INTRODUCTION

This course “marine cargo insurance and reinsurance” is the tenth in a series of courses.

The reader of this course should have read at least the introductory course to reinsurance (course 1) prior to reading this manual so that they can be familiar with the (re)insurance terminology, the forms and types of (re)insurance and (re)insurance documentation.

The objective of this course is to introduce marine cargo insurance and reinsurance to the reader.

The main sections of this manual are as follows:

1.1. Learning Objectives

Section 1 – Introduction to marine insurance and reinsurance

Learning objective: To have a basic knowledge of the origins of marine insurance and to understand the main markets for cargo insurance and reinsurance.

Section 2 – Legal considerations and principles of insurance applicable to marine insurance.

Learning objective: To appreciate the underlying legal considerations and principles of marine cargo insurance.

Section 3 – Marine Cargo, the essential elements of coverage

Learning objective: To have a basic knowledge of the main elements of cover for marine cargo.

Section 4 – The marine cargo insurance policy

Learning objective: To be familiar with a typical marine cargo policy wording.

Section 5 – Underwriting Considerations for Cargo Insurance

Learning objective: To be familiar with some of the important risk factors to take into consideration when underwriting cargo business.

Section 6 – Cargo claims management

Learning objective: To understand the main elements in cargo claims management.

Section 7 – Marine cargo reinsurance structuring

Learning objective: To have a basic knowledge of marine cargo reinsurance covers and their interactions.

1.2. What risks are defined as marine

In 1906, the United Kingdom enacted The Marine Insurance Act. This act codified existing law to date, and given the importance of London as a trading centre at that time, the legal principles embodied in the act were adopted by many jurisdictions around the world, and this act still dominates marine insurance and reinsurance today.

The act defines a marine contract as:

“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”
Marine adventure, and marine perils are defined as follows:

“(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 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, seisures, restraints, and detainments of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy.”

Cargo is, of course, handled on sea, on land and in the air, and all these aspects need to be considered here.

1.3. History

Marine insurance is considered one of the first types of insurance to have evolved within some basic parameters. It already existed at the time of the Greek and Roman empires. At that time many ship owners would need investors to finance their voyage. Those who invested in such ventures would expect higher rates of return than the returns expected for more local investments. Clearly if the ship, and its owner, did not return, then the investment was lost. In effect the ship owner had transferred that part of the risk of the venture to the investors. The difference in the return expected on the investment could be said to have been the risk premium for the voyage.

As also noted in course 1, as economies evolved, the concept was formalised, as in, for example, the Code of Hammurabi, which dates from circa 1754 BC, and was the Babylonian law code of ancient Mesopotamia. According to this code an investor could agree to forgive a loan in exchange for additional payment if a hazardous voyage was completed successfully.

Also, whether it can be called reinsurance or not, a contract which spread a part of the risk between risk takers took place in the year 1370, when one underwriter, Guiliano Grillo, contracted with others, Goffredo Benaira and Martino Sacco to reinsure a cover on a ship on just part of the voyage from Genoa to Bruges. While Grillo covered the ship through the Mediterranean, he passed the risk to Benaira and Sacco from Cadiz to Bruges.

Lloyd’s of London in the United Kingdom was historically seen as one of the most entrepreneurial insurance organisations, and as the United Kingdom carried on an active trade with many parts of the world, Lloyd's could keep itself very well informed as ship's captains returned from their various travels and met in the Captain's Room in Lloyd's to keep underwriters up-to-date. Lloyd's began in 1688 essentially covering marine risks, ships and cargo. Marine insurance has traditionally made up the greater part of the business transacted at Lloyd's. As Lloyd's and the London insurance and reinsurance market grew and evolved, so through judgements and enactments marine insurance law developed, and underwriting became more sophisticated and policies became based on more standardised wordings. Marine law was codified in the Marine Act 1906, which has been adopted as a standard by many countries throughout the world.

Marine insurance is today often included with aviation and cargo transit business, and described by the group acronym of ‘MAT’.

Around 800 BC, what we know today as “General Average” had its beginning in the “Lex Rhodia”. General Average is succinctly described in the judgement Barnard v Adams (1850).
“It is not necessary in the examination of this case again to repeat the history of this doctrine of general average, from the early date of the «Lex Rhodia de jactu» through the civil or Roman law, and the various ordinances and maritime codes of European states and cities, down to the present day. The learned opinions delivered in the cases to which we have alluded leave nothing further to be said on that portion of the subject. We shall therefore content ourselves with stating the leading and established principles of law bearing on the point in question, in order that we may have some precise data with which to compare the facts of the present case, and test the value of the arguments with which the instructions of the circuit court have been assailed.

The law of general average has its foundation in equity. The principle, that «what is given for the general benefit of all shall be made good by the contribution of all,» is recommended not only by its equity, but also by its policy, because it encourages the owner to throw away his property without hesitation in time of need.

In order to constitute a case for general average, three things must concur:

1st. A common danger; a danger in which ship, cargo, and crew all participate; a danger imminent and apparently «inevitable,» except by voluntarily incurring the loss of a portion of the whole to save the remainder.

2d. There must be a voluntary jettison, jactus, or casting away, of some portion of the joint concern for the purpose of avoiding this imminent peril, pericula imminenteris evitandi causa, or, in other words, a transfer of the peril from the whole to a particular portion of the whole.

3d. This attempt to avoid the imminent common peril must be successful.“

Marine insurance and reinsurance thus has a rich history going back several thousand years.

1.4. A brief on the marine insurance act 1906

The Marine Insurance Act 1906 was an act of codification, a photo of the legal position at that time. That is to say the act summarised the law in the UK on marine insurance to date, taking into account common law, statute law and legal precedent. It did not attempt to foresee or take account of possible future developments, nor did it attempt to remove certain references which had been obsolete for a number of years as regards, for example, bottomry and respondentia.

The act covers the main sections of marine insurance, that is to say Hull, Cargo and P&I (Protection and Indemnity cover).

The first three sections of the Act define the scope of marine insurance.

Sections 4 to 15 deal with insurable interest, especially the need for insurable interest to exist for there to be a valid insurance policy.

Section 16 covers insurable value, and sections 17 to 21 disclosure and representations. The importance of uberrimae fidei (utmost good faith) is dealt with in this latter section. Insurable interest and uberrimae fidei are dealt with in more detail below.

Sections 22 to 31 deal with the policy and section 32 deals with double insurance.

Sections 33 to 41 cover warranties. This section in particular has been amended by the Insurance Act 2015 – this again is dealt with in more detail below.

Sections 42 to 49 deal with the voyage, and sections 50 and 51 with the assignment of the policy.

Sections 52 to 54 cover the premium.

Sections 55 to 78 cover loss aspects, notably loss and abandonment; partial losses including salvage, and General Average; and measure of indemnity.

Sections 79 to 94 cover other issues such as the rights of the insurer, return of premium, mutual insurance, and supplemental issues.
Of course, the world has not stood still since 1906, and the shipping industry has gone through many changes. These changes are reflected in the vast number of judicial decisions that have necessarily had to take account of this progress. There have equally been calls to update insurance law in general, and the Insurance Act 2015 is an example of this.

1.5. The key differences between marine and non-marine insurance

While there are still certain differences between marine and non-marine insurance, there is an increasing trend, certainly in the current reforms in England, to make no distinction between marine and non-marine insurance. The Consumer Insurance (Disclosure and Representations) Act 2011 – which abolished the duty of disclosure and modified remedies for misrepresentation in consumer contracts makes no distinctions, while the Insurance Act 2015 applies to both marine and non-marine insurance.

Some so-called differences between marine and non-marine policies can also be confusing.

Insurable Interest – It is said that an insured in marine insurance does not need an insurable interest in a marine policy at the time of effecting the insurance, but must have an insurable interest at the time of the claim. This may be so, as a marine policy may be assigned to different parties as insurable interests in the insured item change, however this does not distract from the requirement that the party effecting the insurance has to have an insurable interest at the time of effecting the policy. Section 4 of the 1906 act is explicit that a policy taken out “interest or no interest” is void.

General Average - Certain aspects also reflect the idea that marine insurance was considered as an “adventure”, and insurers had an interest in the vessel and/or the cargo like any other party in the “adventure”. This idea of a “common” interest is reflected in, for example, the concept of General Average.

The legal principle of maritime law as regards General Average requires that all parties to the “adventure” proportionally share any losses caused by a voluntary sacrifice of part of the ship or cargo to save the whole in a crisis. For example, if the crew jettison cargo to lighten the ship, the loss is proportionally shared by the parties. This aspect is dealt with in more detail in section 5.4 below.

This concept does not exist in non-marine insurance policies, on the other hand if there was under-insurance in a marine policy, the “average” clause common in commercial property policies could be equally applied in a marine policy.

Salvage - The concept of “Salvage” is also different in marine policies.

Marine salvage is the act of trying to save all or parts of a ship and its cargo after a maritime casualty such as a shipwreck or grounding. Historically there is an obligation at sea for a passing vessel to provide assistance to save lives. Today there are also specialised companies who provide salvage services.

A ship in trouble can refuse an offer of assistance, however if it accepts to be assisted a contract of salvage is considered to have automatically been made and the salvor is entitled to a reward under the 1989 convention. In such cases the parties will sign a Lloyd’s open form of salvage agreement (LOF agreement) clearly setting out the terms of the agreement.

However under maritime law the entity that has successfully saved all or parts of a ship and its cargo is entitled to a reward, a proportion of the value of the ship and its cargo, as decided by a maritime court in accordance with articles 13 and 14 of the International Salvage Convention 1989.

If nothing can be saved, then the principle of “no cure, no pay” applies. Nevertheless, where there may be environmental concerns such as pollution after damage to, for example, an oil tanker, salvors today can receive payment under the 1989 convention.

Salvage in non-marine policies generally refers to property that can be recovered after a loss to reduce the amount of the claim. Thus, insurers might recover a car after an accident and auction it off to interested parties. The auction price received by the insurer would reduce the amount of the claim that the insurer had to pay to the insured.
1.6. The main types of Marine Insurance

The main types of marine insurance are as follows:

**Cargo Insurance**

Cargo insurance provides protection from loss, damage, or theft while goods are in transit or in storage until ownership is transferred to the buyer. Cargo Insurance can also be described as freight insurance or goods-in-transit insurance. The latter two descriptions tend to be used more for non-marine transit such as commercial vehicles, trains and aircraft. However often goods are not only transported by ship, but must also be transported by other means to reach their destination, thus it is possible that one or other term may be used to describe the insurance cover.

**Freight, Demurrage and Defence (FD&D) Insurance**

Freight, Demurrage and Defence (FD&D) insurance covers the legal costs that will result from a wide range of maritime activities where a dispute can arise. An insured may be involved in a number of maritime activities such as operating a vessel, collecting freight or demurrage, or disputes with ship repairers, charterers, ship suppliers, etc. The legal costs involved in these disputes can be high, and this type of cover enables the insured to budget income more accurately with a known cost (the premium) for unknown legal costs which could occur during the year. This type of cover may or may not be available on a stand-alone basis depending on the market providing the cover.

**Hull Insurance**

Definitions of hull insurance can vary from coverage of the hull – the framework of the vessel, and its decks etc, but excluding the masts, the rigging and the engines, to full cover for the vessel, its machinery and its equipment. Certainly, cargo and liability exposures will be covered separately.

Vessels under construction are usually the subject of a separate cover.

**Loss of hire**

Loss of hire insurance covers a shipowner against the financial losses arising when one of its ships can no longer earn income due to damage which is covered under the ship’s Hull and/or Machinery policy.

**Machinery insurance**

As noted above, hull and machinery may be covered under one policy.

