fiddling" with the system (Mars 1974). McNicholas (2008) seems to think ten items per employee is the limit. Small-time pilferage also has its own underground currency; e.g., whenever a worker finds a smuggled drug item, the drug packets are traded for other items of value, like computer chips. Organized crime goes bigger, stealing either whole pallets or whole containers. This takes collusion, alteration of the manifest, fraudulent paperwork, and a network for fencing merchandise. The FBI estimates that stolen cargo only remains in possession of
organized crime thieves for less than 24 hours. Organized crime is also heavily involved in the hijacking of cargo while in transit by truck or rail to its final destination. GPS tracking has helped somewhat with this, but it still goes on. The organized crime group can involve the collusion of only a few port employees or the entire operation can be an organized crime group of all employees. McNicholas (2008) estimates that 80% of cargo theft is of the former variety. With the latter, the most common method is "sidetracking" which is done by offloading a container to a different warehouse or someplace else in the terminal so that it gets written off as a loss by the consignee, and after a period of time, it legally belongs to the carrier who can liquidate it or auction it off. Thieves have gotten good at removal of all or parts of container doors so that the seals and locks do not appear to have been disturbed.

**Pilferage**

Pilferage means the stealing of inventory, or shoplifting. Pilferage also means insurance provided for marine goods, however not necessarily provided by the standard policies.

Petty theft, particularly theft of articles in small batches. It's associated with the insuring of cargo under an inland marine insurance form.

One of the most serious problems which shippers and marine underwriters encounter is the ever-increasing amount of theft and pilferage from cargos of merchandise. The situation has become so serious that insurance experts in all civilized countries are considering ways and means of correcting it.

Pilferage is usually means theft of part of contents. Theft clauses commonly include provisions excluding liability where the theft is surreptitious and without forced entry or violence.

**Institute of insurance:**

ICC Institute Cargo Clauses
Handling and Stowage Damage:

Nearly half of all transportation losses are due to handling, storage or stowing problems. Examples of this are:

- Rapid acceleration or deceleration while hoisting
- Turning or lowering goods during loading or unloading
- Failure of handling equipment
- Failure of equipment such as lift trucks, cranes or porticoes during lifting
- Rough handling / incorrect stowage

Damage can be caused when inadequate equipment is used to move the goods or the operators of the equipment lack the necessary training to use it correctly. When heavy packages are stowed on top of lighter ones damage is almost inevitable.

Two examples we have seen recently:

*Exceeding the limit of stacking containers:*

A maximum of nine full containers can be stacked. The most recent open container ships (ships where the deck is eliminated) can receive up to 13 stacked containers. There is thus a risk of crushing the container at the bottom of the pile.
Crushing goods by overloading:
This can be due to errors in the declaration of weight or to intentional overloading in an attempt to save money. Shipping lines regularly discover discrepancies of as much as 10%.

MULTI-MODAL CONTAINERIZATION:
The two principle challenges facing shippers are to satisfy both the customer and the shipper. The customer requires a secure and reliable method of carriage whilst the shipper requires that the space on his vehicle of carriage is fully utilised in order to receive maximum freight. To achieve compatibility between cargo owners and the owners of the means of transport requires knowledge of the cargo-handling procedures in transport. These procedures are described with reference to major characteristics of Commodities and cargoes.

The methods of cargo carriage and packaging must be considered at the very outset of the shipping process. The size and quality of packages must be compatible with the transport technology contemplated, e.g. utilization of containers depends on positioning packages to avoid empty space. Hence, the considered transformation of commodity to cargo carries significant commercial, operational and economic impact. Space with a container is not just loss of revenue but poses the danger of goods shifting during transit and so sustaining damage.

Basically, packaging performs the following three basic functions, which we may call the three P’s of packaging, namely: protection, preservation and presentation. A package should protect and preserve the contents during storage and transit from the harvesting (for agricultural products), manufacturing (for manufactured goods) or mining (for ore or other mineral products), to the consuming centre. Protection is required not only against loss, damage and pilferage, but also, depending on the nature of the contents, against moisture entering or leaving the package, high or low temperatures, light, gases, insect infestation, contamination and other natural hazards.

General cargo moving between developed countries today is usually containerized and carried on cellular container or Ro/Ro vessels. So just what is the difference when we refer to containerized cargo?
Almost any commodity can be containerized. The great advantages to the industry with containerization are that the cargo is not man handled on and off the ship; instead the container is handled with fast and sophisticated handing equipment. Naturally in developed countries where labor is expensive significant savings can be made, less so initially for developing countries but over time as they become developed this will change.

The cargo itself therefore needs less protective packaging. The cargo can be stowed in the container away from the wharf, often by the shipper himself. The containers fit into predetermined positions on board ship, complicated stowage planning are not necessary. Documentation and identification of cargo is simplified as the container number replaces the cargo mark. Computers and electronic data interchange now play a large part in ensuring the correct cargo movement, there is no need to tally the cargo.

The containers themselves are owned or leased by the shipping companies and are responsible in ensuring that sufficient empty units are available for shippers at the load ports. To achieve this often large quantities of empty units are carried at the ship owners expense to high demand areas. The containers themselves were originally designed to fit international standards of specific sizes. However, ship owners have pushed the actual dimensions of the units to their absolute limits; consequently there are a variety of heights, widths and even lengths of units in the system today.

Compared with general cargo carried break bulk, cargo damage in containers is considerably reduced, however, it still exists. Some of the more common forms of damage are explained below.

- Cargo not properly secured or trimmed-off within the container will damage either due to heavy rolling of the ship or from shunting if transported by rail. The further a container is stowed away from the ship's centre of motion the greater will be the acceleration forces on the cargo and therefore the greater risk of damage in heavy weather.
- Water damage can be expected if the container has a leaking roof, although the majority of water damage sustained by a substandard box is caused at the terminal
while the container is waiting in the stacks. Water damage on board is usually caused by a flooded hold due to blocked bilges or a leaking ballast tank. Another source of water damage is often caused when a container is stowed outside on deck where the seas can reach the underside of the unit.

- Refrigerated cargo damage can occur due to a malfunction of refrigeration machinery, or through a hot spot within the container due to insufficient cold air circulation in the stow caused by poor packing or lack of adequate separation through the stow.

- Container and cargo within the container can be damaged due to inappropriate or inadequate securing arrangements when containers are stowed on deck. Despite cargo being stowed in containers it is still possible for some products to taint due to being stowed in close proximity of badly smelling cargoes. Foodstuff stowed close to wet salted hides is a classic example.

- Some cargoes can spoil in the close confines of a container due to lack of ventilation. Sweat damage is as much of a problem with some containerized cargoes as it is with some general cargoes in an open hold.

- To prevent damage to container roof top, accurate positioning of quay crane’s spreader is very important. Pilferage can still take place with containerized cargo. Despite the fact that the door leaves are sealed it is still possible for the doors to be sprung open with the use of heavy machinery, individual items within the container can then be stolen and the doors sprung shut without the door seal being broken.

