

# 英國 1906 年海上保險法

## 一部彙整有關海上保險法律之法律

### Marine Insurance Act 1906

An Act to codify the Law relating to Marine Insurance [21st December 1906]

## M.I.A. 1906

### Marine Insurance

### 海上保險

#### 1. Marine insurance defined

A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.

#### 1. 海上保險之定義

海上保險契約係保險人允諾，於遭受海上損失，亦即海上冒險損失時，依約定之方式及限度，補償被保險人之契約。

#### 2. Mixed sea and land risks

- (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.
- (2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto, but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

#### 2. 海上及陸上混和危險

- (1) 海上保險契約得依其明示條款或貿易習慣，擴大承保被保險人與偶發於任何海上航程之內陸水域或任何陸上風險之損失。
- (2) 海上保單格式之保單承保船舶於建造、下水或在其他任何類似情況之海上冒險，於其範圍內應適用本法之規定；除本條規定外，本法不應變更或影響海上保險契約以外之任何保險契約所適用之任何法律。

#### 3. Marine adventure and maritime perils defined

- (1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.
- (2) In particular there is a marine adventure where
  - (a) Any ship goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";
  - (b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the

#### 3. 海上冒險及海事風險之定義

- (1) 所有合法海上冒險，均得依本法之規定，為海上保險契約之標的。
- (2) 特別是下列各項得為海上冒險：
  - (a) 暴露於海事風險之任何船舶、貨物或其他動產。是項財物於本法稱為「可保財物」。
  - (b) 因可保財物暴露於海事風險所危及之任何運費、客票、佣金、

security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;

- (c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils.

"Maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war, perils, pirates, rovers, thieves, captures, seizures, restraints, and detainment's of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.

## Insurable Interest

### 4. Avoidance of wagering or gaming contracts

- (1) Every contract of marine insurance by way of gaming or wagering is void.
- (2) A contract of marine insurance is deemed to be a gaming or wagering contract-
  - (a) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or
  - (b) Where the policy is made 'interest or no interest,' or 'without further proof of interest than the policy itself,' or 'without benefit of salvage to the insurer,' or subject to any other like term:

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer.

### 5. Insurable interest defined

- (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.
- (2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

### 6. When interest must attach

- (1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected:  
Provided that where the subject-matter is insured 'lost or not

利潤之收益，或其他金錢之利益，或任何墊款、貸款之保證、或開支。

- (c) 可保財物之所有人、利益關係人或對其應負有責任之人，因海事風險，可能對第三人負有任何責任者。

「海事風險」係指因附隨或偶發於海上航行之危險事故，亦即海上風險、火災、戰爭風險、海盜、遊劫者、盜竊、捕獲、查扣、王侯及人民之禁制及阻留、投棄、船員之惡意行為、及其他任何類似或由保險單所指定之危險事故。

## 保險利益

### 4. 賭博契約無效

- (1) 凡以海上保險契約為賭博者無效。
- (2) 海上保險契約有下列情事者，應視為賭博契約：
  - (a) 被保險人無本法所規定之保險利益及被保險人於契約議定當時並無取得保險利益之希望而仍為契約議定者；或
  - (b) 保單係以「無論有無利益」、或「除本保單外無須其他利益證明者」、或「保險人不得享殘值利益」或以任何其他類似條件締結者。然如無殘值之可能時，以「保險人不得享殘值利益」條件簽發之保單仍屬有效。

### 5. 保險利益之定義

- (1) 凡與海上冒險有利害關係之人，依本法規定為有保險利益。
- (2) 凡對海上冒險或任何處於危險中之其他可保財物間具有合法或衡平法上之利害關係，而於可保財物安全或如期到達時即可獲益，或於可保財物發生損失、毀損、阻留或責任即受有損害之人。

### 6. 保險利益必須存在之時間點

- (1) 被保險人須於保險標的發生損失時與其有利害關係，然於保險生效時無須有利害關係。  
然如保險標的係以「已失或未失」

lost', the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

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

## 7. Defeasible or contingent interest

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

## 8. Partial interest

A partial interest of any nature is insurable.

## 9. Re-insurance

- (1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it.
- (2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance.

## 10. Bottomry

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

## 11. Master's and seamen's wages

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

## 12. Advance freight

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

## 13. Charges of insurance

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

條件為投保時，被保險人雖於損失後才取得利益，亦可求償；但被保險人於保險契約生效時明知損害已發生而保險人不知情者除外。

- (2) 如被保險人於損失發生時無利益，則於明知損害發生後不得以任何行為或方式取得利益。

## 7. 可撤銷或不確定之利益

- (1) 可撤銷之利益或不確定之利益均得為保險。
- (2) 特別是，貨物買方投保該貨物時，即有保險利益，無論買方得選擇因賣方交貨延遲或其他原因而拒收貨物或由賣方負擔風險。

## 8. 部份利益

任何性質之部份利益得為保險。

## 9. 再保險

- (1) 海上保險契約保險人對其所承保之風險有保險利益並得以之為再保險。
- (2) 除保單另有相反約定外，原被保險人對該再保險並無權利或利益。

## 10. 船舶借貸

船舶借貸或貨物借貸之貸款人，對該貸款有保險利益。

## 11. 船長及船員之薪津

船舶之船長或任何船員對其薪津有保險利益。

## 12. 預付運費

於預付運費之情況，如於損失亦不退還運費之運費預付人，對該預付運費有保險利益。

## 13. 保險費用

被保險人對其所投保任何保險之保險費用有保險利益。

## 14. Quantum of interest

- (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.
- (2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.
- (3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss.

## 15. Assignment of interest

Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect.

But the provisions of this section do not affect a transmission of interest by operation of law.

## Insurable Value

### 16. Measure of insurable value

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

- (1) In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:  
The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade.
- (2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:
- (3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole:
- (4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance.

## 14.利益範圍

- (1) 保險標的為抵押時，抵押權人對抵押之全部價值有保險利益，抵押人對到期或將到期之任何抵押貸款有保險利益。
- (2) 抵押人、受讓人或其他對保險標的有利益之人，得代表並為其他有利益之人或為自己利益為投保。
- (3) 可保財物之所有人，對該財物之全部價值有保險利益，而無論有無第三人同意或會負責補償其損失。

## 15.利益之轉讓

被保險人將保險標的之利益轉讓或為部份轉讓時，除其與受讓人有明示或默示約定，其於保險契約之權利並不因此轉讓予受讓人。

但本條規定對依法所為利益之轉讓並無影響。

## 可保價值

### 16.可保價值之額度

除保單上有任何明示約定或價值記載外，保險標的之可保價值應以下列方式確定：

- (1) 於船舶保險，船舶之可保價值係船舶於風險開始時之價值，包括屬具、船副船員之食糧供應及物料、預付船員薪津及其他為使船舶得以整備保單約定航程或冒險所需之預付開支(如有)，另加上投保前述各項之保險費用。  
汽輪之可保價值，包括被保險人所有之機器、鍋爐、燃煤及引擎物料；如船舶從事特殊貿易，則包括為該貿易所需之通常屬具。
- (2) 於運費保險，無論為預付或其他方式，其可保價值係被保險人於風險中之運費總額，另加其保險費用。
- (3) 於貨物或商品保險，其可保價值係被保財物之原價，另加船運相關費用及前述價值費用之保險費用。
- (4) 於其他保險標的的保險，其可保價值依被保險人於保單生效時於風險中之數值，另加其保險費用。

## Disclosure and Representations

## 告知及說明

### 17. Insurance is uberrimae fidei

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

### 18. Disclosure by assured

- (1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.
- (2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk.
- (3) In the absence of inquiry the following circumstances need not be disclosed, namely:
  - (a) Any circumstance which diminishes the risk;
  - (b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;
  - (c) Any circumstances 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.