Machinery insurance provides cover for the physical loss or damage to the propulsion machinery and other machinery used for, for example, cargo handling. Insureds will be expected to maintain such machinery in good order, and failure to provide proper maintenance may result in loss of cover.

**Protection and Indemnity (P&I) cover and Marine General Liability (MGL)**

P&I stands for “Protection and Indemnity” and traditionally P&I policies cover exposure to liability risks arising from the operation of a vessel, other than risks which would be covered under an employers' liability policy and those risks covered by the collision clause in a hull policy. As the title of the clause suggests, the collision clause protects the vessel owner for the legal liability that may arise following damage to another vessel caused by a collision.
However, the potential for liability exposures is constantly developing over time, and coverage has been extended to a broader liability coverage that may include, for example, excursion operations, and even the liability arising from selling alcohol.

There are also a number of related activities such as vessel manufacturers, repairers, terminal operators, tug and barge operators and others who may have special needs, and these can be covered under such broader liability policies.

P&I Clubs are discussed in more detail under section 1.8 - The principal players in the Marine Insurance Market below.

**Strike Cover**

Like war risks discussed below, many insurers exclude strike risk under standard marine cargo insurance policies. Strike risk insurance covers the loss of, or damage to, the insured cargo resulting from:

- workers on strike, and/or locked-out workers, and/or persons taking part in labour disturbances, riots or civil commotions,
- any acts of terrorism and/or persons acting from a political motive.

**War risk insurance**

War risk insurance policies cover potential losses resulting from acts of war such as invasion, insurrection, rebellion and hijacking. Piracy may also be covered. When a vessel must necessarily pass through a war zone, or a zone known for piracy, it will often seek war and/or piracy risk insurance.

The cover usually extends the types of cover noted above to include war/piracy. Otherwise the above covers habitually exclude these exposures.

1.7. The need for Marine Insurance

Just as in any human activity, risks connected with maritime activities can arise from a number of natural and man-made causes. A ship setting out from port can be subject to a number of risks and natural perils such as storm, tempest, fire, and explosion. In addition, human error such as grounding and collision can occur, or aggressive human activity such as piracy.

While a maritime operator can afford a certain level of loss and even make an annual profit, there are a large number of loss possibilities which can cause complete ruin. It has been recognised since early times, that where operators and investors can transfer some or all of this risk to third parties, entrepreneurship and international trade is encouraged.

One of the biggest impediments to international free trade is friction. Friction in the form of known and unknown risks, government bureaucracy, complex regulation, and intermediation etc. Marine insurance can ease this friction by reducing or even in certain cases eliminating the pure risks.

(Pure risks are risks over which an individual has little or no control such as a storm or a sudden and accidental fire. Speculative risk, on the other hand, such as investing .. which can also be a form of gambling .. are not generally insurable.)
1.8. The principal players in the Marine Insurance Market

**Lloyd's Underwriters**

Lloyd's of London had its beginnings in a coffee house in London in the late 1680s with a primary focus on marine business.

Today, Lloyd's of London is basically an umbrella organisation, a market, providing the infrastructure, control, rules and oversight for syndicates which it allows to operate in its marketplace. Originally syndicates were made up of wealthy individuals, who, as members of a particular syndicate, had unlimited liability to cover any losses the syndicate made. Today a number of syndicates are owned corporately, and while many of these corporations are much wealthier than former individual names, a corporate entity is quite different from an individual name and thus not only the composition but also the character of Lloyd's has changed.

However, as before, syndicates operating in the Lloyd's of London marketplace can only be accessed by admitted “Lloyd's Intermediaries”. No insurance company can gain entry to this marketplace and try to place business there. They must use the services of a Lloyd's Intermediary – for more on Lloyd's intermediaries see below – the role of the marine insurance broker.

Lloyd's syndicates can be authorised to carry on both marine and non-marine business. Traditionally Lloyd's syndicates have not carried on life business, and have split their market into marine and non-marine business.

The Lloyd's intermediary understands this special marketplace and knows where best to place the risks it is entrusted with, at the best price, for its client.

Lloyd's of London is one of the oldest surviving specialist marine insurers, it has vast experience in this area, and has developed what is possibly the best intelligence network for shipping amongst marine insurers. It also has a network of specialists throughout the world to provide certification of vessels and to adjust claims.

**Institute of London Underwriters (ILU)**

The ILU was originally a trade association set up for the company market but specialising in marine, aviation and transport insurances.

It was established in 1884 so that the company market which specialised in marine, aviation and transport insurances could operate in a similar way to Lloyd's.

At the end of 1998 the ILU merged with LIRMA (the London Insurance and Reinsurance Market Association) which was the trade association representing non-marine insurance companies.

The merged organisation is known as the IUA (the International Underwriting Association of London). It was established on 1 January 1999.

**National Insurance Companies**

National insurance companies exist today in most countries, and even if a country is land-locked, it is likely to have at least a local marine cargo market. Also as noted earlier “cargo” insurance can involve transport by land, sea or air, and then the distinction between marine and non-marine becomes very fluid. In Africa, for example, countries such as Rwanda, Burundi, Tchad, Niger, Burkina Faso and Sudan, when importing their goods by sea, will need cover for their sea and land transportation.

**International Insurance Companies**

International insurance companies may have local entities, branches or underwriting facilities in a local market and write business at the local level. Local clients or brokers may place business at a local level with international insurance companies. However marine business (where legally compliant) may also be placed with international
companies in their country of establishment. This may be done by a client or a local broker, or it may be done by contacting one of the international broking firms to place the business with the world-wide markets.

**The Protection and Indemnity Clubs (P&I Clubs)**

The P&I clubs offer protection and indemnity insurance. They offer cover mainly for those risks which are not available at competitive prices in the general insurance market such as carriers’ third-party risks to protect against losses to cargo arising during carriage, and/or environmental damage and/or war risks.

Unlike a traditional insurance company, which is usually a company with shares and shareholders, P&I clubs tend to be mutual. That is to say they operate solely on behalf of their members, who share mutually their fortunes and misfortunes. Each year the P&I club will make a “call” on its members being an amount payable by them estimated to cover the expected losses of the coming year. If the expected losses of the coming year are less than foreseen then members may expect a refund, however if the losses are more than expected, then a further call is made to fully cover all losses for the year. This aspect may mean that members can suddenly be asked for not insignificant amounts of money to make up for large losses and to this extent the “call” or premium amount may not be fully known until a particular year has been closed, which can take a number of calendar years to happen.

**Captive companies**

Generally, a captive insurance or reinsurance company will concentrate on the risks of its parent, but like all evolving markets some captive companies have considered diversification to be of benefit to them, and they have expanded to write third party risks.

Equally some industries have set up a captive to specialise in risks peculiar to that industry. A good example is Oil Insurance Limited (OIL), a mutual insurance company that insures close to USD 3 Trillion of global assets for its 50+ members.

A captive that concentrates on the risks of its parent is often not authorised to carry on insurance business in all the territories where its parent operates. It thus often seeks a local authorised insurance company to write the risks to its local parent company and then reinsure those risks back to the captive.

In such circumstances the local insurer is said to “front” the risk, ceding it by way of reinsurance to the captive.

Fronting business and insurance/reinsurance business are not the same. A “fronting” ceding company may not be involved in pricing the business, nor in deciding on the terms and conditions. It is thus much more dependent on the ability of the captive to pay losses as they arise (credit risk). Where the ceding company has properly underwritten the business to its usual underwriting standards, and works with reinsurance companies with good ratings the credit risk is usually much lower.

In 2017 COSCO Shipping Group decided to enter the marine market using its new captive company CoscoCap (China Cosco Shipping Captive Insurance Co.). As China’s largest shipowner this had an immediate impact on the marine market.

Depending on both the type and extent of their licenses such captive companies may or may not require fronting in certain territories.

**The role of the marine insurance broker**

The marine insurance broker represents the client, the prospective insured. The role of that broker is to advise the client on the policies the client will need to properly cover the risks to which it will be exposed, and, subject to the client’s agreement, to obtain that protection at best pricing in the national and (where compliant) in the international insurance market place.

It is also the job of the broker to assess not only the ability of the capacity providers to pay claims, but also their willingness to do so. It is not much good to a client if it has cover but cannot get claims paid!

Marine insurance is also a very complex field, as is the market which writes the business, and the best variation of
cover, and the situation of the current competitive risk carriers will vary frequently. It is really only someone who is in constant contact with the market and the market and risk developments that can advise on these matters.

Of particular note is that the Marine Insurance Act of 1906 makes the placing broker liable for the premium to the underwriter, this is not the case when placing non-marine business, so a broker must also assess the credit-worthiness of its client!

**Lloyd's brokers**

As has been noted above, marine business can only be placed at Lloyd's through an approved Lloyd's broker. The Lloyd's broker is the only intermediary that has access to Lloyd's underwriters.

All Lloyd's brokers are required to comply with the Lloyd's Intermediaries Byelaw which includes the following requirements:

- Appropriate regulatory approval by the relevant authority in an EU member state or an equivalent overseas regulatory authority.
- Adequate systems and procedures to conduct business in the Lloyd's insurance market.
- Suitable process in place to secure third-party premiums and claims.
- Professional indemnity insurance that will meet Lloyd's minimum requirements.
- Support from at least one Lloyd's managing agent, but no relationships with or shareholdings in Lloyd's managing agents that do not comply with the Lloyd's rules.

**Claims adjusters**

Marine insurance claims adjusters can be hired to investigate and report on marine insurance claims. They will assess whether the damage is covered and the amounts which in their opinion are payable.

**Lloyd's agents**

Lloyd's has a world-wide network of Lloyd's agents and sub-agents who provide a 24/7 service covering marine surveying and claims adjusting to insurers and their insureds. They act as an important resource to the maritime community providing highly professional and independent reports for their clients.

### 1.9. An overview of the legal regimes that impact marine insurance business

**International Aspects**

Clearly marine insurance is an international business with ships and cargos travelling to all corners of the earth. Necessarily a ship travelling the oceans will sail into a number of jurisdictions, and will need to be familiar with all legal requirements.

Maritime law, also known as admiralty law, is the law that regulates business and shipping on sea or on other navigable water. As some 70% of the earth's surface is water, maritime law is not unimportant!

It is a law that has developed since ancient times so that no particular nation could arbitrarily apply its local laws as it saw fit in international waters.

In very basic terms, the first 12 nautical miles or 22 kilometres from shore are known as territorial waters, and the law of the country adjoining the shoreline applies. The next 12 nautical miles or 22 kilometres is known as the
contiguous zone where the country adjoining the shoreline has jurisdiction in matters of customs, immigration, pollution and taxation. There is then a further stretch of 200 nautical miles or 370 kilometres where the country adjoining the shoreline benefits from an exclusive economic zone (EEZ) to harvest the natural resources. Clearly where valuable natural resources such as oil or gas are in an EEZ and the shoreline curves or countries face each other across a narrow stretch these issues can become very complex.

**Beyond the EEZ lie international waters.**

Under maritime law all ships must be registered, and in international waters a ship is subject to the laws of the country where it is registered. Thus, in basic terms a ship is either subject to the laws of the territorial waters in which it finds itself or the laws of the country in which it is registered.

Many countries have signed international conventions or have adopted internationally recognised Acts such as the Marine Insurance Act 1906, discussed above, or the Merchant Shipping Acts which range from 1894 to 2017. In the latter case not all parts or amendments will be universally recognised.

An example of an international convention is the Convention and Statute on the International Régime of Maritime Ports, 1923. This is a League of Nations multilateral treaty in which adherents agree that in their ports all ships will be treated equally, regardless of the nationality of the ship.