**Cargo Handling**

The techniques of cargo handling have, at least in ocean transport, developed considerably over the last decades. This is particularly due to:

(a) Technological advances in ship design and lifting equipment

(b) Rapid development and increase in the tonnages of bulk cargo

(c) The impact of unitisation, and

(d) The new and modern techniques of refrigeration, particularly with container carriage.
It is shippers, as a group, which has been influencing these developments. The requirements for efficient transport have led the transport industry, port authorities, ship owners etc., to develop new concepts for ship technology and cargo handling. It is up to the individual shipper to utilize the available methods of transport and cargo handling, in order to be competitive in the international markets. As a minimum, requirements must be properly defined by shippers so that the most appropriate services may be made available by the carrier.

The shipper will have to prepare consignments for transport. The handling and storage of cargo is not his immediate responsibility, but as it will influence the total transport cost and quality, shippers' will have to ascertain that the best available methods are provided and used. While in transit, commodities are represented by documents. It is in the shipper's interest to see to that the paper work is handled efficiently.

**Cargo stowage**

The ship owner is generally responsible for the stowage of cargo onboard the vessel. In the handling of stowage and carriage of cargo, the following general principles will apply:

1. The safety of ship and crew
2. The safety of the cargo
3. The highest possible port speed
4. The most efficient use of space

When loading a general cargo at a variety of ports for a variety of ports, the problem of where to place the individual cargoes must be solved to secure minimum time in port. The cargo must be stowed in reverse order of the intended discharge to avoid rearrangements of the consignments. At the same time the amount of unused space should be kept as low as possible to obtain the best economical use of the vessel. It is common to distinguish between horizontal and vertical stowage of general cargo in a ship. With horizontal stowage the cargo is spread over a relatively large area, while in vertical loading the consignments are stacked on top of each other so that space can be better utilised. Bulk cargoes present little difficulty in stowage, as they can fill up the holds as appropriate. In some cases the cargo needs to be trimmed, i.e. shovelled by hand.
from high piles in the centre of the hold to the perimeter so that the vessel can be filled up and best utilised.

The given stowage factor of a particular cargo will normally take what is called broken stowage into account. Broken stowage is space lost because of the shape of the cargo and/or particular requirements in regard to stowing it in the cargo holds. For example, there may be limitations on how many units or consignments which may be placed on top of each other. For homogeneous bulk commodities, broken stowage is usually small. For irregular packages, as often found in typical general cargo lot, it may be substantial.

The stowage factor of any cargo is the volume which a certain amount in weight of that cargo occupies. It is usually measures in cubic feet per long ton or alternatively in cubic meters per metric ton. If the stowage factor is 20, it indicates a heavy cargo. If it is 100, it indicates that the cargo is light.

The stowage factor is important for the loading of cargo in the various means of Transport, as it indicates the amount of the cargo which can go into the holds. Either the volume or the weight will be the limiting factor. The stowage factors of various products are given in published stowage tables.

While stowage of goods is important for the utilisation of space in containers and holds, packaging and stowage must also be carefully considered in relation to marketing and the needs and specifications of the customers as well as in relation to minimising damage.

**Cargo documents**

Goods are carried by sea under a contract of carriage between the shipper and the shipowner. The shipper may employ a forwarding agent to arrange the transport, while the Shipowner may employ a loading broker to control the allocation of space and advertise the service, and to make the loading arrangements and prepare documents on the ship owner’s behalf.

When a shipper wants to send a particular cargo with a particular ship on a scheduled service, a "shipping note" for the consignment is completed by the shipper and forwarded to the shipowner or his agent. This note will have to contain a brief description of the commodity. The loading broker then compiles a list of the consignments intended for
shipment, the booking list. This is sent to the ship to enable the Master to plan the stow and to the stevedore to arrange the loading. The shipper may receive a "booking note", which specifies that the carrier reserves space for a specified volume and kind of cargo in a named vessel between named ports. The broker may also issue a "calling forward notice" to the shipper, advising him of the time and place at which he is to deliver the goods.

When the cargo is delivered to the warehouse or to the ship, a receipt for that cargo must be obtained by the shipper. When the cargo is placed onboard, this is called a "mate's receipt". This receipt acknowledges that the goods have been loaded and have been properly and carefully handled, loaded and stowed. If there are any damages to the goods before loading, this will be recorded on the receipt, and it is no longer "clean".

In some trades, it is customary for the shippers to have a "boat note" following the cargo. When the "boat note" is signed by the cargo officer aboard the ship, it becomes a "mate's receipt". With many shipping companies it is the practice to give an official "mate's receipt" irrespective of the fact that a boat note may be provided by the shipper. Modern practice is to present a copy of the shipping note as the boat note, which when endorsed, become the "mate's receipt".

**Tight stowage**

This can be achieved by making the shape and the dimensions of the package an optimum module of the container or making the base of a unit load a module of the container.

**Restraint**

It is always necessary to restrain the cargo for one or more of the following reasons:

- To prevent collapse of the stow while packing, unpacking, or during transit (e.g., rolls of linoleum on end);
- To stop any movement during transit of part-loads or of single heavy items (e.g., large pieces of machinery) - the heavier the item the more damage it will do if allowed to move; and
Methods of securing cargo
The more common methods of securing cargo are:

Shoring - bars, struts and spars located in the cargo voids to keep the cargo pressed against the walls or other cargo. Lashing - ropes, wire, chains, strapping or netting secured to proper anchoring points and tensioned against the cargo.

Wedging - wooden distance pieces, pads of synthetic material, inflatable dunning to fill voids in the cargo and keep it immobile against the container walls.

Locking - cargo built up to give a three-dimensional brick wall effect.

Aids to good securing
There is no simple formula to follow when securing cargo. Each stow must be treated on its own merits - the type of cargo, the way it is stowed, the equipment available, or the permanent fittings in the container. But the following points should be borne in mind when applying restraint:

- Always use the built-in securing points which are provided. For obvious reasons comply with the safe loading limitation on the securing points.

- Any timber used - i.e., dunnage or filler pieces - should be dry. It may also have to comply with certain quarantine regulations in force.

- If nails have to be used to secure cargo to a wooden floor, they should only penetrate about two-thirds the thickness of the floor to achieve adequate grip without total penetration. Holes must not be drilled in walls or floor. Never use nails in a reefer container (a refrigerated container).

- Any shoring which presses against the container wall should have extra timber laid longitudinally between the wall and point of support to spread the weight over two or more side posts.

- Useful filler pieces for wedging or preventing rubbing, sometimes called chafe, are old tyres, paper pads softened by soaking (macerated) or, for light packages, rolled-up cardboard.
Unless an identical stow is anticipated on the return journey (known as a closed circuit operation) it is best if, when the lashing equipment is chosen, it is considered re-usable.