### 19. Disclosure by agent effecting insurance

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

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

### 20. Representations pending negotiation of contract

### 17.最大善意

海上保險契約係基於最大善意之契約，任何一方未遵守最大善意，他方得使契約無效。

### 18.被保險人之告知

- (1) 依本條之規定，被保險人應於契約完成前，將其知悉之所有重要事項告知保險人，被保險人對於業務通常過程可得知悉之各事項，視為被保險人應被視為知悉。被保險人如不為是項告知，保險人得使契約無效。
- (2) 凡足以影響謹慎保險人釐訂保險費之判斷或是否予以承保該風險之任何事項均為重要事項。
- (3) 下列事項如保險人未加詢問得不予告知：
  - (a) 凡減小危險之事項。
  - (b) 保險人所知悉或推定其應知悉之事項。對眾所皆知之事項及保險人於其業務之通常過程中應知曉之知識或事項，均推定其為知悉。
  - (c) 凡保險人放棄被告知之事項。
  - (d) 凡由於明示或默示保險條款規定無須告知之事項。
- (4) 某未經告知之事項是否重要係屬事實問題，應依個別情況認定之。
- (5) 「事項」包括向被保險人發送或被保險人所收到之一切聯繫及資料。

### 19.代理人投保時之告知

除依前條規定無須告知之事項外，當保險係由其代理人代被保險人投保，代理人應向保險人告知：

- (a) 代理人所知悉之任何重要事項，且代理人為投保時，於其於業務通常過程中可得知悉或並經聯繫之任何事項，視為已經知悉；且
- (b) 被保險人本應告知之任何重要事項，然被保險人得知該重要事項為時過遲，不及告知代理人者除外。

### 20.契約協商中之說明

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

## 21. When contract is deemed to be concluded

A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and, for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract, *although it be unstamped* [1959 repealed].

## The Policy

### 22. Contract must be embodied in policy

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

### 23. What policy must specify

A marine policy must specify

- (1) The name of the assured, or of some person who effects the insurance on his behalf;
- (2) *The subject-matter insured and the risk insured against*; [1956 Repealed];
- (3) *The voyage, or period of time, or both, as the case may be covered by the insurance*; [1956 Repealed].
- (4) *The sum or sums insured*; [1956 Repealed].
- (5) *The name or names of the insured*. [1956 Repealed].

### 24. Signature of insurer

- (1) 被保險人或其代理人於契約磋商期間及完成前，向保險人所為一切重要之說明均應真實。如不真實，保險人可使契約無效。
- (2) 凡足以影響謹慎保險人釐訂保險費之判斷或是否承保該風險之說明，即屬重要。
- (3) 說明包括對事實、期望或意見之說明。
- (4) 對於事實之說明，如大致確實即為真實，亦即所為說明與真實情況間之差異，一謹慎保險人認為其無關緊要時。
- (5) 凡基於誠信所為對期望或意見之說明，即為真實。
- (6) 所有說明得於契約成立前撤回或更正之。
- (7) 某項說明是否重要係屬事實問題，依個別情況認定之。

## 21.何時契約視為成立

海上保險契約於被保險人之要約為保險人所接受時，即視為成立，無論保單是否簽發；但為證明何時要保已被接受之目的，未銷蓋印花之【1959年廢止】暫保單、承保單或其他契約慣例所使用之備忘錄略均得援用參考。

## 保險單

### 22.契約必以保單為之

除其他法令另有規定外，海上保險契約未依本法規定之海上保險單為之者，不認可其為海上保險契約。保險單得於契約締訂當時或之後簽發之。

### 23.保單應載明之項目

海上保單應記載：

- (1) 被保險人之姓名，或代表其投保之其他人姓名。
- (2) 保險標的及承保風險【1959年廢止】。
- (3) 保險所承保之航程或期間或其兩者【1959年廢止】。
- (4) 保險金額【1959年廢止】。
- (5) 保險人或數保險人之姓名【1959年廢止】。

### 24.保險人之簽署

- (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.* [1956 Repealed].

## 25. Voyage and time policies

- (1) Where the contract is to insure the subject-matter 'at and from,' or from one place to another or other, 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) Subject to the provisions of section eleven of the Finance Act, 1901, a time policy which is made for any time exceeding twelve months is invalid. [Repealed].

## 26. Designation of subject-matter

- (1) The subject-matter insured must be designated in a marine policy with reasonable certainty.
- (2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.
- (3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.
- (4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured.

## 27. Valued policy

- (1) A policy may be either valued or unvalued.
- (2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.
- (3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.
- (4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

## 28. Unvalued policy

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

- (1) 海上保單應由保險人或其代表簽署，如保險人為公司時，得以公司圖戳為之，但本條規定不得解釋為必須以公司圖戳為之。
- (2) 當保單上有兩個以上之保險人或其代表簽署時，除另有明示約定外，每一保險人之簽署構成與被保險人之個別契約。【1959年廢止】

## 25. 航程保單及定時保單

- (1) 凡承保標的於及由、或自某處或至另一處之契約，該保單稱為「航程保單」。凡承保標的於特定時間之契約，該保單稱為「定時保單」。同一保單內得包括航程及定時之契約。
- (2) 依 1901 年財政法第 11 節規定，定時保險單期間超過十二個月者無效【已廢止】。

## 26. 保險標的之記載

- (1) 保險標的應合理正確地記載於海上保單上。
- (2) 被保險人對於保險標的之利益之性質及範圍無須於保單內特別列明。
- (3) 凡保單內對保險標的係以一般項目為記載時，應被解釋適用被保險人所意圖承保之利益。
- (4) 援用本條規定時，應注意有關保險標的之記載之慣例。

## 27. 定值保單

- (1) 保單得為定值或不定值。
- (2) 保單上列明保險標的之約定價值者，為定值保單。
- (3) 依本法之規定且無詐欺情形時，保險人及被保險人間於保險單上所確定之價值，為投保標的之可保價值之最後決定，嗣後無論發生全部或部分損失，均以此為準。
- (4) 除保險單另有約定外，保單所確定之價值，不得作為判斷是否為推定全損目的之最後決定。

## 28. 不定值保單

保單上未列明保險標的之價值，除受限於投保限額外，其可保價值依本法前開規定之方法，嗣後再行確定者，為不定值保單。

## 29. Floating policy by ship or ships

- (1) A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.
- (2) The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner.
- (3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.
- (4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration.