Other international conventions include:

- Ballast Water Management Convention
- Hague-Visby Rules
- Hamburg Rules
- International Convention on Salvage
- Maritime Labour Convention
- MARPOL – Marine Pollution
- Rotterdam Rules
- SOLAS Convention - Safety of Life at Sea
- STCW - The International Convention on Standards of Training, Certification and Watch-keeping for Seafarers

**Country-Specific Aspects**

The relationship between maritime law and civil law is not always a clear cut one, and can result in complexity.

An example is the Transport Desgagnes Inc. v. Wartsila Canada Inc., 2017 QCCA 1471 case which took place in Canada, in Quebec.

The case involved a latent defect in a ship’s engine and who should be liable for the defect and for how much.

The trial judge decided that the supply of engine parts was not subject to maritime law but to the Civil Code of Québec. The Civil Code of Québec, amongst other things, imposed a presumption that a latent defect exists at the time of the sale unless the manufacturer proves that the defect resulted from improper use by the buyer.

On appeal, the appeal court decided that maritime law applied to this claim and, in contrast to civil law, maritime law puts the onus on the buyer to prove that the latent defect was known to the seller or that the seller showed reckless disregard for what it should have known. A very different position.

There are thus a variety of situations in which a ship and its cargo can find itself and much will depend on where the ship or the cargo is and, if within territorial waters or on land, the laws of the particular country in which the situation occurs.
2. MARINE INSURANCE – LEGAL CONSIDERATIONS

Learning objective: To appreciate the underlying legal considerations and principles of marine cargo insurance.

2.1. Validity of contract

Validity of contract is covered in the general laws applicable to contracts.

The important factors to make a contract legally enforceable are:

Insurable Interest
- Legal capacity to enter into the contract
- A clear offer has been made which has been accepted
- Consideration has been exchanged
- There is a meeting of the minds

Insurable interest

Insurable interest is dealt in section 2.2 below.

Legal capacity

As noted above, the parties to a contract generally need to be of sound mind and an adult. Although it has also been noted above that there may be restrictions as regards unspent criminal convictions, these do not affect legal capacity but rather the duty of disclosure. Without full disclosure there cannot be a meeting of the minds.

A clear offer has been made which has been accepted

An offer and an acceptance may be verbal or written. Where offers and acceptances are verbal, they may still be legally binding if there has been a meeting of the minds. Generally, all contracts are finalised in writing. Sometimes in insurance and reinsurance contracts are formalised with slips and cover notes which do not fully reflect the intentions of the parties. There can really only be proof that there has been a meeting of the minds when the full policy wording or contract has been delivered and agreed by both parties.

The Marine Act 1906 notes:

“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.”

Consideration has been exchanged

There is an important legal maxim in many jurisdictions that “consideration must be real, but need not be adequate”. A contract can still be legally valid even if one party to the contract has made a bad deal. Where insurers or reinsurers charge inadequate premiums (and there has not clearly been some form of error), they cannot complain later that there was not a legal contract.
There is a meeting of the minds

If an error has occurred – like that noted above – that a calculation has been innocently, but erroneously made. Then there has not been a meeting of the minds.

Equally, as noted above, if there has been a misrepresentation – an arsonist with an unspent criminal conviction, has not disclosed this fact to the insurer – then equally there can be no meeting of the minds.

2.2. Insurable Interest

As noted above, there was a period when, during the development of Lloyd’s of London, it was not clear whether transactions were based on some sort of professional assessment of the risk, or were a pure gamble. This problem was not particular to Lloyd’s at the time, it was prevalent in many institutions offering covers at the time. The principle of insurable interest was thus introduced as a prerequisite for any insurance contract to be effective to distinguish that contract from gambling. The United Kingdom was the first country to pass legislation that prohibited insurance contracts if no insurable interest existed. This requirement is contained in the Life Assurance Act of 1774 which renders life insurance contracts illegal if there is no insurable interest, and the Marine Insurance Act 1906, s.4 which renders such contracts void.

Thus, the insured must have an “insurable interest” in the subject matter of the policy, or such policy will be void and unenforceable as it will be considered gambling.

The Marine Insurance Act 1906 states the following:

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

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.

The assured must be interested in the subject-matter 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 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.”

Important points to note in the above extract are that the insured only needs an insurable interest at the time of the loss. However as noted earlier above, for a compliant insurance policy to be effected, the person taking out the policy also needs an insurable interest at the time the policy is effected, even if this is assigned later on.

Equally that a policy can be taken out after a loss has occurred provided that neither party to the contract is aware that a loss has occurred. It might be that based purely on process, the ownership in the property has changed, even if, in the meantime, the property was lost at sea.

2.3. Utmost good faith

Given that the person or company who offers a risk for insurance knows, or should know, much more about that risk than the party willing to consider providing cover, it is natural that a greater degree of transparency should be expected than from a party to a simple commercial contract. Thus, there is an obligation on the party seeking the cover to disclose all material facts so that the contract will accurately reflect the actual risk(s) being covered. The principles underlying this rule were stated by Lord Mansfield in the leading case of Carter v Boehm (1766) 97 ER 1162, 1164:
«Insurance is a contract of speculation... the special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstances in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist... good faith forbids either party by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary.”

Equally therefore reinsurance contracts demand the same obligation and the principle of utmost good faith is considered the foundation of reinsurance as well. Essentially this means that the buyer of the cover (the insurance company or ceding company as it is known in reinsurance parlance), or its agent/intermediary, must honestly present the risk(s) to the seller (in this case the reinsurer) and can only make a valid claim if it has in fact suffered a loss.

Thus if an insured hides material aspects of the risk(s) or falsely declares values, then it will be unable to successfully recover a claim from its insurer.

The Marine Insurance Act 1906 states the following:

“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.

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.

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 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.*

2.4. The principle of indemnity

The principle of indemnity dictates that an insured or a reinsured should not profit from the cover it buys, but should only be compensated for its actual loss, thus settlement depends on the terms of the contract and the real amount of loss suffered. With some covers, determining the real amount of the loss is relatively easy. It is impossible to evaluate the worth of a human life and thus in life insurance the real amount of the loss is simply the face value of the policy when the insured person dies. Under liability insurance the liability damages rendered in a judgement by the court and the proven legal costs are generally paid out, subject to the policy limit. Calculating the indemnity under a loss of profits cover can be very complex as it is often very difficult to prove what profit the insured might, or might not, have made had the loss not occurred. It must always be clear that moral hazard can occur if an insured or a reinsured is allowed to make a profit out of a loss event, not only because such a situation is clearly against public policy but also because it would materially increase the cost of obtaining cover. Equally an insured or reinsured cannot collect the same loss from multiple insurance policies or multiple reinsurance covers, even if they were with different parties.
2.5. Warranties

Generally, it has been established law that a breach of a warranty in an insurance policy, even if immaterial to the risk insured, would enable an insurer to refuse all liability under the policy as from the date of the breach. This situation was made worse by including ‘basis clauses’ in the policy which turned representations made by the policyholder before the policy was issued into warranties.

In the UK the Insurance Act 2015 has changed this situation. Part 2 of the 2015 Act has created a new ‘duty of fair presentation’ in non-consumer insurance contracts, and while insurers still have effective remedies in the event of non-disclosure, the burden of proof is heavier than before and the remedies are proportionate to the breach. Part 3 of the 2015 Act has banned ‘basis clauses’ from non-consumer insurance contracts. A breach of a warranty no longer simply discharges liability, it only has the effect of suspending liability during the breach, but that liability is then reinstated when the breach is resolved. Equally an insurance company can no longer rely on non-compliance with a warranty, if the non-compliance was not relevant to the loss in question.

Although the situation has changed in the UK, the effect of warranties in other countries may, or may not, have changed and reference needs to be made to the local laws.

2.6. Special provisions in marine insurance contracts

**General Average**

It is a very stormy night and the ship flounders on some rocks. There are five containers on the deck of the ship, and the captain orders that three of them be jettisoned so the ship can be re-floated and saved from further damage or even sinking.

If these five containers were owned by A, B, C, D and E, and the containers of A, C and D are jettisoned to save the ship the principle of General Average applies. That is to say that those whose property was saved (B and E) must contribute to the loss of those whose property was lost (A, C and D) to save the ship.

As has already been noted, for General Average to apply the following conditions must be met:

“In order to constitute a case for general average, three things must concur:

1st. A common danger; a danger in which ship, cargo, and crew all participate; a danger imminent and apparently inevitable, except by voluntarily incurring the loss of a portion of the whole to save the remainder.

2d. There must be a voluntary jettison, jactus, or casting away, of some portion of the joint concern for the purpose of avoiding this imminent peril, pericula imminentis evitandi causa, or, in other words, a transfer of the peril from the whole to a particular portion of the whole.

3d. This attempt to avoid the imminent common peril must be successful.“

**Particular Average**

Particular Average is governed by the Free of Particular Average (FPA) clause.

Unlike General Average where losses are incurred by a premeditated human act, a particular average loss can only be caused by a loss that is accidental and unforeseen. In addition, the clause refers only to partial losses which must be caused by defined perils in the policy.

Thus, in the UK FPA provisions, the insurer is only liable for partial loss when this is the direct result of collision, fire, sinking or stranding. The clause may also include a deductible, that insurers are also only liable where the loss exceeds a certain value.

An example of an FPA clause is as follows (Source ICC):
“Warranted free from Particular Average unless the vessel or craft be stranded, sunk, or burnt, but notwithstanding this warranty the Underwriters are to pay the insured value of any package or packages which may be totally lost in loading, transhipment or discharge, also for any loss of or damage to the interest insured which may reasonably be attributed to fire, explosion, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at a port of distress, also to pay special charges for landing warehousing and forwarding if incurred at an intermediate port of call or refuge, for which Underwriters would be liable under the standard form of English Marine Policy with the Institute Cargo Clauses (W.A.*) attached.

This Clause shall operate during the whole period covered by the policy.”

**Sue & Labour**

Sue and Labour is a standard clause in a marine policy which in mon-marine policies would simply be labelled – The insured’s duties in the event of a loss.

An example is as follows (Source ICC):

**MINIMISING LOSSES**

*Duty of Assured*

- It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder:
  - to take such measures as may be reasonable for the purpose of averting or minimising such loss, and
  - to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties."

(*W.A. = With Average*)
3. MARINE CARGO – ELEMENTS OF COVER

Learning objective: To have a basic knowledge of the main elements of cover for marine cargo.

3.1. What is Marine Cargo?

Basically, Marine Cargo is anything that is conveyed between two points on land, in the air or on the water. Very few “shipments” are simply conveyed to their final destination solely on water and thus a global view needs to be taken in every sense.

Traditionally cargo with a value/weight ratio exceeding that of silver is known as “specie”, and specie, of course, will require much more secure forms of conveyance.

3.2. What can be written in a standard cargo account?

There are many factors which need to be taken into account when underwriting cargo business and even just focussing on the cargo itself, with the constant development of new products, the term “standard” is difficult to apply.

A simple definition of “standard cargo” might be:

- Cargo which can be transported in compliance with “standard” conveyance regulations e.g. non-hazardous cargo, weighing less than 20 tons.
- Cargo which will fit into a “standard” container. (Standard ISO shipping containers are 8ft or 2.43m wide, 8.5ft or 2.59m high and come in two lengths; 20ft or 6.06m and 40ft or 12.2m.)
- Cargo which can be conveyed under “standard” conditions e.g. it does not require special temperature conditions or security measures or change condition after a short time span.
- Cargo value does not exceed, for example, USD 500,000.

However even if the cargo itself might fit into a “standard” definition, it also depends what cover is being requested, where it is going and how it is going to get there.

