

GET THROUGH GUIDES PROPERTY

Key Notes

Chapter 1

Types of Losses

Intro: This chapter discusses various types of losses covered under marine cargo insurance.

Marine Insurance – Types of losses

Losses under MIA

Total losses (Sec 57 and 58 of MIA)

Partial losses (Sec 56 of MIA)

Total Losses (Section 57 and 58 of the MIA)

Actual Total Loss (ATL): An Actual Total Loss can occur in one of the following ways

When the subject matter is destroyed (vessel sinking in water with both the ship and cargo being lost)

Where subject matter is so damaged as to cease to be a thing of the kind insured (loss of specie – cement damaged by sea water hardening and becoming concrete)

Where the assured is irretrievably deprived of the subject matter implying that destruction is not essential for ATL. For example a consignment of gold within a sunken ship in deep seas not retrievable

As per Sec 58 if vessel goes missing and not traceable even after reasonable time she is presumed to be Actual total loss by a marine peril unless insurers raise defence of un-seaworthiness for which burden of proof rests with the insurers themselves

Constructive Total Loss (CTL): There is a Constructive Total Loss (CTL) where the subject matter is reasonably abandoned because:

Actual Total loss appears unavoidable or

To prevent Actual Total Loss some disproportionate expenditure is required to be incurred which exceeds the value of the goods after it is saved

Further when the assured is deprived of the subject matter insured, it is unlikely that they can recover it or cost of recovery would exceed its value in restored condition, not making the exercise worthwhile

Abandonment

In marine insurance an insured may abandon the subject matter to the insurers and claim a Constructive Total Loss (CTL)

Abandonment is a condition precedent to a claim for Constructive Total Loss (CTL)

Difference between abandonment and subrogation

<p>The right of Subrogation arises under all indemnity contracts whether the loss is total or partial while right of abandonment arises only in case of Constructive Total Loss under Marine Insurance contracts only.</p>	<p>On payment of claim abandonment confers proprietary interests in the subject matter whereas subrogation doesn't.</p>	<p>Further in case of abandonment insurers can dispose off the property and retain excess proceeds even in excess of claim amount paid by them whereas in subrogation they can only retain amount up to claim amount paid and rest to be given to the insured.</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Particular Average (PA) (Section 64 of MIA)

Particular average is partial loss or partial damage caused fortuitously by a peril insured against and thus does not include loss/damage voluntarily incurred such as General Average sacrifice.

The measure of indemnity for Particular Average to cargo varies according to:

- i. **Whether it takes the form of loss of part of the cargo**
- ii. **Cargo arriving damaged at the destination**

In Section 64, Particular Average is defined as a partial loss of the subject matter insured caused by a peril insured against and which is not a General Average Loss

- Partial Loss of Ship (Section 69 of MIA)
- Partial Loss of Freight

General Average (GA)

General Average (GA) is a concept peculiar to Marine. It is a principle of maritime law which states that when a voluntary act or sacrifice is done or expense incurred to protect the common adventure, all the interests concerned, would contribute proportionately to the loss

A GA loss is caused by or is the direct result of a GA Act. Such GA loss may be either a GA sacrifice, or a GA expenditure

Charges

Loss prevention and minimisation charges

It is the duty of the insured under common law to always act as if uninsured and always take measures to avoid or minimise the loss inspite of being insured under an insurance policy.

Such expenses are paid in full (underinsurance not applicable) and are paid over and above the sum insured under the policy even when inspite of best efforts total loss could not be averted. Such expenses are in the nature of

- i. Sue and Labour charges
- ii. Particular charges
- iii. Salvage charges

Extra charges

- i. Survey fees
- ii. Auction charges

General Average

Component need to be there otherwise in absence of any one or more such component would defy the categorisation of any loss as 'General Average')

It must be against a common adventure

The action must be for common safety in the common maritime adventure

The act must be voluntarily or intentionally and not inevitably

The sacrifice or expenditure must be extraordinary

It should be reasonably made

Piracy as General Average Loss

Piracy



It is forcible robbery at sea, whether committed by marauders from outside the ship, or by mariner or passengers within it

Essential elements of allege the proximate loss as "Piracy"

Vessel must be at sea

There must be a robbery

Force or the threat of force used

Marine DSU (Delayed Start-Up) covers consequential financial loss arising due to delay in completion of a project, following material damage to the cargo in transit by an insured peril. DSU is designed to indemnify the principal of the project only.

Methods of arriving at the DSU sum insured:

The sum insured is arrived at on the following basis:

Annual estimated gross profit i.e. Net profit + standing charges or fixed expenses.

(OR)

Only certain defined fixed expenses like annual debt servicing costs are considered.

Based on the chosen period of indemnity, the annual values are pro-rated.

Deductible under DSU

Deductible under DSU is always in terms of number of days. If the total delay computed is 45 days and the deductible is 30 days, indemnifiable delay will only be for 15 days