## 30. Construction of terms in policy

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

## 31. Premium to be arranged

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

## Double Insurance

### 32. Double insurance

- (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.
- (2) Where the assured is over-insured by double insurance-
  - (a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this

## 29.船舶流動保單

- (1) 保單上僅記載保險一般項目，而船舶名稱及其他細目嗣後再陳報者，是為流動保險單。
- (2) 嗣後之陳報得以保險批單或其他慣例方式為之。
- (3) 除保單另有約定外，陳報應依運送或裝貨之次序為之。其為貨物時，包括所有保單項目所包括之全部貨物在內，應據實陳述貨物及其他財物之價值，但對於非故意遺漏或錯誤之陳報，既使於損失或到達後，亦得更正之。但以遺漏或善意陳報者為限。
- (4) 除保單另有約定外，如需於通知或損失或到達後始得為價值陳報者，則保單對該陳報標的部分之處理，應同如不定值保單情況同。

## 30.保單條款之解釋

- (1) 保單得以本法附錄一之格式為之。
- (2) 除本法或保單另有約定外，本法附錄一所記載之條款及名詞之解釋，應依該附錄所擬範圍及意義為之。

## 31.經協議之保費

- (1) 保險生效時即應約定保費，如保費未約定，則應支付合理保費。
- (2) 保險得約定於某情況發生即應約定附加保費而生效，如該項情況發生而未約定保費者，則應支付合理之附加保費。

## 複保險

### 32.複保險

- (1) 被保險人對同一冒險或利益或其任何部份投保二份或二份以上保單，而其投保總額超過本法所允許之補償時，該被保險人即以複保險而為超額保險。
- (2) 被保險人以複保險而為超額保險：
  - (a) 除保單另有約定外，被保險人得以其自認適當之次序向保險人請求補償，但不得收取超過本法所允許補償之數額。



- Act;
- (b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;
  - (c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;
  - (d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

- (b) 被保險人所請求補償之保單為定值保單時，則其自任何其他保險單所收取之金額應於其價值內扣除，而不考慮保險標之實際價值。
- (c) 被保險人所請求補償之保單為不定值保單時，則其自任何其他保險單所收取之金額應於其全部可保價值內扣除。
- (d) 凡被保險人所收取之金額已超過本法所允許之補償時，則被保險人應視為各保險人間依其分攤之權利而為保險人信託持有該款項。

## Warranties, &C.

## 擔保等條款

### 33. Nature of warranty

- (1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.
- (2) A warranty may be express or implied.
- (3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

### 33.擔保之性質

- (1) 下列各條之擔保條款係指一認諾承擔之擔保，亦即被保險人必須為或不為某特定行為或履行某條件或對某特定事實情況之確認或否認等之擔保。
- (2) 擔保條款得為明示或默示。
- (3) 擔保條款之條件無論對風險重要與否均應確實遵行。如未遵行，即得依保單任何明示約定，保險人自被保險人違反擔保條款之日起解除責任，然不影響該日之前所發生之義務。

### 34. When breach of warranty excused

- (1) Non-compliance with a warranty is excused when by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.
- (2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss.
- (3) A breach of warranty may be waived by the insurer.

### 34.違反擔保之寬免

- (1) 凡因情事變更使擔保條款無法繼續適用於保險契約，或因其後任何法律致使遵守擔保條款成為不合法時，則擔保條款之不遵行得以被寬免。
- (2) 凡被保險人違反擔保條款者，不得抗辯於損失發生前已予補救該違約或已遵守該擔保。
- (3) 保險人得放棄違反擔保條款得主張之權利。

### 35. Express warranties

- (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.
- (2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy.

### 35.明示擔保

- (1) 明示擔保條款得以任何足以推知擔保意思之文字為之。
- (2) 明示擔保條款應規定於保單內或於保單上載明或於保險所參照之文件上載明。

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

(3) 除內容不相一致外，明示擔保條款不得排除默示擔保條款。

### 36. Warranty of neutrality

- (1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.
- (2) Where a ship is expressly warranted 'neutral' there is also an implied condition that, so far as the assured can control the matter she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract.

### 36. 中立性擔保

- (1) 於船舶或商品可保財物明示擔保其中立性時，即有該財物於危險開始時應具備中立之默示條件，並於被保險人得控制之情況下，於風險期間應維持其中立。
- (2) 於船舶明示擔保其中立時，即有於被保險人得控制之情形下，應具備適當證件，亦即持有必要文件以證明其中立性之默示條件，該項文件不得偽造、隱匿或虛假。因違反本擔保條款所生損失，保險人得使契約無效。

### 37. No implied warranty of nationality

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

### 37. 對國籍無默示擔保

對船舶並無國籍或於風險期間不得更改船舶國籍之默示擔保條款。

### 38. Warranty of good safety

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

### 38. 安全之擔保

凡保險標的擔保於某特定日期為完好或安全時，則於該特定日期任何時間安全者即可。

### 39. Warranty of seaworthiness of ship

- (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.
- (2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port.
- (3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.
- (4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.
- (5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness.

### 39. 船舶適航能力之擔保

- (1) 於航程保單，有船舶於航程開始時應具備適合該特定承保冒險適航能力之默示擔保。
- (2) 保險單於船舶在某港時開始生效，則船舶於風險開始時，應具備合理適合承受該港通常危險之默示擔保。
- (3) 保險單承保之航程分為數航段，而船舶於各航段需具備不同或額外之整備或配備時，則對每一航段開始時，該船舶應具備適合該航段目的之整備或配備之默示擔保。
- (4) 船舶各方面能合理適合於承受承保冒險通常風險事故時，即視為有適航能力。
- (5) 定時保單並無船舶應於冒險任何階段中具備適航能力之默示擔保，然如被保險人明知船舶不適航而出海，則保險人對因該不適航所之致任何損失不負賠償之責。

### 40. No implied warranty that goods are seaworthy

### 40. 對貨物無適航之默示擔保

- (1) In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.
- (2) In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy.

#### 41. Warranty of legality

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

### The Voyage

#### 42. Implied condition as to commencement of risk

- (1) Where the subject-matter is insured by a voyage policy 'at and from' or 'from' a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract.
- (2) The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition.

#### 43. Alteration of port of departure

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

#### 44. Sailing for different destination

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

#### 45. Change of voyage

- (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.
- (2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the

- (1) 貨物或其他動產之保單並無該貨物或動產應具備適航能力之默示擔保。
- (2) 貨物或其他動產之航程保單，於航程開始時，不僅應有船舶適航能力且應有合理適於載運貨物或其他動產至保單所載目的地之默示擔保。

#### 41. 合法性擔保

海上保險有一默示擔保條款，即所承保之冒險應合法，且於被保險人得控制情形下，冒險將以合法方式為之。

### 航程

#### 42. 風險開始之默示條件

- (1) 保險標的以航程保單承保”於及由”或”由”某特定地方，契約締結時船舶不必即在該地方，然應具有一默示條件，亦即冒險應於合理時間內開始，如冒險未如此開始，保險人得使契約無效。
- (2) 如能證明該遲延係保險人於契約締結前已知悉之情況所致，或保險人放棄權利者，即可否定前項默示條件。

#### 43. 啟航港變更

如保單上載明啟航地，船舶未自該處而改自任何他處啟航時，則風險未開始。

#### 44. 駛向不同目的地

於保單上載明目的地，船舶未駛向該目的地而駛向其他目的地時，則風險未開始。

#### 45. 變更航程

- (1) 於風險開始後，自願性地變更保單所載明船舶之目的地時，是為變更航程。
- (2) 除保單另有約定外，凡有變更航程者，保險人自變更之時，亦即自變更航程被確認之日起，解除責任；

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.