A request for all risks cover on perishable goods being transported in an antiquated ship, registered in a questionable country, with a questionable captain and crew, sailing in mid-December extreme weather three-quarters of the way round the world to a politically unstable country with constant port strikes and a corrupt customs subject to long delays, is something very different from cover at standard carrier conditions, for an item of common clothing, by a well-known transporter, between two cities, a few hundred kilometres apart, in Western Europe, with guaranteed 24 hour delivery.

It is not easy to draw some sort of a line between these extremes and come up with a “standard”.

Also, if one wants to write a cargo account, certain realities will present themselves. If one is established in a land-locked developing country with long distances, poor roads, and low standards of maintenance generally, one must perforce write a different portfolio to that of an underwriter established at a major European port.

Equally there are countries where precious stones, or iron, or copper or coal, or coffee or tea are important export commodities, and one cannot ignore the main segment of opportunity in the marketplace.

Another way of looking at “standard” might be to decide on underwriting a particular type of cargo, so that a portfolio of relatively homogenous risks could be created. However with an enormous variety of means of transport, destinations, and qualities of crews, or drivers, or packing, or weather conditions, it is again extremely difficult to fit risks even into a loosely defined homogenous category.
Finally, unless routing and timing can be fixed precisely for every cargo risk, there can be limited, if any, real control over accumulations, so even maximum potential losses will be difficult to define and/or control.

3.3. INCO terms

The INCO terms are today the main terms under which trade is effected throughout the world, and it is necessary to understand the 11 main rules as they imply different levels of risk for the parties involved.

The extract below is based on the Incoterms® 2010 edition, it has been sourced from the ICC website and the full official text of the rules can be obtained from the ICC Store at https://iccwbo.org.

“RULES FOR ANY MODE OR MODES OF TRANSPORT

EXW Ex Works

“Ex Works” means that the seller delivers when it places the goods at the disposal of the buyer at the seller’s premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.

FCA Free Carrier

“Free Carrier” means that the seller delivers the goods to the carrier or another person nominated by the buyer at the seller’s premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.

CPT Carriage Paid To

“Carriage Paid To” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

CIP Carriage And Insurance Paid To

“Carriage and Insurance Paid to” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination. The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.”

DAT Delivered At Terminal

“Delivered at Terminal” means that the seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination. “Terminal” includes a place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo terminal. The seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination.

DAP Delivered At Place

“Delivered at Place” means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.

DDP Delivered Duty Paid

“Delivered Duty Paid” means that the seller delivers the goods when the goods are placed at the disposal of the
buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

**RULES FOR SEA AND INLAND WATERWAY TRANSPORT**

**FAS Free Alongside Ship**

“Free Alongside Ship” means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.

**FOB Free On Board**

“Free On Board” means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

**CFR Cost and Freight**

“Cost and Freight” means that the seller delivers the goods on board the vessel or procure the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

**CIF Cost, Insurance and Freight**

“Cost, Insurance and Freight” means that the seller delivers the goods on board the vessel or procure the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.*

Clearly each of these definitions will have a different impact on the risks taken by the buyer and seller.

If the seller transfers ownership “ex works” then the buyer is responsible for the goods as from that point and must arrange transport from that location and insure itself for any subsequent loss or damage to the goods.

If the seller transfers ownership “delivered at terminal” then the seller is responsible for loss or damage to the goods until they are placed at the disposal of the buyer at destination. Thus the seller has a much greater risk and the buyer a reduced risk. From an underwriting aspect it is clearly important to know on what terms the goods are being sold as this will have a material impact on the risks as between buyer and seller.

### 3.4. Valuation of cargo

Valuation can be like being in love, it can be very subjective, and can be seen very differently by different people. One only needs to read the news headlines to note the great variety of values given to works of art at auctions, to realise that value can be a mixture of emotions, current alternative market investment possibilities, and the general economic situation.

Equally there are no clear rules. When share prices tumble, sometimes the market for works of art rises, but it can fall too.

There is also the perspective that an insured may want to maximise value based on emotions and/or financial ne-
cessity or gain, while the insurer needs to distribute the premiums received in a fair and equitable manner. Clearly these two perspectives may not always find a happy meeting point.

There can also be the problem of the basis of valuation. Is it the cost of the materials? Should production be included? Should the seller’s profit be included? Should it be the contract price? Should it be the market value?

Many aspects can also affect value. Something can be in very high demand when the weather is hot, but if delivery is delayed until the weather is cold, the value may be very different. Fashion can change quite suddenly. Sanctions can make a highly profitable transaction illegal.

There are two main aspects from an insurance viewpoint.

The first is choosing the sum insured and/or an agreed value.

The second is adjusting a loss. This latter aspect will be dealt with under Section 5 – Cargo Claims Management – below.

The basic rule-of-thumb for the calculation of the sum insured is to take, depending on INCO terms agreed, for example, the FOB value, adding the freight cost and then increasing the result by a factor of 1.1 (adding 10%). Thus, a shipment valued at $25,000 with a freight cost of $5,000, would have an insured value of $33,000. ((($25,000 + $5,000)*1.1).

If an insurer is faced with a higher sum insured requirement, it will want to know why.

### 3.5. Types of cargo and their packing and labelling

There can be a complex matrix between cargo, packing/labelling, shipping route, duration, the weather, size/value/weight and fraud/moral hazard.

Transporting blood diamonds from their place of origin is very different from transporting blood products between hospitals.

Nuclear waste and crude oil represent a totally different scale of problems.

Valuable works of art being transported and assembled in a single location for an exhibition again require a different treatment.

Today there is also the issue of sanctions and the fact that breaking sanctions can lead to criminal convictions.

The purpose of packaging is to contain, protect and preserve a product. It should also be as easy as possible to handle based on reasonably foreseeable circumstances from the point of packing to the point of unpacking, including loading, unloading, storage during transport, inspection and warehousing.

Thus, depending on the type of cargo, so packing must be arranged accordingly. For many types of cargo, packing, labelling and transport will be subject to official rules. For example, the Hazardous Materials Transportation Act (HMTA) 1975, is the main federal law in the United States regulating the transportation of hazardous materials. Its purpose is to:

"protect against the risks to life, property, and the environment"

Packaging will have to fulfil certain requirements, as will the route and method of transportation before permission to transport the goods will be permitted.

For example, goods that are corrosive, explosive, flammable, radioactive or toxic will certainly be subject to regulations. In the UK the Health and Safety Executive, an organ of Government, publish a manual on the Carriage of Dangerous Goods.

Packaging is the most important risk prevention aspect in cargo transportation and the cargo underwriter will need to know that local requirements have been respected.

There will also be the challenge of understanding what may be the laws and processes as any cargo passes
through national borders and is transported by land, and/or sea and/or air. Cargos stranded in international waters for want of a port that will accept them, or lengthy delays because certain requirements have not been respected, may increase the underwriter’s risk.

### 3.6. Extraneous perils

With the broader coverage afforded in many cargo policies today it is difficult to pin point extraneous perils. Classic cover today may be along the following lines: “The insurer will cover the insured for all damage to goods .... not otherwise excluded.”

Does this mean that extraneous perils are those which would normally be excluded, or simply those which were not traditionally covered such as, for example, rough handling when loading or unloading, pilferage, or breakage?

Today there is more emphasis on risk management such as proper packaging and not leaving goods unattended unless properly secured.

If packaging is adequate then the contents should not break or leak even if some rough handling takes place and then such damage will be covered.

Equally if goods are not left unattended, or are properly secured then theft and pilferage will be covered.

Given that today every effort is made to make policies more transparent, it is unlikely that it will be possible to find coverage for damage where goods are improperly packed or left unattended and unsecured. Equally it is unlikely that coverage will be obtainable for unexplained or mysterious disappearance.

Where coverage is limited to only a short list of perils, for example, fire, explosion, grounding, capsizing, sinking, collision, jettison or washing overboard, then clearly there is scope to cover other “extraneous” perils such as rough handling or breakage or pilferage. To this extent extraneous perils can be considered as those which can occur in the normal course of the transport and storage of goods, but which are not covered in a named perils policy.

However, if cover is being provided on an “all risks except basis”, then it is highly unlikely that coverage will be obtainable for core exclusions.

### 3.7. Export and Import trade covers

Both the import and export of goods will expose the trader to the usual marine cargo risks if either land, sea or air transport is used.

However there are other risks involved when one wishes to trade beyond one’s own borders.

There can be customs controls and restrictions, long term or sudden and unexpected political situations, and also the fact that customer knowledge may be much more limited and the credit risk a much bigger issue than dealing in one’s own country.

Sometimes the Government of the country where the trader is established may wish to encourage the export of goods and foreign trade and may have a department which will offer to cover the import/export risks of a trader at favourable terms.

For example – quoting from Wikipedia:

*UK Export Finance is the operating name of the Export Credits Guarantee Department (ECGD), the United Kingdom’s export credit agency and a ministerial department of the UK government.*

*ECGD derives its powers from the Export and Investment Guarantees Act 1991 and undertakes its activities in accordance with a specific consent from HM Treasury. ECGD was established in 1919 to promote UK exports lost during the submarine blockade of World War I.*
ECGD’s aim is to benefit the UK economy by helping exporters of UK goods and services to win business, and UK firms to invest overseas, by providing guarantees, insurance and reinsurance against loss, taking into account HM Government’s wider international policy agenda. ECGD is required by HM Government to operate on a slightly better than break-even basis, charging exporters premiums at levels that match the perceived risks and costs in each case.

The largest part of ECGD’s activities involves underwriting long term loans to support the sale of capital goods, principally for the export of aircraft, bridges, machinery and services; it helps UK companies take part in major overseas projects such as the construction of oil and gas pipelines and the upgrading of hospitals, airports and power stations. Support can be given for contracts as low as £1,000, but some of the projects ECGD backs go well beyond the £1 billion mark.

Clearly where the insurance provider is motivated by national interest to promote trade, the terms and conditions are likely to be more competitive than covers provided by commercial limited companies who must provide a competitive rate of return to their investors.

The basic transport risks apart (which are covered under a standard marine cargo policy) a trader involved in import/export will also be faced with political risks, and various credit risk which may involve not only the customer, but also currency issues and restrictions on the transfer of funds.

Basically, export credit insurance can materially reduce the credit risks of trading in foreign countries by providing coverage that should certain situations occur, the policy will pay if the foreign buyer fails to pay.

Coverage will include the standard credit risks such as bankruptcy or default by the foreign buyer, but will also cover political risks such as war, riots, civil strife, and terrorism.

The policy will also cover the risks noted above of inability to transfer funds, and changes in import or export policies. Expropriation and confiscation can also be covered.

### 3.8. Domestic trade covers

Domestic trade covers essentially insure the credit risk of the buyer. The local political and economic environment should be known by local traders and be part of the general commercial risks that are not insurable.

Certain specialised Credit Insurers have large databases based on many years of doing local business, and they have developed sophisticated processes to underwrite local trade credit. Policies may have restrictions as to the amount of credit a trader is allowed to have with a particular buyer in additional to overall credit limits.

Clearly the essential job of a bank when considering loans is the credit risk, the ability of the debtor to repay the loan. Thus, where a trader requires a loan to be able to take the business proposition forward, the bank itself may assess the situation and charge interest accordingly. There may thus be a need to find the right balance between the level of interest the bank wishes to charge for the “credit risk” and the premium requested by a credit insurer for essentially the same risk.

It should be noted that credit risk is a risk wholly distinct from standard marine cargo insurance. It is generally written in a separate department if not by a separate company and requires a totally different set of underwriting criteria.
4. THE MARINE CARGO INSURANCE POLICY

Learning objective: To be familiar with a typical marine cargo policy wording.