**Forms of Intermodalism**

The emergence of intermodalism has been brought about in part by technology and requires *management units* for freight such as containers, swap bodies, pallets or semi-trailers. In the past, pallets were a common management unit, but their relatively small size and lack of protective frame made their intermodal handling labor intensive and prone to damage or theft. Better techniques and management units for transferring freight from one mode to another have facilitated intermodal transfers. Early examples include piggyback (TOFC: Trailers On Flat Cars), where truck trailers are placed on rail cars, and LASH (lighter aboard ship), where river barges are placed directly on board sea-going ships. A unique form of intermodal unit has been developed in the rail industry, particularly in the US where there is sufficient volume. Road railer is essentially a road trailer that can also roll on rail tracks. It is unlike the TOFC (piggyback) system that requires the trailer be lifted on to rail flat car. Here the rail bogies may be part of the trailer unit, or be attached in the railway yard. The road unit becomes a rail car, and vice-versa. While handling technology has influenced the development of intermodalism, another important factor has been changes in public policy. Deregulation in the United States in the early 1980s liberated firms from government control. Companies were no longer prohibited from owning across modes, which developed a strong impetus towards intermodal cooperation. Shipping lines in particular began to offer integrated rail and road services to customers. The advantages of each mode could be exploited in a seamless system, which created multiplying effects. Customers could purchase the service to ship their products from door to door, without having to concern themselves of modal barriers. With one *bill of lading* clients can obtain one through rate, despite the transfer of goods from one mode to another. The most important feature of intermodalism is the provision of a service with one ticket (for passengers) or one bill of lading (for freight). This has necessitated a revolution in organization and information control. At the heart of modern intermodalism are data handling, processing and
distribution systems that are essential to ensure the safe, reliable and cost effective control of freight and passenger movements being transported by several modes. **Electronic Data Interchange** (EDI) is an evolving technology that is helping companies and government agencies (customs documentation) cope with an increasingly complex global transport system. Intermodal transport is transforming a growing share of the medium and long-haul freight flows across the globe where large **integrated transport carriers** provide door to door services, such as the high degree of integration between maritime and rail transport in North America. In Europe rail intermodal services are becoming well-established between the major ports, such as Rotterdam, and southern Germany, and between Hamburg and Eastern Europe. Rail shuttles are also making their appearance in China, although their market share remains modest. While rail intermodal transport has been relatively slow to develop in Europe, there are extensive interconnections between barge services and ocean shipping, particularly on the Rhine. Barge shipping offers a **low cost solution to inland distribution** where navigable waterways penetrate to interior markets. This solution is being tested in North America, although with limited success so far. The limits of inter modality are imposed by factors of space, time, form, pattern of the network, the number of nodes and linkages, and the type and characteristic of the vehicles and terminals.

**Containerization**

The driver of intermodal transportation has undoubtedly been the **container**, which permits easy handling between modal systems. While inter modalism could take place without the container, it would be very inefficient and costly. At start, a distinction is necessary between containerization and the container.

**Container**

A large standard size metal box into which cargo is packed for shipment aboard specially configured transport modes. It is designed to be moved with common handling equipment enabling high-speed intermodal transfers in economically large units between ships, railcars, truck chassis, and barges using a minimum of labor. The container, therefore, serves as the load unit rather than the cargo contained therein. The reference size is the 20 foot box, 20 feet long, 8'6" feet high and 8 feet wide, or 1 Twenty-
foot Equivalent Unit (TEU). Since the great majority of containers are now forty foot long, the term Forty-foot Equivalent Unit (FEU) is also used, but less commonly.

**Containerization**

Refers to the increasing and generalized use of the container as a support for freight transportation. It involves processes where the intermodal container is increasingly used because it either substitutes cargo from other conveyances, is adopted as a mode supporting freight distribution or is able to diffuse spatially as a growing number of transport systems are able to handle containers.

The usage of containers shows the complementarity between freight transportation modes by offering a higher fluidity to movements and a standardization of loads. The container has substantially contributed to the adoption and diffusion of intermodal transportation which has led to profound mutations in the transport sector. Through reduction of handling time, labor costs, and packing costs, container transportation allows considerable improvement in the efficiency of transportation. Thus, the relevance of containers is not what they are - simple boxes - but what they enables; intermodalism. Globalization could not have taken its current form without containerization. Intermodalism originated in maritime transportation, with the development of the container in the late 1960's and has since spread to integrate other modes. It is not surprising that the maritime sector should have been the first mode to pursue containerization. It was the mode most constrained by the time taken to load and unload the vessels. A conventional break bulk cargo ship could spend as much time in a port as it did at sea. Containerization permits the mechanized handling of cargoes of diverse types and dimensions that are placed into boxes of standard sizes. In this way goods that might have taken days to be loaded or unloaded from a ship can now be handled in a matter of minutes. Containers are either made of steel (the most common for maritime containers) or aluminum (particularly for domestic) and their structure confers flexibility and hardiness. The development of intermodal transportation and containerization are mutually inclusive, self strengthening and rely of a set of driving forces linked with technology, infrastructures and management. One of the initial issue concerned the different sizes and dimensions of containers used by shipping lines, which were a source of much confusion in compiling container shipping statistics. A lift could involve
different volumes since different box sizes were involved. As a result, the term TEU (Twenty foot Equivalent Unit) was first used by Richard F. Gibney in 1969, who worked for the Shipbuilding & Shipping Record, as a measure of comparison. Since then, the TEU remains the standard measure for containerized traffic. Another factor behind the diffusion of the container is that an agreement about its base dimensions and latching system was reached through the International Standards Organization (ISO) within 10 years of its introduction. From this standard, a wide variety of container sizes and specifications have been put in use. The most prevalent container size is however the 40 foot box, which in its 2,400 cubic feet which carry on average 22 tons of cargo. International containers are either owned by shipping lines that tend to use them as a tool to help fill up their ships or by leasing companies using containerized assets for revenue generation. In the United States, a large amount of domestic containers of 53 foot are also used. Double stacking of containers on railways (COFC: Containers On Flat Cars) has doubled the capacity of trains to haul freight with minimal cost increases, thereby improving the competitive position of the railways with regards to trucking for long-haul shipments. While it is true that the maritime container has become the work horse of international trade, other types of containers are found in certain modes, most notably in the airline industry. High labor costs and the slowness of loading planes, that require a very rapid turnaround, made the industry very receptive to the concept of a loading unit of standard dimensions designed to fit the specific shape of the belly hold. The maritime container was too heavy and did not fit the rounded configuration of a plane’s fuselage, and thus a box specific to the needs of the airlines was required. The major breakthrough came with the introduction of wide-bodied aircraft in the late 1970s. Light weight aluminum boxes, called unit load devices, could be filled with passenger’s baggage or parcels and freight, and loaded into the holds of the planes using tracking that requires little human assistance. Containerized traffic has surged since the 1990s, underlining its adoption as a privileged mean to ship products on international and national markets, particularly for non bulk commodities where the container accounts for about 90% of all movements. Containerization leans on growth factors mainly related to globalization, substitution from break bulk and more recently the setting of intermediate transshipment hubs. The diffusion and adaptation of transport modes to containerization
is an ongoing process which will eventually reach a level of saturation. Containers have thus become the most important component for rail and maritime intermodal transportation. The challenge remains about the choice of modes in an intermodal transport chain as well as minimizing the costs and delays related to moving containers between modes.