#### 46. Deviation

- (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs.
- (2) There is a deviation from the voyage contemplated by the policy-
  - (a) Where the course of the voyage is specifically designated by the policy, and that course is departed from; or
  - (b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from.
- (3) The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract.

#### 47. Several ports of discharge

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

#### 48. Delay in Voyage

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

#### 49. Excuses for Deviation or Delay

- (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused-
  - (a) Where authorised by any special term in the policy; or
  - (b) Where caused by circumstances beyond the control of the master and his employer; or
  - (c) Where reasonably necessary in order to comply with an express or implied warranty; or
  - (d) Where reasonably necessary for the safety of the ship or subject-matter insured; or

且船舶於損失發生時是否事實上並未偏離保單所載航線，均無關緊要。

#### 46. 偏離航程

- (1) 凡船舶無合法理由偏離保單所載航程者，保險人自偏離航程時解除其責任，即使船舶於任何損失發生前已回復其航程亦同。
- (2) 下列情況可均認為偏離保單上所載明之航程：
  - (a) 離開保單所明定航程之路徑；
  - (b) 保單雖未明定航程路徑，但離開通常及習慣上之航行路徑者。
- (3) 保險人僅於船舶確已偏離航程時始解除其契約之責任，如僅有偏離航程之企圖，則無關緊要。

#### 47. 數卸載港

- (1) 保單上載明數卸載港時，船舶得航行所有或其中任一港口，然如無任何相反慣例或充分理由，則應依保單所載明之次序航行於所有或部份港口，如非如此航行，即屬偏離航程。
- (2) 保單只載明某地區之數卸載港然未列名時，若無任何相反慣例或充分理由，船舶應按地理次序航行所有或部份港口。如非如此航行，即屬偏離航程。

#### 48. 航程遲延

航程保單中承保冒險之全程應合理迅速進行，如未如此亦無合法寬免理由者，保險人於不合理遲延之時解除其責任。

#### 49. 偏離航程或遲延之寬免

- (1) 進行保單載明航程，因下列原因而偏離航程或遲延得予以寬免：
  - (a) 保單上特別條款所授權者；或
  - (b) 非船長或其雇主可得控制之情勢所致者；或
  - (c) 為履行明示或默示保證條款合理所需者；或
  - (d) 為船舶或保險標的之安全合理所需者；或

- (e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or
  - (f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
  - (g) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.
- (2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable dispatch.

- (e) 為拯救人命、救助受難船舶，而其上有人處於危險者；或
  - (f) 為船上任何人員獲得醫療或外科救助目的所合理必須者；或
  - (g) 因船員惡意行為所致者，然以保單有承保船長船員惡意不法行為者為限。
- (2) 當偏離航程或遲延之理由不存在時，船舶應合理迅速回復原航行路徑繼續其航程。

## Assignment of Policy

### 50. When and how policy is assignable

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

### 51. Assured who has no interest cannot assign

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

## The Premium

### 52. When premium payable

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

### 53. Policy effected through broker

- (1) Unless otherwise agreed, where a marine policy is effected on

## 保險單之轉讓

### 50. 保單何時及如何轉讓

- (1) 除另有條款明白禁止外，海上保單得於損失前後轉讓之。
- (2) 海上保單已就其保單利益為轉讓者，受讓人有權以自身名義起訴；被告有權如同為原投保之人或代其投保之人之名義起訴般，依該契約有權主張之抗辯向該受讓人主張抗辯。
- (3) 海上保單得以批單或其他習慣方式轉讓之。

### 51. 無利益之被保險人不得轉讓

被保險人於其對保險標的利益分離或喪失前或當時，未明示或默示同意將其保單轉讓者，嗣後之保單轉讓不生效力。但本條規定不影響損失後保單之轉讓。

## 保險費

### 52. 保費何時支付

除另有約定外，被保險人或其代理人支付保費之義務與保險人對被保險人或其代理人簽發保險單之義務應為同時履行時，保險人在保險費未支付前得不簽發保單。

### 53. 由經紀人代訂之保單

- (1) 除另有約定外，若海上保單係由經

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.

## 54. Effect of receipt on policy

Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such 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

### 55. Included and excluded losses

- (1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.
- (2) In particular
- (a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;
- (b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against;
- (c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils.

紀人代被保險人簽訂，經紀人對向保險人負直接繳付保費之責，而保險人直接向被保險人負損失支付賠款或應退還之保險費之責。

- (2) 除另有約定外，經紀人對保險費及代訂保費之費用得留置保單以資對抗被保險人；如某人雇用某經紀人並以該人為保險本人投保時，則對該人任何保險帳目之任何應付差額仍得留置保單，然對該應付款項，經紀人有理由相信該人僅為代理人所發生者除外。

## 54.保單收據之效力

海上保單由經紀人代被保險人簽訂並證實已收到保費時，如該證實無詐欺情事，於保險人及被保險人間具有絕對拘束力，然於保險人及經紀人間並無拘束力。

## 損失及委付

### 55.包括及除外之損失

- (1) 除保單另有約定外，依本法規定，保險人對於其所承保之危險事故主力近因所致之任何損失負賠償之責，然除前述情況外，非由承保之風險事故主力近因所致之任何損失不負賠償之責。
- (2) 特別是
- (a) 保險人對歸因於被保險人之故意不當行為所致之任何損失不負賠償之責，然除保單另有約定外，對於由承保事故主力近因所致之任何損失，而就該事故即使如無船長或船員之不當行為或疏失仍不會發生該損失者，保險人仍負賠償之責；
- (b) 除保單另有約定外，船舶及貨物保險人對於因遲延主力近因所致之損失，保險人不負賠償之責，即使該遲延係由承保事故所致者亦同；
- (c) 除保單另有約定外，保險人對於通常耗損、滲漏、破損、保險標的之固有瑕疵或本質、或蟲獸主力近因所致之任何損失、或非由於海上風險事故主力近因所致機器之任何損傷，概不負賠償之責。

## 56. Partial and total loss

- (1) A loss may be either total or partial. Any loss other than a total loss, as hereinafter defined, is a partial loss.
- (2) A total loss may be either an actual total loss, or a constructive total loss.
- (3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss.
- (4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.
- (5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total.

## 57. Actual total loss

- (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.
- (2) In the case of an actual total loss no notice of abandonment need be given.

## 58. Missing ship

Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed.