4.1. Types of policies and main differences

The Open Cargo Policy

The Open Cargo Policy is designed for insureds who have a constant trading and seek a cover that will insure all of their goods during a set period of time, usually one year. Unlike the “Standard Policies” described below, the insured does not need to inform the insurer prior to each shipment to be sure of cover being provided, but need only declare shipments in bulk at certain times of the year, and depending on volumes will be debited premium monthly, quarterly, half-yearly or even annually.

Cover will be constant provided the cargo being shipped falls within certain definitions, up to certain values and is within defined geographic limits. Any cargo falling outside of these definitions must be declared separately.

The scope of cover may vary depending on an individual insurer’s policy wording, but many insurers will still refer to the Institute Clauses explained in more detail under Standard Policies below.

Thus cover might be worded as follows:

Subject to the terms, conditions and exclusions of this Open Cargo Policy, this insurance covers loss or damage to the Goods during Transit in accordance with the terms and conditions of the Institute Clauses or other Conditions of Cover specified in the Schedule.

As will be seen below, the Institute Clauses come in three versions A, B, and C all providing different scopes of cover, ‘A’ being the widest form of cover.

Certificates of insurance are provided for all shipments to be covered and these form part of the overall documentation. They are a negotiable document and the bearer is entitled to make a claim for loss or damage to the cargo as insurable interest may pass from one ‘owner’ to the next. Financial institutions may require evidence of the certificate when issuing a letter of credit.

The Open Policy does not cover shipments which have commenced before the effective date of the insurance, or after the policy has been cancelled, or before the insured has acquired an insurable interest.

The Standard Policies

The standard policies available for Marine Cargo are known as the Institute Cargo Clauses “A”, “B”, and “C”. They are copyright: 11/08 - Lloyd’s Market Association (LMA) and International Underwriting Association of London (IUA). These standard policies have been the basis for many cargo policies around the world and an example of each is contained in appendix B.

The examples in Appendix B are based on the 2009 clauses. The differences between these clauses and the 1982 clauses are discussed below.

The differences between the clauses “A”, “B” and “C” are the scope of cover provided.

Institute Cargo Clauses “A”

Scope of cover:

The Institute Cargo Clauses “A” offers the widest cover, basically in the form of – All risks are covered except as per the exclusions.
Exclusions:

These exclusions cover many of the basic exclusions found in insurance policies such as war, strikes, riots and terrorism. Political risks such as seizure and detainment are also excluded as are wilful acts of the insured. Equally insufficient packaging and the unfitness of the vessel or vehicle to transport the insured cargo safely. Also, normal leakage, normal loss of weight, wear and tear and inherent vice. The full list is contained in Appendix B.

Duration:

While the policy period as such will be defined, duration in this context is more concerned with a period from the moment the goods leave their place of storage to be loaded onto the conveying vehicle/vessel to the moment when they are either unloaded or they are placed in storage at the named destination.

There are also provisions if for any reason the contract of carriage terminates before the goods reach their final destination or the named destination changes.

Claims:

As goods can change ownership during transit, it is important that the insured has an insurable interest in the goods at the time of loss or damage, or at least was not aware of any loss prior to taking out the policy.

As loss or damage may occur during a transit, there is provision for insurers to pay the reasonable additional costs (forwarding charges) that may result to ensure the goods reach their named destination.

There are definitions of what is to be understood by "Constructive Total Loss", and how the current policy will pay if increased Value policies have also been effected by the insured.

Benefit of Insurance:

This section defines who may benefit from the insurance.

Minimising losses: / Avoidance of delay:

As is expected under most insurances, the insured must do everything reasonable to minimise losses and act with reasonable despatch.

Law and Practice:

In the wording referred to here the insurance is subject to English law and practice.

It is important to consider this aspect where local regulations do not insist on a particular jurisdiction. The volume of maritime law and relevant case law that has built up over time in England makes England a good reference for resolving disputes. Clearly it is not the only location with these qualifications, but it is important to choose a location where the law and practice are likely to be able to deal with possibly global and complex disputes effectively.

Institute Cargo Clauses “B”.

As one moves from the “A” clauses to the “B”, many of the terms and conditions remain the same, it is essentially the scope of cover that is reduced.

The scope of cover under the “B” contract is limited to:

As INSTITUTE CARGO CLAUSES (A) above with Clauses 1,4 and 6 deleted and substituted the following.

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,

1.1 loss of or damage to the subject-matter insured reasonably attributable to

1.1.1 fire or explosion

1.1.2 vessel or craft being stranded grounded sunk or capsized

1.1.3 overturning or derailment of land conveyance
1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
1.1.5 discharge of cargo at a port of distress
1.1.6 earthquake volcanic eruption or lightning,
1.2 loss of or damage to the subject-matter insured caused by
1.2.1 general average sacrifice
1.2.2 jettison or washing overboard
1.2.3 entry of sea lake or river water into vessel craft hold conveyance container or place of storage,
1.3 total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft.

Here cover is limited to named perils. If the loss is not covered by a named peril it is excluded. For example, damage other than total loss is not covered while loading or unloading.

Institute Cargo Clauses “C”.

Equally under the “C” contract the cover is even further reduced:

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,
1.1 loss of or damage to the subject-matter insured reasonably attributable to
1.1.1 fire or explosion
1.1.2 vessel or craft being stranded grounded sunk or capsized
1.1.3 overturning or derailment of land conveyance
1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
1.1.5 discharge of cargo at a port of distress,
1.2 loss of or damage to the subject-matter insured caused by
1.2.1 general average sacrifice
1.2.2 jettison.

Here, for example, there is no cover for washing overboard or any damage caused during loading and unloading.

4.2. The Institute Strikes and War Clauses

Examples of the Institute Strikes and War clauses are attached as Appendix C. They are copyright: 11/08 - Lloyd’s Market Association (LMA) and International Underwriting Association of London (IUA).

The Institute Strikes Clauses

The format of these clauses is similar to the “A”, “B” and “C” Institute Cargo Clauses.

The risks covered are the following:

RISKS COVERED

Risks
1. This insurance covers, except as excluded by the provisions of Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by

1.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

1.2 any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted

1.3 any person acting from a political, ideological or religious motive.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these Clauses.

Essentially these clauses give the insured cover that is otherwise excluded in the “A”, “B” and “C” Institute Cargo Clauses. It does not only cover strikes, but also riots, civil disturbances and terrorism.

**The Institute War Clauses**

Again, the format of these clauses is similar to the “A”, “B” and “C” Institute Cargo Clauses.

The risks covered are the following:

**RISKS COVERED**

**Risks**

1. This insurance covers, except as excluded by the provisions of Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by

1.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

1.2 capture seizure arrest restraint or detainment, arising from risks covered under 1.1 above, and the consequences thereof or any attempt thereof

1.3 derelict mines torpedoes bombs or other derelict weapons of war.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these Clauses.

Essentially these clauses give the insured cover that is otherwise excluded in the “A”, “B” and “C” Institute Cargo Clauses. In this case war, civil war and rebellion and damage from various derelict weapons of war. It is important to note that seizure and detainment are only covered as a result of a risk under 1.1 in the above coverage extract. Thus, if a Government would seize or detain goods otherwise covered by the policy for any other reason, the insured would not be able to claim any compensation.

**4.3. Institute Cargo Clauses, differences between the 1982 and the 2009 Clauses**

One of the main objectives of the 2009 changes was to bring terminology up-to-date so that meanings were clearer and to take account of the evolution of risks and practices between 1982 and 2009 and certain judgements which had criticised sections of the 1982 clauses.
The main differences can be summarised as follows: (Reference is to the Institute cargo Clauses “A”.)

- Clause 5.2 now acknowledges the previously detrimental situation of a party who has had the policy assigned to them and has had no possibility to review the adequacy of the vessel transporting the goods. Thus, the exclusion is narrower in the 2009 version as opposed to the 1982 version.
- Clause 7 – The scope of “terrorism” has been enlarged.
- Clause 8 – The scope of coverage has been extended to include loading and unloading.

However, decisions regarding storage have been expanded from “Assured” to “Assured or their employees”, so the Assured will need to take additional care over where and how such decisions are executed.

4.4. Specific coverage issues

Clearly cargos can come in all shapes and sizes, and can result in other insurance needs or their loss can have more dramatic consequences and some of these issues are discussed below.

**Bulk Cargos**

Bulk cargos are defined as large quantities of an unpacked homogenous substance transported often in purpose-built vessels. This could be unpacked dry cargo such as ore, or coal or grain, or it can be liquid such as oil or liquid gas.

Each type of cargo will have specific issues and specific coverage needs.

An example is the extract below from the Institute Bulk Oil Clauses - Copyright: The Institute of London Underwriters.

**RISKS COVERED**

1. This insurance covers, except as provided in Clauses 4, 5, 6 and 7 below,

1.1 loss of or contamination of the subject-matter insured reasonably attributable to

1.1.1 fire or explosion

1.1.2 vessel or craft being stranded grounded sunk or capsized

1.1.3 collision or contact of vessel or craft with any external object other than water

1.1.4 discharge of cargo at a port or place of distress

1.1.5 earthquake volcanic eruption or lightning,

1.2 loss of or contamination of the subject-matter insured caused by

1.2.1 general average sacrifice

1.2.2 jettison

1.2.3 leakage from connecting pipelines in loading transhipment or discharge

1.2.4 negligence of Master Officers or Crew in pumping cargo ballast or fuel,

1.3 contamination of the subject-matter insured resulting from stress of weather.

(The rest of the cover is similar to the Institute Cargo Clauses examples of which appear in Appendix B.)

As will be noted in the risks covered above, a number of risks are similar to those covered in the Institute Cargo Clauses “C”. Overturning or derailment of land conveyance is not covered, but earthquake, volcanic eruption or
lightning is.

There is also additional coverage above for:

- leakage from connecting pipelines in loading transhipment or discharge
- negligence of Master Officers or Crew in pumping cargo ballast or fuel, and,
- contamination of the subject-matter insured resulting from stress of weather.

These coverages would reflect the additional risks of the cargo being transported.

**Full Outturn Guarantee (FOG)**

Full Outturn Guarantee (FOG) is an optional cover that will protect the insured against losses related to any weight differences identified between the loading at the time of conveyance and the unloading at the destination. Generally, some sort of third-party certification is required to establish the weight before and after shipment. Depending on the cargo, this may be done by a joint draught survey.

A draught survey is based on the Archimedes’ principle that the weight of cargo loaded can be calculated by changes in the displacement of the carrying vessel.

Coverage is often simply given by narrowing the exclusions to allow for weight shortage, for example:

**Exclusions:**

... differences or losses arising in the number, the weight or the measure of the cargo. If a deductible has been agreed, however, such differences or losses are regarded as covered;

The deductible might read as follows:

*Shipments with an insured value in excess of EUR 50,000 are subject to a EUR 10,000 deductible per claim for losses as a result of Theft (including partial theft), Pilferage, Weight Shortage, Mysterious Disappearance and Non Delivery.*

**Temperature sensitive and frozen food cargos**

A number of different cargos can be temperature sensitive. Fresh foods such as salads and fruits can be both sensitive to temperature and handling, and the word “fresh” implies rapid and “on-time” delivery.

Certain types of pharmaceutical products will also fall into this category and very strict rules are likely to apply. Special handling and transport may be required to ensure proper risk management.

If such shipments need to be refrigerated, or simply chilled, or frozen or even heated then they need a temperature and humidity-controlled environment during shipment and storage.

This will require suitable, reliable packaging and clear accompanying documentation relating to the specifications and method of transport.

Generally, all such cargos should be inspected before shipment and confirmed in compliance with all necessary standards.

The insured should confirm that all the carriers from “door to door” and while the risk is covered by the insurer are capable to provide the special services to deal with perishable goods.