Advantages and Challenges of Containerization

Among the numerous advantages related to the success of containers in international and hinterland transport, it is possible to note the following:

- **Standard transport product.** A container can be manipulated anywhere in the world as its dimensions are an ISO standard. Indeed, transfer infrastructures allow all elements (vehicles) of a transport chain to handle it with relative ease. Standardization is a prevalent benefit of containerization as it conveys a ubiquity to access the distribution system and reduces the risks of capital investment in modes and terminals. The rapid diffusion of containerization was facilitated by the fact that its initiator, Malcolm McLean, purposely did not patent his invention. Consequently all segments of the industry, competitors alike, had access to the standard. It necessitated the construction of specialized ships and of lifting equipment, but in several instances existing transport modes can be converted to container transportation.

- **Flexibility of usage.** It can transport a wide variety of goods ranging from raw materials (coal, wheat), manufactured goods, and cars to frozen products. There are specialized containers for transporting liquids (oil and chemical products) and perishable food items in refrigerated containers (called "reefers" which now account for 50% of all refrigerated cargo being transported). About 1.6 million TEUs of reefers were being used by 2009. In many developing countries, discarded containers are often used as storage, housing, office and retail structures.

- **Management.** The container, as an indivisible unit, carries a unique identification number and a size type code enabling transport management not in terms of loads,
but in terms of unit. This identification number is also used to insure that it is carried by an authorized agent of the cargo owner and is verified at terminal gates. Computerized management enables to reduce waiting times considerably and to know the location of containers (or batches of containers) at any time. It enables to assign containers according to the priority, the destination and the available transport capacities. Transport companies book slots in maritime or railway convoys that they use to distribute containers under their responsibility. As such, the container has become a production, transport and distribution unit.

- **Economies of scale.** Relatively to bulk, container transportation reduces transport costs considerably, about 20 times less. While before containerization maritime transport costs could account between 5 and 10% of the retail price, this share has been reduced to about 1.5%, depending on the goods being transported. The main factors behind costs reductions reside in the speed and flexibility incurred by containerization. Similar to other transportation modes, container shipping is benefiting from economies of scale with the usage of larger containerships (The 6,000 TEUs landmark was surpassed in 1996 with the Regina Maersk and in 2006 the Emma Maersk surpassed the 14,000 TEU landmark). A 5,000 TEU containership has operating costs per container 50% lower than a 2,500 TEU vessel. Moving from 4,000 TEU to 12,000 TEU reduces operating costs per container by a factor of 20%, which is very significant considering the additional volume involved. System-wide the outcome has been costs reductions of about 35% by the use of containerization.

- **Speed.** Transshipment operations are minimal and rapid, which increase the utilization level of the modal assets and port productivity. A modern container ship has a monthly capacity of 3 to 6 times more than a conventional cargo ship. This is notably attributable to gains in transshipment time as a crane can handle roughly 30 movements (loading or unloading) per hour. Port turnaround times have thus been reduced from 3 weeks in the 1960s to less than 24 hours since it is uncommon for a ship to be fully loaded or unloaded along pendulum routes. It takes on average between 10 and 20 hours to unload 1,000 TEUs compared to between 70 and 100 hours for a similar quantity of bulk freight. With larger
containerships, more cranes can be allocated to transshipment. 5 to 6 cranes can service a 5,000 TEU containership implying that larger ship sizes do not have much differences in loading or unloading time. A regular freighter can spend between half and two-third of its useful life in ports. With less time in ports, containerships can spend more time at sea, thus be more profitable to operators. Further, containerships are on average 35% faster than regular freighter ships (19 knots versus 14 knots). Put all together, it is estimated that containerization has reduced travel time for freight by a factor of 80%.

- **Warehousing.** The container limits damage risks for the goods it carries because it is resistant to shocks and weather conditions. The packaging of goods it contains is therefore simpler, less expensive and can occupy less volume. This reduces insurance costs since cargo is less prone to be damaged during transport. Besides, containers fit together permitting stacking on ships, trains (double stacking) and on the ground. It is possible to superimpose three loaded and six empty containers on the ground. The container is consequently its own warehouse.

- **Security.** The contents of the container are anonymous to outsiders as it can only be opened at the origin, at customs and at the destination. Thefts, especially those of valuable commodities, are therefore considerably reduced, which results in lower insurance premiums. Theft was a serious issue at ports before containerization as longshoremen had ready access to cargo.

In spite of numerous advantages in the usage of containers, some challenges are also evident:

- **Site constraints.** Containerization implies a large consumption of terminal space. A containership of 5,000 TEU requires a minimum of 12 hectares of unloading space, while unloading entirely its containers would require the equivalent of about 7 double-stack trains of 400 containers each. Conventional port areas are often not adequate for the location of container transshipment infrastructures, particularly because of draft issues as well as required space for terminal operations. Many container vessels require a draft of at least 14 meters (45 feet).
A similar challenge applies to container rail terminals, many being relocated at the periphery of metropolitan areas. Consequently, major container handling facilities have modified the local geography of container by forcing relocation to new sites at the periphery.

- **Infrastructure costs.** Container handling infrastructures, such as gantry cranes, yard equipment, road and rail access, represent important investments for port authorities and load centers. For instance, the costs of a modern container crane (pertained) are in the range of 4 to 10 million $US depending on the size. Several developing countries cannot afford these infrastructures with local capital and so have difficulties to participate effectively in international trade as efficient load centers unless concession agreements are reached with terminal operators.

- **Stacking.** The arrangement of containers, both at terminals and on modes (container ships and double-stack trains) is a complex problem. At the time of loading, it becomes imperative to make sure that containers that must be taken out first are not below the pile. Further, containerships must be loaded in a way to avoid any restacking along its numerous port calls where containers are loaded and unloaded.

- **Thefts and losses.** While many theft issues have been addressed because of the freight anonymity a container confers, it remains an issue for movements outside terminals where the contents of the container can be assessed based upon its final destination. It is estimated that about 10,000 containers per year (27 per day) are lost at sea when they fall overboard containerships. Rough weather is the major cause, but improper container stacking also plays a role (distribution of heavy containers). Yet, the loss rate remains very low since 5 to 6 million containers are being transported at any given time.

- **Empty travel.** Maritime shippers need containers to maintain their operations along the port networks they service. The same number of containers brought into a market must thus eventually be relocated, regardless if they are full or empty. On average containers will spend about 56% of their 10 to 15 years lifespan idle or being repositioned empty, which is not generating any income but convey a cost that must be assumed in one way or the other. Either full or empty, a
container takes the same amount of space on the ship or in a storage yard and takes the same amount of time to be transshipped. Due to a divergence between production and consumption, it is uncommon to see an equilibrium in the distribution of containers. About 2.5 million TEUs of empty containers are stored in yards and depots around the world, underlining the issue of the movement and accumulation of empty containers. They represent about 20% of the global container port throughput and of the volume carried by maritime shipping lines. Most container trade is imbalanced, and thus containers "accumulate" in some places and must be shipped back to locations where there have deficits (mostly locations having a strong export function). This is particularly the case for American container shipping. As a result, shipping lines waste substantial amounts of time and money in repositioning empty containers.