## 59. Effect of transhipment, &c.

Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other moveables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

## 60. Constructive total loss defined

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

## 56.部份損失及全部損失

- (1) 損失分為全部損失及部份損失。凡非嗣後定義所指全損外之任何損失，即為部份損失。
- (2) 全損分為實際全損及推定全損。
- (3) 除保單條款有另不同意思表示外，承保全損即包括推定全損及實際全損。
- (4) 除保單另有約定外，凡被保險人請求全損，然所提證據顯示為分損時，僅能以分損獲償。
- (5) 凡貨物抵達目的地因標籤消失而無法辨識時，如有任何之損失，均為分損而非全損。

## 57.實際全損

- (1) 保險標的滅失或毀損不復為被保險之原物，或永不得再歸復被保險人者是為實際全損。
- (2) 實際全損不需發送委付通知。

## 58. 船舶失蹤

冒險中船舶失蹤經過合理時間而未知悉其訊息時，即可為實際全損之推定。

## 59.轉船等之效力

因承保風險事故而於中途港或地點中斷其航程時，除運送契約另有特別約定外，船長將貨物或其他動產上岸、重裝上船、或轉船運送至目的地時，包括上岸及轉船期間，保險均繼續有效。

## 60.推定全損之定義

- (1) 除保單另有任何明示約定外，保險標的因實際全損似已不可避免或如欲由實際全損中予以保全，則其費用將超過保全後之價值者，經合理委付者，是為推定全損。
- (2) 下列事項為推定全損：
  - (a) 被保險人因保險事故而被剝奪其對船舶或貨物之占有，且
    - (i) 其似無法回復其船舶或貨

- 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.

- 物；或
- (ii) 回復其船舶或貨物之費用超過回復後之價值；或

- (b) 於船舶毀損情況，船舶因承保風險事故所致毀損之修理費用超過船舶修理後之價值。於估計修復費用時，對於其他利害關係人就該修理所應支付之共同海損分擔，不予扣除，然應計入如船舶修復後，其可能應負擔之未來救助作業或未來共同海損分擔之成本；或
- (c) 於貨物毀損情況，貨物毀損修復及運送至目的地之費用超過抵達後之價值。

## 61. Effect of constructive total loss

Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

## 61.推定全損之效力

發生推定全損時，被保險人得以分損處理或將保險標的委付而以實際全損處理。

## 62. Notice of abandonment

- (1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss.
- (2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in 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 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 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 re-insured his risk, no notice of abandonment need be given by him.

## 62.委付通知

- (1) 依本條規定，當被保險人決定向保險人為委付時，應發送委付通知。否則其損失僅以分損處理。
- (2) 委付通知得以書面或口頭或部份以書面部份以口頭為之，或任何足以表達將保險標的之權利無條件委付予保險人之方式為之。
- (3) 委付通知應於收悉損失確實消息後合理迅速為之，如消息尚有可疑之處時，被保險人有權於合理時間進行查證。
- (4) 凡委付通知適當發送後，被保險人之權利不因保險人拒絕接受委付之事實而有所影響。
- (5) 委付之接受得以明示或保險人之默示行為為之。通知後保險人之單純沈默不得視為接受。
- (6) 委付通知一經接受不得撤回。接受委付即為對損失承負責任之決定及通知之適格。
- (7) 當被保險人收悉損失消息後，即使通知保險人亦無任何受益之可能時，則可不發送委付通知。
- (8) 保險人得放棄委付通知。
- (9) 當保險人再保時，無須發送委付通知。

## 63. Effect of abandonment

## 63.委付之效力



- (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.

- (1) 有效之委付使保險人有權接收被保險人對於保險標的一切殘餘權益及其附屬之所有權益。
- (2) 船舶之委付，保險人有權取得其應賺得運費及發生損失意外後之運費，但應扣減意外後為賺取運費之費用；且對於船舶運送船舶所有人之貨物時，保險人有權取得發生損失之意外後運送該貨物之報酬。

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

### **部份損失 (包括救助、共同海損及單獨費 用)**

#### **64. Particular average loss**

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

#### **64. 單獨海損損失**

- (1) 單獨海損損失係指保險標的因承保風險事故所致非共同海損損失之部份損失。
- (2) 為保險標的之安全或其保存，被保險人或其代表人所發生非屬共同海損及救助費用之費用為單獨費用。單獨海損不包括單獨費用。

#### **65. Salvage charges**

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

#### **65. 救助費用**

- (1) 為防止承保事故所致損失而發生之救助費用得依保險單上之明示約定予以補償。
- (2) 「救助費用」指依海事法律非契約關係之救助人可獲補償之費用。救助費用不包括被保險人或其代理人或其雇用之任何人員為避免承保風險所提供救助性質之服務費用在內。適當發生之費用，得按發生時之情況以單獨費用或共同海損損失獲償。

#### **66. General average loss**

- (1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.
- (2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure.
- (3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime

#### **66. 共同海損損失**

- (1) 共同海損損失係指共同海損行為所致或其直接後果之損失，包括共同海損費用及共同海損犧牲。
- (2) 於共同冒險間遭遇海上風險，為保全財物，自願及合理所為或發生之非常犧牲及費用，是為共同海損行為。
- (3) 發生共同海損損失之關係人有權依海事法律之規定，向其他關係人要

law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution.

- (4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute.
- (5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer.
- (6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.
- (7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons.

## Measure of Indemnity

### 67. Extent of liability of insurer for loss

- (1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy is called the measure of indemnity.
- (2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy.

### 68. Total loss

Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured,-

- (1) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy;
- (2) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured.

### 69. Partial loss of ship

Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as

求比例分擔損失，該分擔稱之為共同海損分擔。

- (4) 除保單另有約定外，被保險人發生共同海損費用時，得依保險單上明示規定依被保險人損失比例自保險人處獲償；然關於共同海損犧牲，被保險人得全部自保險人處獲償，而不需先行向其他應負責分攤關係人之分擔之權利。
- (5) 被保險人已付或應付保險標之之分擔，得依保單上明示約定自保險人處獲償。
- (6) 除另有明示約定外，保險人對非為避免被保險危險事故所致損失之共同海損損失或分擔概不負責任。
- (7) 凡船舶、運費及貨物或其他兩者屬同一人時，保險人對其共同海損損失或分擔之責任，一如其屬於不同之人。

## 補償額度

### 67. 保險人對損失之責任限度

- (1) 被保險人對保單所承保之損失可得獲償之數額，於不定值保單為可保價值之全部，於定值保險單則為保單確定價額之全部，稱之為補償額度。
- (2) 保險人或各保險人對得由保險單獲償之損失，依其保險金額負補償額度比例之責任，於定值保單以保單確定價額為標準，於不定值保單則以可保價值為標準。

### 68. 全部損失

依本法或保單上之明示約定，於保險標的為全部損失時：

- (1) 如為定值保單，補償額度為保單所確定之數額；
- (2) 如為不定值保單，補償額度為保險標的之可保價值。

### 69. 船舶之部份損失

依保單上明示約定，船舶遭受非全損之損害時，其補償額度為：

follows:

- (1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;
- (2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above;
- (3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.

## 70. Partial loss of freight

Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy.

## 71. Partial loss of goods, merchandise, &c.

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

- (1) Where part of the goods, merchandise or other moveables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy;
- (2) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss;
- (3) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged value at the place of arrival bears to the gross sound value;
- (4) 'Gross value' means the wholesale price, or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. 'Gross proceeds' means the actual price obtained at a sale where all charges on sale are paid by the sellers.