Trans-shipments and all types of transfer should be minimised.

Frozen foods require similar handling.

Frozen foods are the subject of special clauses. In March 2017 the Joint Cargo Committee revised the Institute
Frozen Food and Frozen Meat clauses, updating the 1/1/86 Clauses. The clauses are numbered 422 to 431 and can be downloaded from the internet. An example, clause 422, copyright IUA, is attached as Appendix D.

**Insurance of over-dimensional cargo (ODC)**

Over dimensional cargo is cargo that exceeds regulatory and/or the transporter size and/or weight limits. There may also be size/weight limits for the road, runway or water channel that will apply too.

Not only can there be challenges to arrange the right type of transporter and the appropriate routing, but there can also be challenges in the event of loss.

One can imagine a massive silo being displaced from its transport during transport on a highway. Special lifting equipment may be required to repair the problem, and the problem of where to store such a large piece of equipment while alternative transport is awaited.

Not only does the process of transport and potential accidents need to be considered, but often such types of equipment are one-off pieces which have taken many months to produce. Not only may manufacturing time be lengthy, but also fitting such manufacture into a busy production schedule might require months of waiting before a replacement or repair can even be commenced.

If this piece of equipment is needed for a major infrastructure project, the delay in terms of time may be considerable, and the financial penalties very significant.

**Insurance of Project Cargo / DSU (Delay in start-up) cover**

As noted in the section above relating to ODC cover, not only can the transport of cargo result in large losses, but the consequences of a transport loss can seriously affect the project the cargo was destined for, and result in delays in start-up and large financial losses. Quite simply a $10 million transport loss can be dwarfed by a $100 million delay in start-up cost!

Projects can range from, for example:

- Essential equipment for the start-up of a nuclear power station destined to generate electricity for 20% of the population of a country.
- Essential equipment for the start-up of a pharmaceutical facility to produce a high cost medicine as a new cure for a relatively common but fatal disease.
- Essential equipment for the start-up of a multi-billion facility for oil or gas.
- Essential equipment for the on-time launch of a large LNG transporter.
- Essential equipment for the start-up of a very large cruise liner.
- Essential equipment for the start-up of a very large dam or mining operation.

From the above list it is evident that there can be many types of very different risk and each type may have specialist issues involving leading edge materials and technology.

Cover often requires that the underlying Marine Cargo Policy is itself the subject of a valid loss.

Cover could be along the following lines (based on copyright IUA wording JC2009/020):

*This policy will indemnify the insured for actual loss sustained to the insured’s business generated at the Project Site if at any time during the period of the policy an indemnifiable event occurs which causes a delay to the Scheduled Commercial Operation Date consequent upon 1.1. Loss of and/or damage to and/or delay in arrival of the Project Cargo which*
results from an event giving rise to an indemnifiable claim under (Marine Cargo Policy - excluding any deductible amounts.)

1.2. loss of or damage to or mechanical breakdown of the hull or machinery and/or equipment of the vessel, craft or aircraft, on which any of the Project Cargo is being carried or is intended to be carried which would be covered under:
The Institute Voyage Clauses – Hulls 1/10/83 (CL 285) and/or Institute War and Strikes Clauses Hulls – Voyage 1/10/83 (CL 295) or an Aircraft All Risks policy, Section 1 clause AVN 16, including war, hi-jacking and allied perils as per LSW555D;

1.3. loss of or mechanical breakdown of, any motor or rail vehicle or attachment thereto upon which any of the Project Cargo is being transported or is intended to be transported;

1.4. the vessel, aircraft or other conveyance on which any of the Project Cargo is carried or is intended to be carried, being involved in a general average salvage or life-saving operation.

As this is a highly specialised area and may represent a one-off risk for many smaller insurers, it may be better to seek specialised help to both understand the risk and to suitably structure appropriate reinsurance.

4.5. Manuscript/Broker wordings and clauses

The big problem with any kind of non-standard wording is to understand why it was necessary and how it affects a “standard” understanding of the risk.

Marine insurance, unlike local property and liability risks, is an international trade, and thus many thousands, if not millions, of insured are covered under standard wordings. Why does this particular insured need a manuscript wording?

Equally the standard wordings have been the subject of disputes and generally there is ample case law to clarify interpretations to make the resolution of any dispute that much easier.

Often manuscript wordings oblige the insurer to agree that, although it may not have had input to the wording, it is agreed for legal reasons that misinterpretations will not automatically go against the party that has created it.

It is easy enough to have misunderstandings in an office environment where everyone knows each-other. Can you really be sure you have thoroughly checked the manuscript wording, you have clearly understood any deviations from standard cover and that your interpretation is the same as that of the author?

Beware manuscript wordings and clauses!

4.6. ISM Code

The ISM Code was adopted by the International Maritime Organization (IMO) by resolution A.741(18). It is available on the IMO web site and is described on the site as follows:
“The purpose of the International Safety Management (ISM) Code is to provide an international standard for the safe management and operation of ships and for pollution prevention.

The Code’s origins go back to the late 1980s, when there was mounting concern about poor management standards in shipping. Investigations into accidents revealed major errors on the part of management, and in 1987 the IMO Assembly adopted resolution A.596(15), which called upon the Maritime Safety Committee to develop guidelines concerning shore-based management to ensure the safe operation of ro-ro passenger ferries.

The Code establishes safety-management objectives and requires a safety management system (SMS) to be established by «the Company», which is defined as the owner or any other organization or person, such as the manager or bareboat charterer, who has assumed responsibility for operating the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the Code.

The Company is then required to establish and implement a policy for achieving these objectives. This includes providing the necessary resources and shore-based support.

Every company is expected «to designate a person or persons ashore having direct access to the highest level of management» in order to provide a link between the company an those on board.

The procedures required by the Code should be documented and compiled in a Safety Management Manual, a copy of which should be kept on board.“

Clearly the safe operation of a ship also enhances the safe transportation of its cargo and “Companies” who adhere strictly to the rules will be better risks than those who do not.

Certification is required that the “Company” is in compliance with the code and there is also periodical verification.

4.7. Insuring Containers

In essence a container is simply a cargo “wrapping” making it easier to store and transport large volumes of individual items all destined for the same port or even location.

Clearly if a container is not sealed it is open to pilfering, rather like any form of cargo left unattended in a port area.

However, unlike tailored packaging for specific cargos, there may be a variety of miscellaneous cargos which find themselves in a container, and then the adequacy of the individual packaging, and its interaction with the other packages, and the way the container itself has been packed can all increase the potential of damage.

Equally a container makes the inspection of its contents more complex and then good documentation as to its contents becomes of high importance. Lack of proper documentation may result in delays, improper storage and, in extreme cases, seizure.

Finally, as regards individual containers, they need to be fit for purpose – in good condition and if used, for example, for refrigeration, to be not only in good working order, but when combined with other containers for shipping to be able to also function properly when stacked and/or surrounded by similar ones.

The next issue is that of stack collapse. All the containers destined for transport on the same ship must be stacked on that ship, generally on deck.

There are manuals for safely securing/stacking containers on deck. If these procedures are not followed there is risk of stack collapse, not only resulting in damage, but possibly also in the loss of containers overboard.

Equally the structural failure of a container, or improper packing within a container so that it shifts within poor lashings can cause a stack collapse.

As regards loading and unloading and transport to final destination, containers are usually processed through specialised harbour facilities, but poor handling, congestion and poor storage can affect containers much in the same way as any other cargo.
5. UNDERWRITING CONSIDERATIONS FOR CARGO INSURANCE

*Learning objective:* To be familiar with some of the important risk factors to take into consideration when underwriting cargo business.

5.1. General risk factors - examples

**The Insured**

Is it a new or existing customer?
What is the legal form of the company and how long has it been in the current business?
Where is the company located?
What is its business and its position in the goods chain? Manufacturer, wholesaler, importer, retailer?
How big is the company, and what has been its profitability over the last five years?
Claims experience?
Quality and risk management?

**Insurance cover being sought**

Institute clauses A, B or C?
Manuscript wording?
Additional clauses and/or special conditions?
Is loss of profit / consequential loss also required?
Contingency insurance (DIC/DIL)
Deductibles
(Knowing the insurance cover being sought and the deductibles the insured may be willing to pay will influence the importance of the factors which follow below.)

**Cargo type**

Clearly cargo type will dictate a lot about the risks, and there are a myriad of different types of cargo.

Bulk cargos:
Beans and seeds in sacks, coal, sand, cereals
Dangerous goods:
Gases and explosives, corrosive and infectious goods
General cargos:
Cars, machines, textiles
Liquid cargos:
Oils, chemicals and spirits

Live animals:
Race horses, zoo animals

Perishable goods:
Fresh fruits, dairy products and vegetables

Temperature controlled goods:
Frozen fish and meat

Other descriptions:
There are raw, semi-finished, and finished products. New and used products.

Packaging

Own packing, or packing by a third party?
Compliant? At international standards? Fit for purpose?
Packing materials?
Markings? Description of contents?
Clear handling instructions

Form and detail of transport

Climate:
Could it be very cold or hot? Seasonal access of transport routes (frozen, subject to hurricanes), exposure to natural hazards – tsunami, earthquakes

Compliance issues:
Specified routes, official approvals, export/import regulations, sanctions

Destination:
House-to-house or terminal-to-terminal, trans-shipment points, duration of travel, schedule?
Density of sea traffic?

Form of transport:
Own transport, third party carrier?
Container?
Air, land, sea?

Appropriateness of Aeroplane, vehicle, vessel? Certification?

Political: Strikes, civil unrest at ports of loading and unloading, or over routing. Passing through war zones or areas known for piracy. Waters subject to being mined.

Port conditions:
Cargo handling facilities, customs delays, security, waiting times
**Storage**

Planning:
- Is storage in own facilities or in third party facilities?
- Is storage along the route clearly defined, or carrier determined?
- Is storage both inside and outside? Storage in vehicles?
- Are there transhipments – number and duration?
- Could there be lengthy customs procedures and storage in general bonded warehouses?

Warehousing:
- Size, quality, duration of storage?
- Efficiency, throughput, competence?
- Automated, mechanical, manual?
- Type of storage – multi-level shelving, flat, flat on pallets, purpose built or general?

Protective measures:
- Fire and burglar alarms?
- Guarded day and night? Video monitoring?
- Located in a secure zone?
- Sprinklers, hydrants, distance from fire brigade?

5.2. Accumulations

Cargo accumulation is an increasing nightmare in the marine insurance industry.

The OOCL Hong Kong, a vessel built in 2017 has a maximum TEU of 21,413. 1 TEU = 1 20 foot long ISO container.

There are five sister ships with the same capacity.

Not only can huge volumes now be transported, but ports and warehouses are expanding to deal with the increased volumes.

Many insurers have little idea where accumulations of their insured cargo could arise or the possible impact of a major catastrophe on their balance sheet.

If an insurer can calculate its approximate share in the world cargo and hull market and can locate the biggest port where its vessels and cargo are likely to accumulate, and can calculate an approximate worst-case loss scenario at that port, it may have some idea as to its overall potential accumulation.

There are, of course, a number of guesstimates in the above calculation, and there is a tenuous link between a share in the world market and a share at any particular large port.

There are modelling companies who today also try to model accumulations of various sorts and to assist companies to calculate their potential accumulations in various areas.

The possibility of a massive container carrier such as the one above colliding with a large LNG (liquified natural gas) carrier close to a major port facility could cause a catastrophe resulting in a large loss of life, a major property loss, and a huge consequential loss.
Other scenarios would include earthquakes, tsunamis, and hurricanes all of which could wreak havoc and cause large losses in major ports exposed to those natural risks.