- **Illicit trade.** By its confidential character, the container is a common instrument used in the illicit trade of drug and weapons, as well as for illegal immigrants. Concerns have also been raised about containers being used for terrorism. These fears have given rise to an increasing number of regulations aimed at counteracting illegal use of containers. In 2003, following US inspection requirements the International Maritime Organization (IMO) introduced regulations regarding the security of port sites and the vetting of workers in the shipping industry. The US, itself established a 24 hour rule, requiring all shipments destined for the US to receive clearance from US authorities 24 hours prior to the departure of the vessel. In 2008, the US Congress has passed a regulation requiring all US-bound containers to be electronically scanned at the foreign port of loading, prior to departure. Needless to say, these measures incur additional costs and delays that many in the industry oppose.

Yet, the advantages of containerization have far outweighed its drawbacks, transforming the global freight transport system and along with it the global economy.5. Intermodal Transport Costs There is a relationship between transport costs, distance and modal choice that has for long been observed. It enables to understand why road transport is usually used for short distances (from 500 to 750 km), railway transport for average
distances and maritime transport for long distances (about 750 km). Variations of modal choice according to the geographical setting are observed but these figures tend to show a growth of the range of trucking. However, intermodalism offers the opportunity to combine modes and find a less costly alternative than a unimodal solution. It is also linked with a higher average value of the cargo being carried since intermodal transportation is linked with more complex and sophisticated commodity chains. As a result, the efficiency of contemporary transport systems rests as much on their capacity to route freight than on their capacity to transship it, but each of these functions have a cost that must be reduced. The intermodal transportation cost implies the consideration of several types of transportation costs for the routing of freight from its origin to its destination, which involves a variety of shipment, transshipment and warehousing activities. It considers a logistic according to which are organized transport chains where production and consumption systems are linked to transport systems. Numerous technical improvements, such as river / sea shipping and better rail/road integration, have been established to reduce interchange costs, but containerization remains the most significant achievement so far. The concept of economies of scale applies particularly well to container shipping. However, container shipping is also affected by diseconomies involving maritime and inland transport systems as well as transshipment. While maritime container shipping companies have been pressing for larger ships, transshipment and inland distribution systems have tried to cope with increased quantities of containers. Thus, in spite of a significant reduction in maritime transport costs, land transport costs remain significant. Between half and two-third of total transport costs for a TEU is accounted by land transport. Public policy is also playing a role through concerns over the dominant position of road transport in modal competition and the resultant concerns over congestion, safety and environmental degradation. In Europe, policies have been introduced to induce a shift of freight and passengers from the roads to modes that are environmentally more efficient. Intermodal transport is seen as a solution that could work in certain situations. In Switzerland, for example, laws stipulate that all freight crossing through the country must be placed on the railways in order to try to reduce air pollution in alpine valleys. The European Union is trying to promote intermodal alternatives by subsidizing rail, and shipping infrastructure and increasing
road user costs. Since intermodal transportation is mostly the outcome of private initiatives seeking to capture market opportunities it remains to be seen to what extent public strategies can be reconciled with a global intermodal transport system which is flexible and footloose. While economies of scale enabled to reduce the unit costs of maritime, inland intermodal transportation costs account to about 50% of the total costs if terminal costs are included. With the deregulation and privatization trends that began in the 1980's, containerization, which was already well established in the maritime sector, could spread inland. The shipping lines were among the first to exploit the intermodal opportunities that deregulation permitted. They could offer door-to-door rates to customers by integrating rail services and local truck pickup and delivery in a seamless network. To achieve this they leased trains, managed rail terminals, and in some cases purchased trucking firms. In this way they could serve customers across the country by offering door-to-door service from suppliers located around the world. The move inland also led to some significant developments, most notably the double-stacking of containers on rail cars. This produced important competitive advantages for intermodal rail transport and favored the development of inland terminals. It also required various forms of translating between maritime and domestic container units.

Reinsurance And its Type:
The earliest recorded reinsurance arrangement appears to have been affected in the fourteenth century when an underwriter reinsured the hazardous part of a marine voyage from Genoa to Sluys. Professional reinsurers, however, did not emerge until the nineteenth century; some two centuries after the first professional insurers were founded. The first of these was the Cologne Reinsurance Company, which was formed in 1846 after a catastrophic fire in Hamburg had led to losses well beyond the reserves of the insurers—the Hamburg Fire Fund. Lord Mance has neatly encapsulated the basic function of reinsurance on a number of occasions; first as follows:

In insurance, the matching of exposure and protection to assure both solvency and profitability is absolutely fundamental. Reinsurance—of whatever type—is a principal means to this end.
The broad purpose of reinsurance is for the direct insurer to be covered in respect of his liability under an original insurance policy, pursuant to which the original insured is entitled to recover from him. The direct insurer gives protection to individuals and businesses against the uncertain risks associated with life and commerce. The reinsurer takes a share of those risks (and a share of the premium), thus spreading the consequences of the losses should a risk event take place. Furthermore, an insurer cannot predict with certainty which part of the business that it writes will result in profits and which part in losses each year, and reinsurance enables the insurer to smooth the peaks and troughs of his business results.

The functions of reinsurance, however, are not only protective—there are significant business advantages to be gained by an insurer that can obtain reinsurance. Primarily reinsurance provides capacity to an insurer, thereby enabling the insurer to insure a volume, type or size of risk that it would not be able to cover in the absence of reinsurance. In effect, the reinsurer enlarges the direct insurer’s underwriting capacity by accepting a share of the risks and by providing part of the necessary reserves for losses. Reinsurance also increases the capital available to the direct insurer which would otherwise be earmarked to cover potential losses. This is of some significance to the conducting of reinsurance business both in England and elsewhere. A yardstick commonly used by regulatory bodies in controlling insurance companies is the margin of their solvency—defined under the Insurance Companies Act 1982 as the excess of the value of its assets over the amount of its liabilities. Regulatory authorities will frequently have minimum margins or ratios below which they will not allow insurers to operate. Reinsurance, therefore, can strengthen the solvency ratio of the direct insurer.

**Types and Methods of Reinsurance**

Reinsurance is essentially a contract under which an insurer agrees to pass a defined part of an insurance risk to a reinsurer. The distinction between the two main types of reinsurance is in the way that this part is defined—proportional or non-proportional.
(1) Proportional Reinsurance
In the first main type of reinsurance, proportional reinsurance, the reinsurer agrees to take a proportional part or share of the liability of the insurer on a single risk or a number of risks and also takes an equivalent proportion of the premium (less commission). The reinsurer has an interest in all the insurer’s losses as it will pay the proportion of such losses that he has agreed to reinsure, leaving the remainder to be paid by the insurer. For example, an insurer enters into a contract of insurance providing for £1 million of cover in the event of fire damage to a factory. The insurer then enters into a contract of reinsurance with a reinsurer who agrees to reinsure 75% of the risk. The reinsurer receives 75% of the premium (less commission). If a fire takes place at the factory and damage of £1 million results then the reinsurer will be liable for the payment of £750,000 (i.e., his proportion of the total liability), and the net cost to the insurer will be £250,000 (i.e., that part which he has retained).