## 72. Apportionment of valuation

- (1) 如船舶業已修理，被保險人得以合理之修理費用，減去習慣性扣減獲償，然每一次意外不得超過投保金額；
- (2) 船舶為部份修理時，被保險人得以前項計算合理修理費用，及由於未修理部份所致合理折舊補貼獲償，然其總額不得超過如全部損害修理時按前項計算之修理費用；
- (3) 船舶未修理且未於保險期間內以受損船況出售時，被保險人得以因未修理損害所致合理折舊之補貼獲償，但不得超過該項損害按前述計算之合理修理費用。

## 70.運費之部份損失

依保單明示約定，運費部份損失之補償額度，定值保單為保單所確定數額；不定值保單以可保價值，依被保險人所損失之運費與保單所承保之全部風險運費比例獲償。

## 71.貨物商品等之部份損失

依保單上明示規定，貨物、商品或其他動產部份損失之補償額度為：

- (1) 定值保單所承保之部份貨物、商品或其他動產為全部損失時，一如不定值保單所確定者般，以損失部份之可保價值與全部可保價值依保單確定金額之比例部份獲償。
- (2) 不定值保單所承保之部份貨物、商品或其他動產為全部損失時，一如全部損失之確定者般，以損失部份之可保價值獲償。
- (3) 全部或部份被保險貨物或商品於抵達目的地時損害，如為定值保單，為保單確定數額之比例部份；如為不定值保單，則為可保價值部份，以抵達地總完好價值及毀損後價值之差額比例乘總完好價值計算獲償。
- (4) 「總價值」指批發或其估計價格、運費、卸載費用及已付稅捐之總和；如習慣上貨物商品係以未稅方式出售者，則未稅價值即得視為總價值。「總所得」指出售人應負擔所有出售費用之實際買賣售價。

## 72.價值之分配

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

### **73. General average contributions and salvage charges**

- (1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be reduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.
- (2) Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle.

### **74. Liabilities to third parties**

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

### **75. General provisions as to measure of indemnity**

- (1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.
- (2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

### **76. Particular average warranties**

- (1) 當不同種類之財物以單一價值承保時，不同種類之價值應依其可保價值比例分配，一如不定值保單情形同。某種類任一部份之保險價值為該種類全部保險價值之比例部份，一如該部份之可保價值與全部可保價值之比例，均得依本法之規定而確定。
- (2) 當價值須予以分配，而每一個別種類貨物之原價、品質或內容無法確定時，可依該不同種類、品質或內容貨物之抵達淨價值計算分配之。

### **73.共同海損分擔及救助費用**

- (1) 依保單明示約定，被保險人已付或應付之共同海損分擔，其補償額度為一如應分擔之保險標的係以全部分擔價值投保，則其補償額度為全部之分擔；但如該保險標的未以全部分擔價值或係以其部份投保，則保險人以不足額保險比例補償被保險人。如另有保險人應負責之單獨海損損失發生，且可自分攤價值中扣減時，則該數額應自保險價值中扣減之，以決定保險人對分擔之責任。
- (2) 保險人對應負責救助費用之補償亦以前項原則決定之。

### **74.對第三人之責任**

被保險人以明示條款投保其對第三人任何責任之保險，依保單上之任何明示約定，其補償額度為被保險人對第三人就該責任所已付或應付之金額。

### **75.補償額度之一般性規定**

- (1) 於任何保險標的遭受損失而本法前述各條無明示規定者，其補償額度應儘可能地依適用該個別情況之前述各條規定確定之。
- (2) 本法有關補償額度之規定不影響複保險有關規定，或禁止保險人得反證全部或部份保險利益或證明全部或部份保險標的於損失發生時並未處在保單風險中之規定。

### **76.單獨海損擔保條款**

- (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable, but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part.
- (2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.
- (3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.
- (4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded.

## 77. Successive losses

- (1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured.
- (2) Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss: Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

## 78. Suing and labouring clause

- (1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage.
- (2) General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause.
- (3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause.
- (4) It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss.

- (1) 保險標的以不負責單獨海損條件為保險時，被保險人非因共同海損犧牲所發生之部份損失不能獲償，然保單上之契約約定可以劃分者不在此限；如契約可劃分，被保險人得以任何可劃分部份之全損獲償。
- (2) 保險標的以不負責全部或特約比例單獨海損條件為保險時，保險人無論如何均須負責救助費用及單獨費用，以及其他為避免所承保之損失，依損害防阻條款規定所適當發生之費用。
- (3) 除保單另有約定外，保險標的以不負責特約比例單獨海損條件為保險時，共同海損損失不得加在單獨海損損失上，以求達到該特約比例。
- (4) 為確定是否已達到特約比例，只考慮保險標的實際所遭受之損失。為確定及證明該損失所附隨發生之單獨海損費用應予除外。

## 77. 後續損失

- (1) 除保單另有約定外，依本法規定，保險人對於後續損失，即使該若干損失總額已超過投保金額，亦應負責。
- (2) 於同一保單承保，部份損失未及修理或以其他方式補償時，隨後發生全部損失，被保險人只能以全部損失獲償。但本項之規定並不影響保險人在損害防阻條款下之責任。

## 78. 損害防阻條款

- (1) 如保單上約定有損害防阻條款，此約定應視為保險契約之附加約定，被保險人依該條款規定所適當發生之費用得自保險人處獲償；即使保險人已賠付全損或保險標的以不負責全部或特約比例單獨海損條件保險，保險人仍應負責。
- (2) 本法所規定之共同海損損失、分攤及救助費用，均不得於損害防阻條款下獲償。
- (3) 凡為避免或減輕非保險單所承保損失而發生之費用，均不得於損害防阻條款中獲償。
- (4) 被保險人及其代理人於任何情況下，有責任採取合理措施以避免或減輕損失。

## Rights of Insurer on Payment

### 79. Right of subrogation

- (1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.
- (2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss.

### 80. Right of contribution

- (1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.
- (2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt.

### 81. Effect of under insurance

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

## Return of Premium

### 82. Enforcement of return

Where the premium or a proportionate part thereof is, by this Act, declared to be returnable,-

- (a) If already paid, it may be recovered by the assured from the insurer; and
- (b) If unpaid, it may be retained by the assured or his agent.

## 保險人賠償後之權利

### 79. 保險代位權

- (1) 於保險人支付保險標的全部損失或貨物任何可劃分部份之全部損失時，其即有權取得其所賠付之保險標的所餘留之任何權益，並得保險代位行使自發生損失之意外時起被保險人有關保險標的之一切權利及救濟。
- (2) 保險人依前述各條款規定支付部份損失，無權獲得保險標的或其所餘留部份之任何權利；然保險人得就其所支付損失之額度，依本法規定，保險代位行使損失意外發生時起被保險人對於或有關保險標的之一切權利及救濟。

### 80. 分攤之權利

- (1) 被保險人因複保險而為超額保險時，任一保險人依其保險契約之金額比例負責被保險人之損失。
- (2) 如任一保險人支付之損失大於其本應負擔者，其即有權要求其他保險人予以分攤，並有權取得就其所支付超過其應比例分攤之部份取得如同保證金般之補償。

### 81. 不足額保險之效力

若被保險人之投保金額小於可保價值，或於定值保單時小於保險價額，被保險人視為自己承保未保險部份之差額。

## 保險費之退還

### 82. 強制性退還

保費或其部份依本法規定應予退還者，則保費：

- (a) 已繳付時，被保險人可自保險人處退還。
- (b) 尚未繳付時，被保險人或其代理人得留存之。

### 83. Return by agreement

Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured.