Real catastrophic losses have occurred such as the Mont-Blanc/Halifax collision/explosion which occurred on 6 December 1917 in the Narrows part of Halifax Harbour. The Mont-Blanc was a fully laden French munitions ship. Some 2,000 people in Halifax/on land were killed and over 9,000 injured.

Warehouse fires can also be a problem given the potential variety of goods being stored and their packaging. Among the risk factors described above, good fire precautions such as sprinklers and the close proximity of a fire brigade coupled with 24 hour security can help prevent large fires.

Once again it is very difficult for an insurer to quantify its potential accumulation exposures.

It is claimed that new technologies such as “blockchain” may enable a much more accurate and complete data set to be created for goods which could easily include their whereabouts at any one time. This would enable insurers to track their accumulations and assess quite accurately their exposures at any one time.

However, it is unlikely that insurers will be able to influence many of the risk factors such as bottle necks in ports or how and what route all the different insured cargos may take and what delays they may encounter, so it will still be a big challenge to calculate worst case scenarios, calculate optimum retentions and to properly structure their reinsurance to protect themselves.

5.3. Case study

Rating

Pricing for cargo risks is likely to be market driven and based on a limited number of variables, for example:

<table>
<thead>
<tr>
<th>Type of cargo</th>
<th>Container</th>
<th>ICC</th>
<th>Mode</th>
<th>Transshipment</th>
<th>Sum Insured</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container</td>
<td>yes</td>
<td>no</td>
<td>Sea/Land</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>ICC</td>
<td>A</td>
<td>B</td>
<td>C</td>
<td>A</td>
<td>B</td>
</tr>
</tbody>
</table>

The underwriter will need to know the type of cargo, whether it is in a container or not, what ICC cover is being sought and the mode of travel – by sea/land or air. The underwriter will also need to know the sum to be insured. There is often an additional premium for transhipments.

The underwriter will have some form of pricing mechanism, for ease of presentation set out below:

<table>
<thead>
<tr>
<th>Type of Cargo</th>
<th>Container ICC</th>
<th>Non-Container ICC</th>
<th>Air ICC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A</td>
<td>B</td>
<td>C</td>
</tr>
<tr>
<td>Acids (in Glass carboys in Baskets)</td>
<td>0.156%</td>
<td>0.140%</td>
<td>0.130%</td>
</tr>
<tr>
<td>Cables</td>
<td>0.109%</td>
<td>0.078%</td>
<td>0.068%</td>
</tr>
<tr>
<td>Calcium Carbide in Drums</td>
<td>0.156%</td>
<td>0.140%</td>
<td>0.130%</td>
</tr>
</tbody>
</table>
Thus, if the underwriter were to receive the following information:

<table>
<thead>
<tr>
<th>Type of cargo</th>
<th>Cables</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container</td>
<td>no</td>
</tr>
<tr>
<td>ICC</td>
<td>A</td>
</tr>
<tr>
<td>Mode</td>
<td>Sea/Land</td>
</tr>
<tr>
<td>Transshipment</td>
<td>no</td>
</tr>
<tr>
<td>Sum Insured $</td>
<td>280 000,00</td>
</tr>
</tbody>
</table>

The underwriter would refer to the pricing mechanism, and in this case the rate would be 0.218% and the premium $612 (rounded).

The underwriter might compare this premium to the premium being offered by the broker or competitors. If the market premium is lower than other risk factors may come into play. Perhaps the client has excellent risk management and a very low claims record (see risk factors above). Similarly, if the premium being offered is higher than the underwriter’s calculation, this may also indicate a client with poor risk management and a bad claims record.

Other factors such as destination, length of the journey, packaging and storage (see risk factors above) can also have a bearing on probability of loss and a decision whether to accept the risk or not.

Even the time of year can have a bearing – risk of ice or hurricanes.

In a highly competitive market making the right choice between those risks which have a higher probability of loss and those which have a lower probability of loss at a given price can make all the difference. The underwriter’s results, the profit or loss, may be in the upper quartile of the market or the bottom quartile.
6. CARGO CLAIMS MANAGEMENT

Learning objective: To understand the main elements in cargo claims management.

The general claims process, both at basic and advanced levels is also considered in courses 6 (basic) and 7 (advanced).

6.1. All Risks v Named Perils

As we have seen in section 4 the standard types of cover are the institute clauses A, B and C. These are attached in Appendix B below.

They range from quite restricted cover (named perils) – C, to an all risks cover – A.

The first step in any claims process is thus, having identified the insured – to establish the form of cover which has been purchased.

Coverages B and C

Coverages B and C refer to named perils and if the primary cause of the loss is not due to one of the named perils, then there is no cover afforded by the policy.

Coverage under C is as follows:

This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,

1.1 loss of or damage to the subject-matter insured reasonably attributable to

1.1.1 fire or explosion

1.1.2 vessel or craft being stranded grounded sunk or capsized

1.1.3 overturning or derailment of land conveyance

1.1.4 collision or contact of vessel craft or conveyance with any external object other than water

1.1.5 discharge of cargo at a port of distress,

1.2 loss of or damage to the subject-matter insured caused by

1.2.1 general average sacrifice

1.2.2 jettison.

Coverage under B is as follows:

This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,

1.1 loss of or damage to the subject-matter insured reasonably attributable to

1.1.1 fire or explosion

1.1.2 vessel or craft being stranded grounded sunk or capsized

1.1.3 overturning or derailment of land conveyance

1.1.4 collision or contact of vessel craft or conveyance with any external object other than water

1.1.5 discharge of cargo at a port of distress
1.1.6 earthquake volcanic eruption or lightning,
1.2 loss of or damage to the subject-matter insured caused by
1.2.1 general average sacrifice
1.2.2 jettison or washing overboard
1.2.3 entry of sea lake or river water into vessel craft hold conveyance container or place of storage,
1.3 total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft.

It is important here to note the words “reasonably attributable to”. As will be noted under coverage A below, the onus on the insured is essentially only to prove that an event was fortuitous, while under coverages C and B the insured has to show that the damage is linked to an insured peril.

“Reasonably attributable to” is a less onerous obligation than “caused by.”

For example – taking C cover, if one ship collides with another, and one of the ships takes on water as a result of the collision and the cargo is damaged by water, then the cargo was not directly damaged by the collision, but the damage is reasonably attributable to the collision.

Coverage A

Coverage A – the all risks cover – must be considered in more detail.

The wording is as follows:

This insurance covers all risks of loss of or damage to the subject-matter insured except as excluded by the provisions of Clauses 4, 5, 6 and 7 below.

It is important to note that cover is all risks of LOSS OR DAMAGE thus any consequential loss would not be covered. Equally to qualify as a contract of insurance the damage must be fortuitous, something sudden and unexpected.

If “fresh” and sensitive fruit such as strawberries are left purposefully in the sun all day, then the damage is not sudden and unexpected. If the strawberries are then un-fit for sale, the luxury store expecting to sell them cannot claim for its loss of profit because the strawberries could not be offered for sale.

Provided therefore the property insured goes missing or is damaged, and, if necessary, the insured can prove the loss was fortuitous, then the loss falls under the policy.

The next step is to review the exclusions and any specially added clauses and decide if any of the clauses/exclusions apply. If they do not then one can proceed to adjust the loss.

Special clauses

In a manual of this nature one cannot go into detail in all clauses, suffice it to say that there are a number of trade specific clauses. As we have seen above there are clauses for frozen foods (an example is attached at Appendix D) and meat. Similarly, there are clauses, for example, for coal, bulk oil and rubber.

Some cargos also have particular issues such as bulk oil where water in suspension in the oil can “settle out” during the voyage resulting in a reduction in the quantity of oil as between loading and unloading. The Institute Bulk Oil clauses deal with this issue to avoid underwriters being exposed to losses just from this normal process.

Variations and Non-standard wordings.

Clearly not every cover will be subject to the Institute Clauses. Many countries/jurisdictions will have variations of the Institute Clauses that apply in their areas. In addition, as has been noted in Section 4 above, brokers can produce their own clauses and wordings which may vary cover in one way or another, and here it may be necessary to review the whole wording to properly assess the extent of cover.
Exclusions

The exclusions are listed in Appendix B – under Cover A – being 4, 5, 6, and 7. We will deal here with one exclusion under each of the 4, 5, 6, and 7 clause numbers by way of example.

Clause 4 – Clause 4.1 - loss damage or expense attributable to wilful misconduct of the Assured.

As we have noted above, under a valid insurance policy a loss must be sudden and unforeseeable. If the assured wilfully crashes the ship into another vessel, or sets light to the cargo, or arranges theft of the cargo, then there is no cover. Equally if the insured knowingly tries to import, for example, illegal drugs, and they are seized by the authorities and confiscated, insurers will not respond to the loss.

Clause 5 – Clause 5.1. - In no case shall this insurance cover loss damage or expense arising from

5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.

In a sense this is similar to the wilful misconduct clause above, as if the insured knows a vessel is unseaworthy then the risk of loss is materially increased. However, there is, of course, cover where the vessel was unseaworthy, but the insured had no knowledge of this.

Clause 6 – Clause 6.1. - In no case shall this insurance cover loss damage or expense caused by

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power.

Excluding war and other hostile acts, strikes, riots and civil commotions is fairly standard under most insurance covers. However, it is important to note that especially under marine covers it is possible to cover such risks via special clauses. It is thus important to check that the policy concerned does not have any of these special clauses which could nullify the effect of these exclusions under certain circumstances.

Clause 7 – Clause 7.1. - In no case shall this insurance cover loss damage or expense

7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions.

Again, the same comment as under Clause 6 above, it is important to check that the policy concerned does not contain any special clauses which could nullify the effect of these exclusions under certain circumstances.

6.2. Claims documentation

An example of a claims advise is set out below:

Example Claim form for Marine Cargo

Claim Form

Please note you will be contacted by one of our claims staff in due course, who will advise you of your claims reference number and any further documentation that is required in support of your claim.

Please complete all the relevant sections.

Please return the completed form to: ...

Claimant/Insured:.....

Claimant reference number (if any):.....
Address:.....

Email Address:.....

Telephone:.....

The above questions identify the claimant/insured and any reference number the claimant/insured wishes the insurer to use.

Insurer Policy Number:

Claim details:.....

Brief Description of Event:....

Carrier Involved:.....

Terms of Carriage:.....

Date when carrier liability commenced:.....

The above identify the cover that the insurer has issued and provide basic details of the claim, the parties involved and the terms of carriage. The date when the liability of the carrier begins is important as many disputes arise concerning the commencement and termination of the carrier’s liability, and if the carrier’s liability is based on good evidence, then this important aspect is well documented. (The liability of the carrier begins when it accepts the contract of carriage and the goods are in its possession and control with its knowledge and consent.)

Consignments details:....

Weight of consignment in kgs:.....

Weight of damaged/missing goods in kgs:......

Estimate of damage/loss:.....

Full details of the consignment, what part was damaged and an estimate of the loss provide necessary details for the insurer to understand the type and the extent of the loss and the size of the estimated claims reserve.

Please include the following documents as they may be relevant to your claim:

- Commercial Invoice & packing list
- Freight Invoice
- Original Transport documents: Bill of Landing, Airway Bill, Consignment Note
- Collection/Delivery Receipt – especially any note relating to damages/missing items
- Copies of correspondence holding the carriers/third party(ies) responsible
- Photographs of damages – if applicable
- Copy of Police Report – if applicable
- Driver’s statement – if applicable

Supporting documentation will enable the insurer to verify the claim and to perhaps establish who appears responsible and what recovery the insurer may be able to effect.

Have you received a settlement offer from the Carrier?