(2) Non-Proportional Reinsurance
In the second main type of reinsurance, non-proportional excess of loss reinsurance, the reinsurer reinsures a layer (or part of a layer) of the liability of the insurer on a single risk or a number of risks. Non-proportional reinsurance enables a reinsured to assume a risk or size of risk which it might not otherwise write, but for the protection afforded by the reinsurance.

The non-proportional reinsurer has little interest in any loss until it reaches a certain amount: the excess point. For a loss which is greater than the excess point, the insurer pays everything below the excess and the reinsurer pays that part which he has insured above the excess point. 49 Take the same example of an insurer entering into a contract of insurance providing for £1 million of cover in the event of fire damage to a factory. The insurer enters into a contract of reinsurance with reinsurer A for 100% of its liability in excess of £250,000 but up to a liability of the insurer of £500,000 (i.e., £250,000 in excess of £250,000) and a contract of reinsurance with reinsurer B for 100% of the liability in excess of £500,000 up to £1 million (i.e., £500,000 in excess of £500,000). Both reinsurers have reinsured a layer of the risk. If a fire takes place causing £200,000 of damage to the factory, neither reinsurer will be called upon to pay any part of the loss. If the loss caused by the fire is £450,000, the insurer will be liable for the first £250,000 but
reinsurer A’s layer of cover will also be caught and reinsurer A will therefore be liable for £200,000 (ie that part of the damage in excess of £250,000). If the loss caused by the fire is £1 million (or more), reinsurer A will be liable for £250,000 and reinsurer B for £500,000.

**Facultative and Treaty Reinsurance**

A reinsurance programme will often be comprised of a combination of proportional and excess of loss or non-proportional reinsurances. These can be provided on a ‘one-off’ basis, with specific contracts of reinsurance designed to cover a particular risk (‘facultative’ reinsurance), or the insurer and reinsurer can enter into a continuing relationship under a ‘treaty’ whereby a class of risks or an insurer’s entire account can be reinsured. The different forms of reinsurance, ie facultative and treaty, represent different tools which an insurer may deploy, frequently in conjunction with one another, to pass on or protect exposure either on particular risks or on the whole or part of its insurance account. The purpose is self-evidently to protect the insurer from exposures of the type reinsured which could otherwise either individually or cumulatively imperil the insurer’s solvency or profitability.

**Facultative Reinsurance**

Facultative reinsurance is reinsurance for individual risks and each risk is considered individually. The central distinguishing feature of facultative reinsurance is that both insurer and reinsurer have a choice as to whether to enter into a reinsurance contract in respect of each risk. There is no obligation on the insurer to reinsure the risk. If the insurer does seek reinsurance, there is no obligation on the reinsurer to provide it. Facultative reinsurance can be proportional or non-proportional. It was the predominant form of reinsurance probably until the early part of the twentieth century. It has a number of obvious drawbacks. The administrative costs of having to consider risks on an individual basis are relatively high, and the time taken to do so may also be somewhat lengthy. Unsurprisingly, therefore, one most often sees facultative reinsurance being used to reinsure unusual or large risks. 55 Furthermore, an insurer will generally want a degree of certainty that if he insures a risk he will be able to obtain appropriate reinsurance for it.
The facultative method, in its most traditional form (i.e., where insurance is effected first and reinsurance is then sought), is intrinsically uncertain—an insurer can take on a risk and then discover that he cannot obtain any reinsurance (or any reinsurance for a price that he wishes to pay).

**Proportional Facultative Reinsurance**

The basic concept of facultative proportional reinsurance was summarized by Lord Griffiths in *Forsikringsaktieselskapet Vesta v JNE Butcher*:

An insurer who has accepted a risk by issuing a policy of insurance goes to reinsurers to lay off part of that risk. Before the reinsurer accepts part of the reinsurer’s risk, he will wish to assess the risk for himself. The reinsurer can only assess the risk if he is shown the terms on which the insurer has accepted the risk; in other words if the reinsurer is shown the policy that has been or is to be issued by the insurer. When the reinsurer has assessed the risk covered by the policy he can then decide whether or not he will reinsure the risk. In the ordinary course of business reinsurance is referred to as ‘back-to-back’ with the insurance, which means that the reinsurer agrees that if the insurer is liable under the policy the reinsurer will accept liability to pay whatever percentage of the claim he has agreed to reinsure.

This is not, however, a complete description of facultative proportional reinsurance. In many cases reinsurance is arranged, at least in principle, before insurance is effected. Furthermore, the description does not address the common and accepted practice of ‘signing down’ facultative proportional reinsurance—whereby a broker will oversubscribe reinsurance (i.e., obtaining reinsurance cover for more than 100% of the risk, or for more than the amount which the reinsured has asked him to obtain, and then ‘signing down’ the over-subscription proportionately to 100%).

**Treaty Reinsurance**

Treaty reinsurance is an agreement (‘treaty’) for reinsurance, at least in principle, for a number of risks. By this method, insurer and reinsurer agree that all risks of the insurer of a certain type or types, and potentially the entirety of the insurer’s book of business, will be reinsured by the reinsurer. Individual risks are not assessed by the reinsurer and premiums are decided in advance, reducing administrative costs and ensuring certainty of
reinsurance cover simultaneously with the direct insurance being placed. The central distinguishing feature of the treaty method of reinsurance is that the insurer is obliged to cede to the reinsurer such risks as he has agreed to cede under the treaty and the reinsurer is obliged to accept those risks. It is the predominant method of reinsurance. In Hanwha Non-Life Insurance Co Ltd v Alba Pte Ltd the High Court of Singapore had to construe a reinsurance contract to decide whether it was facultative or obligatory. Both on a traditional construction of its brief terms (including a fixed premium, a limit of cover and monthly declarations) and when adopting the contextual approach outlined in Investors Compensation Scheme Ltd v West Bromwich Building Society, the reinsurance was held to be open obligatory in nature.

This meant that the reinsurance risk run by the reinsurer commenced immediately whenever the reinsured accepted a risk on the underlying insurance policy.

Such obligatory or treaty reinsurance can be effected proportionally and non-proportionally, and there are various mechanisms of doing so within each category.

**Stop Loss**

Stop loss reinsurance comes in two principal forms (although sometimes also an amalgamation of the two)—namely excess of loss ratio and aggregate excess of loss, which are considered individually at paras 1.67 et seq. The deference lies in the way in which the stop loss excess is expressed to operate—in the former it is expressed as a percentage of loss to premium income; in the latter it is expressed as a particular sum.