### 84. Return for failure of consideration

- (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured.
- (2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.
- (3) In particular
  - (a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;
  - (b) Where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable; Provided that where the subject-matter has been insured 'lost or not lost' and has arrived in safety at the time when the contract is concluded, the premium is returnable unless, at such time, the insurer knew of the safe arrival.
  - (c) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering;
  - (d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;
  - (e) Where the assured has over-insured under an unvalued policy, a proportionate part of the several premiums is returnable;
  - (f) Subject to the foregoing provisions, where the assured has overinsured by double insurance, a proportionate part of the several premiums is returnable;Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

## Mutual Insurance

### 83.協議退還

保單約定於特定情事發生得退還保費或其部份，於該情事發生時，保險人應將保險費或其部份退還予被保險人。

### 84.約因無效時之退還

- (1) 支付保費之約因全部無效，而被保險人或其代理人無詐欺或不法時，保費應退還被保險人。
- (2) 當支付保費之約因可劃分時，而任一可劃分之約因未履行時，則該部份之保費，亦得退還予被保險人。
- (3) 特別是：
  - (a) 於保單無效或保險人於風險開始時得使其無效，如被保險人無詐欺或不法，保費應予退還。然如風險不能劃分而風險業已生效起保時，則保險費得不予退還。
  - (b) 於保險標的或其部份從未陷於風險中，保費或其部份應予退還。然如保險標的以「已失或未失」條件，保險標的於契約締結時已安全到達，保費不得退還，然保險契約締結時，保險人已知其安全到達者不在此限。
  - (c) 被保險人於風險期間並無保險利益，保費應予退還，然此項原則以賭博方式簽訂之保單不適用之。
  - (d) 被保險人如有可撤銷之利益，於風險期間終止，保費不得退還。
  - (e) 被保險人於不定值保單中超過保險部份之保費應予退還。
  - (f) 依前述各項規定，被保險人因複保險為超額保險時，各保費應比例退還。但如數保單係於不同時間為投保，任一先投保之保單已承負全部風險或已以保單上之全部投保金額為賠款時，則該保單無須退還保費；另被保險人投保時知情其為複保險者，亦不退還保費。

## 互助保險

## 85. Modification of Act in case of mutual insurance

- (1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.
- (2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.
- (3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.
- (4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

## Supplemental

### 86. Ratification by assured

Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss.

### 87. Implied obligations varied by agreement or usage

- (1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract.
- (2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

### 88. Reasonable time, &c. a question of fact

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

### 89. Slip as evidence

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

### 90. Interpretation of terms

## 85. 本法對互助保險之修訂適用

- (1) 互助保險指二人或二人以上相互協議彼此對海上損失為保險者。
- (2) 本法有關保險費之規定不適用於互助保險，然得以擔保或其他協議之方式代替保費。
- (3) 本法各項規定，得由雙方當事人協議變更修訂之處，亦得由互助協會簽署保單上之條款或以協會規則變更修訂之。
- (4) 除本條各項之除外規定外，本法之規定適用相互保險。

## 附則

### 86. 被保險人之追認

海上保險契約係由他人誠信代為簽訂時，本人得認可該契約，即使於知悉損失後亦得為之。

### 87. 以協議或慣例變更默示義務

- (1) 海上保險契約依法所生之任何權利、義務或責任，均得由明示協議或拘束契約雙方當事人之慣例，予以否定或變更之。
- (2) 本法規定之任何權利、義務或責任得因協議予以合法修改者，亦得適用本條規定之變更。

### 88. 合理時間等均屬事實之認定

本法所有規定合理時間，合理保險費或合理注意等項，是否合理，屬事實認定問題。

### 89. 暫保條亦可為證據

已銷蓋印花之保單，則其暫保條或承保單於任何法律行為中亦可提供為證據。

### 90. 條款解釋



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

'Action' includes counter-claim and set off;  
'Freight' includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money;  
'Moveables' means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents;  
'Policy' means a marine policy.

## 91. Savings

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

## 92. Repeals

*The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in that schedule. [1927 Repealed].*

## 93. Commencement

*This Act shall come into operation on the first day of January one Thousand nine hundred and seven. [1927 Repealed]*

## 94. Short Title

*The Act may be cited as the Marine Insurance Act, 1906. [1927 Repealed]*

## SCHEDULES

### First Schedule

#### Form Of Policy

### Lloyd's S. G. Policy

Be it known that \_\_\_ as well \_\_\_ in own name as for and in the name and names of all and every other person or persons to

除另有規定外，本法中所謂：

「訴訟」包括反訴及抵銷。  
「運費」包括船舶所有人使用船舶承運自己貨物或動產所生收益，以及第三人應付運費，但不包括旅客票價。  
「動產」指任何可移動之實體財物，但船舶除外，包括貨幣、有價證券及其他文件。  
「保單」指海上保險單。

## 91.保留

- (1) 本法或本法任何廢止規定均不應影響下列法律之效力：
  - (a) 1891 年印花稅法之規定及現行有效稅法之任何法律；
  - (b) 1862 年公司法以及其修訂或更替之法律；
  - (c) 本法未明示廢止之任何法律。
- (2) 包括商事法之普通法規則，除與本法明示規定不相一致外，仍得繼續適用於海上保險契約。

## 92.廢止

本法第二附錄所規定各項，依該附件特別聲明範圍內予以廢止。【1927 年廢止】

## 93.施行

本法訂於 1907 年 1 月 1 日施行。【1927 年廢止】

## 94.簡稱

本法簡稱 1906 年海上保險法。【1927 年廢止】

## 附錄

### 第一附錄

#### 保單格式

### 勞依茲船貨保險單

茲經\_\_\_\_\_以其本人名義或代表及其他各標的關係人名義為被保險人要

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, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the \_\_\_ whereof is master under God, for this present voyage, \_\_\_ or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandised from the loading thereof aboard the said ship, upon the said ship, &c. and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandises whatsoever shall be arrived at \_\_\_ upon the said ship, &c. 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, &c., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detentions of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, &c., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

In Witness whereof we, the assurers, have subscribed our names and sums assured in London.

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

保本保險，無論標的減失與否，於及由\_\_\_\_\_其所有任何種類貨物及商品裝載於\_\_\_\_\_上及其船身、器具、裝具、軍械、軍火、槍砲、小艇及其他家具，本船舶此航行船長\_\_\_\_\_或其他代理船長職務之人，或將來本船無論更易何名，或船長更易何人，本保險自上述貨物或商品裝於上述船舶之上或船舶\_\_\_\_\_開始於\_\_\_\_\_繼續有效，直至上述船舶及其所有軍械、器具、裝具等及任何其他貨物商品抵達\_\_\_\_\_船舶於安全繫纜二十四小時，貨物及商品則以完好卸載上岸時終止，船舶在本航程得航行及停靠任何港口或地方，本保險不受任何影響。保險人及被保險人協議被保險人在本保單對上述船舶貨物及商品之價值為\_\_\_\_\_。保險人在本航程所願承負之冒險及危險事故為海上風險、戰艦、火災、敵人、海盜及遊劫者、盜竊、投棄、拿捕許可狀及其報復、突襲、海上拿捕、所有任何國籍情況或性質、國王、王侯及人民之查扣禁制及阻留、船長、船員之惡意行為以及得損及上述船舶貨物及商品或任一部份之及所有其他風險、損失或不幸。於有任何損失或不幸情形時，應對上述貨物商品及船舶或其任一部份設法防禦，以保全回復之，而不影響其在本保險之權益。各保險人將依據被保險金額比例支付該項費用。茲特經雙方同意保險人或被保險人對被保險財物之回復援助保全之行為，不得視為放棄或承諾委付。保險人同意本保單與向在倫敦倫巴底街或皇家交易所或其他處訂立之保險單具備同等之效力，保險人繼承人遺囑執行人及其動產基於被保險人在本保險按\_\_\_\_\_費率計算給付保險費，各自願意允諾並受其拘束，對保險人其遺囑執行人管理人及受讓人確實履行上述各款。

茲保險人於倫敦簽署其名及承擔之保險金額於下。

協議備忘錄：除非共同海損或船舶擱淺外，穀類、魚類、鹽、水果、麵粉及種子之單獨海損均不負責，糖、煙草、大麻、亞麻及皮革之單獨海損未達百分之五者不負責。其他貨物船舶

pounds per cent. unless general, or the ship be stranded.

## Rules for Construction of Policy

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

1. Where the subject-matter is insured 'lost or not lost', and the loss has occurred before the contract is concluded, the risk attaches unless, at such time the assured was aware of the loss, and the insurer was not.
2. Where the subject-matter is insured 'from' a particular place, the risk does not attach until the ship starts on the voyage insured.
3.
  - (a) Where a ship is insured 'at and from' a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately.
  - (b) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.
  - (c) Where chartered freight is insured 'at and from' a particular place, and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.
  - (d) Where freight, other than chartered freight, is payable without special conditions and is insured 'at and from' a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the shipowner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.
4. Where goods or other moveables are insured 'from the loading thereof,' the risk does not attach until such goods or moveables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.
5. Where the risk on goods or other moveables continues until they are 'safely landed,' they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.
6. In the absence of any further licence or usage, the liberty to touch and stay 'at any port or place whatsoever' does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.
7. The term 'perils of the seas' refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary

運費之單獨海損未達百分之三者不負責。

## 保單解釋規則

上述保單或其他類似格式，如其內容無其他約定時，則以下列本法所定之規則解釋之：

1. 保險標的係以「已失或未失」條件保險，而於保險契約完成前已發生損失，該保險仍為有效，然損害當時被保險人明知損失已發生，而保險人不知情者不在此限。
2. 當保險標的係以「由」某特定地方條件為保險時，則於船舶開始其承保航程前，風險未開始。
3.
  - (a) 船舶係以「於及由」某特定地方條件為保險，於保險契約締結時，船舶安全在該地方時，風險立即起保。
  - (b) 如於保險契約締結時，船舶不在該地方，除保單另有約定外，風險於船舶安全抵達該地方時開始起保，即使船舶抵達後某特定時間另有其他保單承保亦同。
  - (c) 當租傭船運費係以「於及由」某特定地方條件為保險，於保險契約締結時，船舶安全在該地方時，風險立即開始起保。如於保險契約締結時船舶不在該地方，風險則於船舶安全抵達該地方時開始起保。
  - (d) 租傭船運費以外其他運費之支付並無特殊約定，而以「於及由」某特定地方條件保險時，風險則以貨物或商品已裝船之比例開始起保。但如屬於船舶所有人應為船到準備通知，或與其他人員已通知船舶所有人準備上船裝載時，風險於船舶備就接受貨物時開始起保。
4. 貨物或其他動產係以「自裝載」條件保險時，則風險必於該貨物或動產實際已裝上船舶開始起保，自岸上轉運送上船期間保險人概不負責。
5. 貨物或其他動產之風險繼續至其「安全上岸」止時，則應於抵達卸貨港後，應於慣例及合理時間內上岸，如不如此上岸時，風險終止。
6. 如無任何額外許可或習慣時，得停靠「任何港口或地方」之自由並非授權船舶駛離啟航點至目的港航程之航道。
7. 「海上風險」一詞僅指海上偶發之意外或不幸，並不包括風浪經常作

- action of the winds and waves.
8. The term 'pirates' includes passengers who mutiny and rioters who attack the ship from the shore.
  9. The term 'thieves' does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.
  10. The term 'arrests, &c., of kings, princes, and people' refers to a political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.
  11. The term 'barratry' includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.
  12. The term 'all other perils' includes only perils similar in kind to the perils specifically mentioned in the policy.
  13. The term 'average unless general' means a partial loss of subject-matter insured other than a general average loss, and does not include 'particular charges'.
  14. Where the ship has stranded the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.
  15. The term 'ship' includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.
  16. The term 'freight' includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money.
  17. The term 'goods' means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

Note: by virtue of the Public Order Act 1986 the words 'rioters' in rule 8 and 'riot' in rule 10 shall be construed in accordance with section I of that Act.]

Second Schedule - [This Schedule was repealed by the Statute Law Revision 1927]

- 用在內。
8. 「海盜」一詞包括叛變之旅客及自岸上攻擊船舶之騷亂者。
  9. 「盜竊」一詞不包括隱匿之偷竊或任何船公司之船員或旅客之偷竊。
  10. 「國王、王侯及人民之查扣等」一詞指政治及行政上之行為，不包括由騷亂或正常司法程序所致之損失。
  11. 「船長船員惡意不法行為」一詞包括船長或船員故意損及船舶所有人或租傭船人之非法行為。
  12. 「一切其他危險」僅包括與保險單特別載明之風險類似之危險。
  13. 「除共同海損外之海損」一詞指被保險標的共同海損損失以外之部份損失，但不包括「單獨費用」在內。
  14. 當船舶擱淺，保險人即應負責預期損失，即使非擱淺所致損失亦同，但以船舶擱淺發生時保險已開始起保；承保貨物者則以毀損貨物裝於船上為限。
  15. 「船舶」一詞包括船體、材料、船員及水手之工具、供應、食糧、及為特殊商業使用之船舶經常所需之器具、及蒸氣船之機器、鍋爐及為被保險人所有之煤及引擎供應。
  16. 「運費」一詞包括船舶所有人使用其船舶承運自己貨物或動產所生之利益及第三者應付之運費，但不包括旅客票價。
  17. 「貨物」一詞指具備商品性質之貨物，不包括個人之物品及船上使用之供應。如無任何相反之習慣，甲板貨物及牲畜於投保時應特別聲明，且不得列於一般貨物項目之下。

注意：基於 1986 年公共秩序法，第 8 點之「騷亂者」及第 10 點之「騷亂」應依該法第 1 條解釋之。

第二附錄一【本附錄業依 1927 年制定法修正廢止之】