Stop loss reinsurance is a product commonly used to cover against an attritional level of losses on an account or part of an account and may or may not relate to losses of a particular type. They are usually written annually, but this is not invariably so, for example reinsurance for seasonal damage to, say, crops.

**Excess of Loss Ratio**

By this method of reinsurance the reinsurer agrees to provide insurance to the reinsured in excess of an agreed annual loss ratio—based on the ratio of losses suffered by the insurer to the premiums received by it in a given year. For example, the reinsurer may agree to reinsure an amount of 20% in excess of 110% of the insurer’s loss ratio. If in any
given year the insurer’s losses exceed 110% of its premium income, the reinsurer will be liable for all losses until the total amount paid out by the insurer amounts to 130% of the ratio. Thereafter the loss will fall back onto the reinsured. Because these treaties will generally run annually, it is common to see payments being made by reinsurers at the end of the year. However, such treaties frequently provide for payments to be made earlier when it is clear that the ratio excess will be breached, with any necessary reconciliation taking place at the year end.

(4) Aggregate Excess of Loss
This form of reinsurance, sometimes called cumulative excess of loss or catastrophe excess of loss, performs essentially the same function as excess of loss ratio reinsurance—providing protection in respect of the general result of the reinsured—the difference being that a specific monetary amount is defined in the treaty. An obvious danger for the reinsurer in underwriting this sort of reinsurance is that the reinsured may write much more business than the reinsurer anticipated when the reinsurance was effected. As such the losses incurred may reach an excess point rather more readily than at first had been anticipated. It is perhaps not unsurprising, therefore, that one often finds hybrid stop loss policies being effected in which the ratio and specific sums are both included, with the reinsurance cover provided expressed to be a maximum of one or the other.

Risk transfer
With reinsurance, the insurer can issue policies with higher limits than would otherwise be allowed, thus being able to take on more risk because some of that risk is now transferred to the reinsurer. The reason for this is the number of insurers that have suffered significant losses and become financially impaired. Over the years there has been a tendency for reinsurance to become a science rather than an art: thus reinsurers have become much more reliant on actuarial models and on tight review of the companies they are willing to reinsure. They review their financials closely, examine the experience of the proposed business to be reinsured, review the underwriters that will write that business, review their rates, and much more. Almost all reinsurers now visit the insurance company and review underwriting and claim files and more.
**Income smoothing**

Reinsurance can make an insurance company's results more predictable by absorbing larger losses and reducing the amount of capital needed to provide coverage. The risks are diversified, with the reinsurer bearing some of the loss incurred by the insurance company.

**Surplus relief**

An insurance company's writings are limited by its balance sheet (this test is known as the solvency margin). When that limit is reached, an insurer can do one of the following: stop writing new business, increase its capital, or (in the USA) buy "surplus relief".

**Arbitrage**

The insurance company may be motivated by arbitrage in purchasing reinsurance coverage at a lower rate than they charge the insured for the underlying risk, whatever the class of insurance.

In general, the reinsurer may be able to cover the risk at a lower premium than the insurer because:

- The reinsurer may have some intrinsic cost advantage due to economies of scale or some other efficiency.
- Reinsurers may operate under weaker regulation than their clients. This enables them to use less capital to cover any risk, and to make less prudent assumptions when valuing the risk.
- Reinsurers may operate under a more favorable tax regime than their clients.
- Reinsurers will often have better access to underwriting expertise and to claims experience data, enabling them to assess the risk more accurately and reduce the need for contingency margins in pricing the risk.
- Even if the regulatory standards are the same, the reinsurer may be able to hold smaller actuarial reserves than the cedant if it thinks the premiums charged by the cedant are excessively prudent.
- The reinsurer may have a more diverse portfolio of assets and especially liabilities than the cedant. This may create opportunities for hedging that the cedant could
not exploit alone. Depending on the regulations imposed on the reinsurer, this may mean they can hold fewer assets to cover the risk.

- The reinsurer may have a greater risk appetite than the insurer.

**Reinsurer's expertise**

The insurance company may want to avail itself of the expertise of a *reinsurer*, or the reinsurer's ability to set an appropriate premium, in regard to a specific (specialized) risk. The reinsurer will also wish to apply this expertise to the underwriting in order to protect their own interests.

**Creating a manageable and profitable portfolio of insured risks**

By choosing a particular type of reinsurance method, the insurance company may be able to create a more balanced and homogeneous portfolio of insured risks. This would lend greater predictability to the portfolio results on net basis (after reinsurance) and would be reflected in income smoothing. While income smoothing is one of the objectives of reinsurance arrangements, the mechanism is by way of balancing the portfolio.

**Maritime Fraud:**

Among the instances of maritime fraud, the scuttling of ships, the deliberate sinking of a ship in order to collect the insurance money, stands out. It has been suggested that marine transport is prone to infiltration by organized crime groups. These are suggestions that have never been substantiated, but they could point towards a criminogenic market-structure of the (marine) insurance industry. The Dutch marine insurance-industry has a reputation to lose. The insuring of ships requires skill, professionalism and money, but the practice of marine insurance has hardly changed since the Dutch Golden Age. Drawing upon the results of two years of fieldwork in the Dutch marine insurance industry, it will be argued that the scuttling of ships is interlinked and intertwined with the practice of marine insurance and the way the marine insurance industry is commercially and legally organized. An analysis of the opportunity-for-fraud-structure of the (Dutch) marine insurance market will be made.
What is a fraud? An international trade transaction involves several parties-exporter, importer, ship-owner, charterer, ship's master, officers and crew, insurer, banker, broker or agent, freight forwarder. Maritime fraud occurs when one of these parties unjustly takes another's goods or money. In some cases, several of these parties act in collusion to defraud another. Banks and insurers are often the victims of such frauds.

The sinking of an over-insured vessel carrying a high valued non-existent cargo has been encountered at regular intervals. During periods of economic and political upheaval and depression in the shipping business, there have been incidents of unusual losses. In the last few years, these and other factors have led to a significant escalation in the number of incidents that can be termed as 'maritime frauds'.

**Types of Fraud**

Maritime fraud has many guises and it methods are open to infinite variations. Majority of these crimes can be classified into four categories as under:

- Scuttling of ships
- Documentary frauds
- Cargo Thefts
- Fraud related to the chartering of vessels

**Scuttling of Ships**

Also known as 'rust bucket' frauds, this involves deliberate sinking of vessels in pursuance of fraud against both cargo and hull interests. With occasional exceptions, these crimes are committed by ship-owners in a situation where a vessel is approaching or has the end of its economic life, taking into account the age of the vessel, its condition and the prevailing freight market. The crime can be aimed at hull insurers alone or against both hull and cargo interests.
For example, a dishonest shower may approach an exporter and offer to carry his next large cargo shipment on his vessel. The exporter is to arrange the contract and the proposed buyer to open a letter of credit in his favor to pay for them. No goods are actually to be supplied or shipped, but the ship-owner agrees to supply bills of lading to show that the goods have been loaded on the vessel. The bills of lading together with such other documents as are required are presented to the bank negotiating the letter of credit. The banker pays against documents and not against goods. After ascertaining that the cargo description corresponds to the requirements as stipulated in the L/C, the bank, in the normal course of events, releases the funds under the terms of the L/C.

The ship, without it is by now paid for, but non-existent cargo, leaves port. It should not of course reach its destination, because should it do so, the missing cargo would lead immediately to the discovery of the fraud. To avoid this eventually, the ship is deliberately scuttled in a suitable location, so as to remove the evidence of the non-existent shipment beyond any prospect of subsequent investigation.

The ship-owner enters an insurance claim on his hull underwriters and he also receives a share of the proceeds from the letter of credit from exporter, leaving the hapless buyer to pursue an insurance claim for loss/non-delivery of his cargo.

**Documentary Frauds**

This type of fraud involves the sale and purchase of goods on documentary credit terms and some or all of the documents specified by the buyer to be presented by the seller to the bank in order to receive payment, are forged. Bankers pay against documents. The forged documents attempt to cover up the fact that the goods actually do not exist or that they are not of the quality ordered by the buyer. When the unfortunate purchaser of the goods belatedly realizes that no goods are arriving, he starts checking, only to find that the alleged carrying vessels either does not exist or was loading at some other port at the relevant time.

Banks deal with documents and not in the goods covered by them. A bank which accepts under a letter of credit a set of documents which appear to be regular on their face, is not
liable to its principal if the documents turn out to be forged or to contain false statements. Thus a confirming bank is entitled to obtain reimbursement against such documents from the issuing bank and the issuing bank is entitled to obtain payment against them from the buyer. Thus the loss is usually borne by the buyer.

It is precisely to discourage the activities of fraudsters relating to export cargoes that GIC evolved the ship approval system. This has been extended to full load import cargo also. The vessels usually employed by fraudsters are:

- Vessels flying a flag of convenience
- Vessels over 15 or 20 years of age
- Usually small sized ships of 7000 to 10000 GRT
- Vessels having changed their names and owners a few months before the last voyage.

**Cargo Thefts**

There are several variations in the modus operandi of cargo thefts. In a typical example, the vessel, having loaded a cargo, deviates from its route and puts it into a port of convenience. Such ports are Tripoli, Beirut, Almina, Jouneih, Ras Salaata and others along the coasts of Greece, Lebanon and Suria. The cargo may be discharged and sole on the quayside or in a more sophisticated manner. Such an act is often accompanied by a changed of the vessel's name or a subsequent scuttling in order to hide the evidence of theft. The whole process of investigation is proved difficult as by the time the loss is known the cargo disappears and the actual recovery of goods is unlikely. The owners of these ships are "paper companies" set up a few days prior to the operation.

**Fraud related to Chartering of vessels**

This is also known as Charter-part fraud". Establishing a chartering company required a modest initial financial commitment and is usually subject to little regulation. In
depressed conditions of shipping market, there is no have demand on tonnage and owners anxious to avoid laying up their vessels are tempted to charter them to unknown companies without demanding any substantial financial guarantee for the performance of the charter contract.

The fraudulent chartered can turn this situation to his advantage. Having chartered a vessel from an unsuspecting owner, the chartered canvasses for cargo, knowing that in a depressed economy, shippers will be willing to cut corners in the hope of reducing transport costs and thus saving on freight so that their goods can be more attractively priced the charterer offers low freight rates on pre-paid basis. He can afford to do that, as he has no intention of completing the voyage.

Soon, after the vessel sails from the port, the chartered disappears. He may have paid his first month's hire or he might not have paid any hire charges as are due from him. Meanwhile the ship-owner may find himself with substantial bills to meet from port authorities along with the ship's route as well as for crew's wages and for provisioning the ship. Worse, the ship owner may find that his ship, not having delivered the cargo to the consignees, has been arrested and this leads to protracted and expensive legal wrangle.

In order to get their goods to destination, shippers may agree to pay a freight surcharges or they will agree to a diversion and a sale of the goods to cover costs and then state the export process all over again. Sometimes, when no such compromise can be reached, the ship owner will instruct the master to divert his ship and sell the cargo wherever he can, and this become as much of a criminal as the charterer.

**Precautionary Measures for Fraud Prevention**

There are certain basic precautions against maritime fraud that commercial interests, like exporter and importers, banks and insurance companies, should be aware of and should be able to implement.

**Exporters and Importers**

The checks and precautions that buys and sellers can implement are:
Care should be exercised when dealing for the first time with unknown parties. Careful inquiries should be made as to their standing and integrity before entering into a binding agreement.

Shipment should be by well-established shipping lines. In India, vessels approved by GIC should be preferred.

The cargo owners should be wary:
- If the freight rate is too attractive
- If the ship owner owns one vessel only
- If the vessel is over 15 years of age.
- If the vessel has passed through various owners.

Payment by irrevocable documentary credit, confirmed by a bank in seller's country, provides the best safeguard to the seller. Should the seller have any doubt about the authenticity of the documentary credit, he should immediately consult his bank before parting with the goods.

As far as the buyer is concerned, he should ensure that he receives the documents he has stipulated in his documentary credit application.

As far as the buyer is concerned, he should ensure that he receives the documents he has stipulated in his documentary credit application. Therefore, the buyer must consider carefully which documents he requires. For example, an independent "loading certificate" would add significantly to his protection as would detailed instructions on which shipping line or forwarding agent is to be used. The inspection of cargo should be as close to the time of loading on board as possible.

In order to ensure that the subject cargo is in fact loaded on the specified carrying vessel, the buyer may stipulate for a "report on the vessel" from an independent third party.

Conference or national lines bills of lading should be used and marked "freight prepaid" with the amount of freight clearly stated in the bill of lading.
o Services of dependable and well-known forwarding agents, who are also members of a national association, should be engaged.

o Buyers and sellers should attempt to identify whether the carrying vessel is on charter and who the chatterers and owners are and whether chartering is done only through agents or reputable institutions.

**Piracy:**

Piracy is typically an act of robbery or criminal violence at sea. The term can include acts committed on land, in the air, or in other major bodies of water or on a shore. It does not normally include crimes committed against persons traveling on the same vessel as the perpetrator (e.g. one passenger stealing from others on the same vessel). The term has been used throughout history to refer to raids across land borders by non-state agents.

Piracy is the name of a specific crime under customary international law and also the name of a number of crimes under the municipal law of a number of States. It is distinguished from privateering, which is authorized by national authorities and therefore a legitimate form of war-like activity by non-state actors. Privateering is considered commerce raiding, and was outlawed by the Peace of Westphalia (1648) for signatories to those treaties.

Those who engage in acts of piracy are called pirates. Historically, offenders have usually been apprehended by military personnel and tried by military tribunals.

In the 21st century, the international community is facing many problems in bringing pirates to justice
Review Question:

Q1. Discuss different types of Maritime fraud.

Q2. What are different types of methods of Reinsurance?

Q3. Describe fundamental principle of Marine contract

Q4. What are different types of Vessels?

Q5. Discuss in short the Marine Act.
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