If the Carrier has admitted liability and offered an amount in settlement, this may help the insurer to avoid more correspondence and expedite the claim. The amount offered may also give an indication of the value of the loss from the Carrier’s perspective and perhaps give a view on the reasonableness of the amount being claimed by the insured.

Deliberately exaggerated claims could invalidate your policy cover. Insurance fraud is a crime and liable to prosecution.

The above answers to our questions will be the basis of consideration of your claim. You must ensure that all
information is true, correct and complete to the best of your knowledge and belief, and that all material facts have been disclosed.

Declaration

I / We declare the foregoing particulars to be correct to the best of my/our knowledge and belief.

Policyholder's Signature

Position within company and authorised signatory

Date (dd/mm/yyyy)

It is important to point out to the claimant/insured the consequences of exaggeration and/or fraud and to establish the claim form as the basis upon which any claim will be settled. It is also important that the claim form is signed by an authorised representative of the claimant/insured if it is not the claimant/insured themselves.

6.3. Loss investigation and the role of the surveyor

Loss investigation of cargo claims can be more complex than that of, for example, a property loss concerning a fixed site on land. Cargo can get lost or damaged in the remotest of places on land and simply disappear in the sea. Large ports can represent a web of close-knit groups and union members where establishing the true facts may be a difficult task. The cargo may even be in areas where the rule of law is tenuous, or in territories torn apart by war or civil strife.

For these reasons many insurers make use of the Lloyd's Agency network. The Lloyd's web site describes the Lloyd's Agency network as follows:

*The Lloyd's Agency network provides 24 hour, year round independent marine surveying and claims adjusting services to the global insurance industry and its customers. With over 260 Lloyd's Agents and a similar number of Sub Agents, covering major ports and commercial centres around the world, the Lloyd's Agency network forms the world's most extensive surveying and adjusting network.*

Clearly the Lloyd's Agency network has its competitors, but few insurers will have a similar network in place, and most will require the services of third parties to investigate and adjust any loss where the economics dictate that an investigation and adjustment will be necessary.

If the cargo is of a size, nature or value that merits good risk management, then doubtless the insurer will have verified that the insured has a good risk management system in place at the time of underwriting the risk.

This will certainly involve surveyors.

Surveyors are used in a wide area of marine insurance. They may examine not only ships and cargo, but also the machinery and equipment used to load, store and off-load the cargo including the cargo outturn. They may also have to certify compliance with international standards where cargo may be oversized, dangerous or very heavy. Correct packing and storage may be essential for a safe voyage.

To this extent there should be documentation that the packing of the cargo is compliant, that the loading and storage of the cargo has been compliant, and that a discharge or delivery survey has been carried out.

If all this documentation is available it may be sufficient to adjust a claim without further extensive third-party support.

While there are claims that “blockchain” will considerably help in the effecting of complete and correct documentation, currently human error can be prevalent in missing or incorrect documentation. Thus while survey reports
should be available, they may not be, for one reason or another, and it will be necessary to use a surveyor yet again for the investigation and adjustment of the claim.

6.4. Loss adjustment

There are various aspects to loss adjustment of cargo, some of which are peculiar to marine insurance. We will deal with these special topics first, and then discuss the more common aspects of the adjustment of total and partial losses.

**General and Particular Average** - see also section 2.6

If we take an example. The ship “threesacrowd” is sailing from port A in Africa to port B in Europe, and it has three large containers on deck. During the voyage there is a terrible storm and the ship is stranded on a sand bank being constantly lashed by large waves. The ship risks breaking up, and to re-float and save the ship it is necessary to jettison the container on top of the stack of three containers. This is done, the ship re-floats and reaches port B without further incidents.

The top container belonged to company Z, the middle container to company M, and the lowest in the stack to company D.

In the above scenario company Z has lost everything to save not only the cargos of companies M and D, but also the ship itself.

The notion of General Average is that ALL participants in the “venture” (in this case the transport of three containers from Port A to Port B) should share the loss proportionally.

(Particular Average, is covered by the FPA clause – see section 2.6.)

So, the big question is how the calculation “to share the loss proportionally” is done.

Today a set of rules exists to govern how this calculation is made. The rules are known as the York-Antwerp Rules, and the current version is the 2016 version. These rules can be downloaded from the internet.

There are rules A to G and rules I-XXII.

For example, rule A:

“1 - There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

2- General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.”

The above is self-explanatory.

For example, rule VIII

“Expenses Lightening a Ship when Ashore, and Consequent Damage

When a ship is ashore and cargo and ship’s fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.”

Essentially the objective is to arrive at the actual net benefit received by each party as a result of the General Average act, to calculate each party’s proportion. There will be expenses incurred during the General Average act, and a good example is rule VIII above where various cargos may have to be off-loaded so that damage to the ship can be repaired, and the expenses and any losses incurred in that act can be deducted from a party’s actual net benefit.

Let us use the scenario above and make the calculation.
The ship “threesacrowd” has a certified value of $15,000,000. The CIF (cost, insurance, freight) value of all the cargo aboard (the three containers) is $12,000,000.

The individual cargo owners’ values are:

- Cargo Owner Z = $3,000,000
- Cargo Owner M = $4,000,000
- Cargo Owner D = $5,000,000

The summary of the General Average Act disbursements is:

1. Loss of Z’s container worth $3,000,000 (This is allowable under rule II of the York-Antwerp rules).
2. The ship was damaged while refloating – damage $150,000 (This is allowable under rule II of the York-Antwerp rules).
3. The ship had to go to the nearest port after refloating to repair the damage. This port had charges ($70,000), and there was also damage to the cargo during the unloading, storage and re-loading process ($200,000) – all allowable expenses under rule X of the York-Antwerp rules.

NOTE: The damage to the ship caused by the grounding is NOT an allowable expense as this is covered by the ship’s hull insurance.

The apportionment of general average is set out below:

<table>
<thead>
<tr>
<th>Contributory Value</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ship Sound Value per certificate</td>
<td>15 000 000</td>
</tr>
<tr>
<td>All cargo on board CIF value</td>
<td>12 000 000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Summary of General Average Act Disbursements</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss of container company Z (Rule II)</td>
<td>3 000 000</td>
</tr>
<tr>
<td>Refloating damage (Rule II)</td>
<td>150 000</td>
</tr>
<tr>
<td>Port of refuge expenses (Rule X)</td>
<td>70 000</td>
</tr>
<tr>
<td>Damage to cargo caused by forced discharge, storage and reloading (Rule X)</td>
<td>200 000</td>
</tr>
<tr>
<td>Total</td>
<td>3 420 000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Apportionment of General Average</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ship</td>
<td>15 000 000 pays 56%</td>
</tr>
<tr>
<td>Cargo Owner Z</td>
<td>3 000 000 pays 11%</td>
</tr>
<tr>
<td>Cargo Owner M</td>
<td>4 000 000 pays 15%</td>
</tr>
<tr>
<td>Cargo Owner D</td>
<td>5 000 000 pays 19%</td>
</tr>
<tr>
<td></td>
<td>27 000 000 pays 100%</td>
</tr>
</tbody>
</table>
It is important to note that while the General Average act saved the ship and the cargos of M and D, had the voyage been completed without any incident, then Z would also have benefitted from the voyage as Z would have sold the cargo for a CIF value of $3,000,000. For this reason, Z must also contribute to the General Average act in proportion to its contributory value.

In the above calculation:

The Contributory Value is the value each owner brings to the venture, or, in this example, the transport of the cargo by sea. The ship owner brings the ship, while D, M and Z bring the cargo.

The summary of General Average Act Disbursements are the losses/expenses allowed for the calculation by the York-Antwerp rules.

The Apportionment of General Average is the calculation firstly of the percentage contribution of each party (the contributory values of each party, for example, $3,000,000 divided by the sum of the contributory values = $27,000,000 = 11%) and then multiplying the total of the disbursements by that figure (Thus Z has 11% of the total disbursements to pay i.e. 11% of $3,420,000 = $380,000).

**Partial/Total Losses and Salvage**

Clearly the first part of the claim process is always to identify the claimant, identify the policy which has been issued to the claimant or policyholder and decide whether the loss as such benefits from the cover under the policy.

Having, on first impression, established the loss is covered, the next issue may be to verify the facts, and if these appear to be in order or are confirmed by a loss adjuster/surveyor, then the issue becomes one of value.

**Partial Losses:**

A partial loss is defined in the Marine Act 1906 as a loss which is not a total loss. It is a loss where some part of it is not damaged, or where some value remains. There are two main alternatives to adjusting such losses.

In some cases, it may make sense to reinstate or repair the damaged item. Then the amount of the loss will be the cost of the reinstatement/repairs.

In other cases, it may be necessary to calculate the diminution or depreciation in value. Sometimes damaged goods can be sold as “seconds” (goods that may still be functional, but may have lost their cosmetic appeal). They have a value, but it is likely to be at some discount on their usual market value.

It may be possible to agree the depreciation in value with the claimant/insured. Often however the insurer wants to minimise its costs, and the claimant/insured wants to maximise its recovery, so agreement cannot always be reached.

Another approach is to go for a more objective process such as an auction where the partially damaged goods are sold to the highest bidder. The adjustment may then be the CIF value of the goods, less the net proceeds of the auction (highest bid less the auctioneer’s and other agreed fees).

For example, 150 cars are transported from Port H to Port M. During the voyage there is ingress of seawater and some of the cars are damaged. It is confirmed that 30 of the cars have various degrees of damage. The CIF value of a car is $45,000.

It is not possible to agree a depreciation figure with the owner; and thus the 30 cars are sent for auction and the net proceeds are $600,000. This represents an average value of $20,000 per car, or an average depreciation of -56%.
The result, a payment by the insurer of $750,000 is set out below:

<table>
<thead>
<tr>
<th>Partial Cargo Damaged, rest sound</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIF value of the shipment</td>
</tr>
<tr>
<td>CIF value of 30 cars damaged</td>
</tr>
<tr>
<td>Depreciation at</td>
</tr>
<tr>
<td>Payment by insurer</td>
</tr>
</tbody>
</table>

**Total Losses:**

Total losses can be of two kinds.

There is Actual Total Loss (ATL) which means the cargo was indeed lost and has no residual value – for example the cargo was the subject of a fire onboard ship and has been totally consumed by the flames.

There is also Constructive Total Loss (CTL) where the cargo may have some residual value but that value is less than trying either to recover the cargo, or to transport it to a place where some value could be recovered. The cargo is thus abandoned.

The essential difference between the two (where the insurer has not decided itself it’s best to abandon the goods) is that in CTL cases the claimant/insured needs to inform the insurer of its intention to abandon the goods and the insurer must have the opportunity to investigate the facts and decide whether abandonment is justified.

The insured/claimant thus sends the insurer a Notice of Abandonment.

Abandonment may seem a good economic alternative, however many insurers refuse abandonment. While abandonment may imply disavow, disclaim, or disown, life is unfortunately not so simple. In effect the insurer, in agreeing a Notice of Abandonment, becomes the owner of the abandoned goods. Depending on what goods are involved, they can be subject to a variety of laws and regulations. Dangerous goods cannot simply be “abandoned”. Apart from safety issues, there may also be issues around pollution, preservation of the environment and even customs duties and other “import” requirements where the goods are “abandoned” in a foreign country. A number of these new liabilities may not be covered in the insurance policy but become the risk of the insurer if it accepts ownership of the goods.

**Salvage:**

Salvage is generally the process of saving a vessel and/or its cargo after a grounding or other kind of accident. Salvage may involve re-floating a vessel and/or towing a vessel to a refuge port or other activity that saves the vessel from further damage or loss.

Salvage costs can be high, especially where a vessel is saved from certain loss.

Salvage can also have a special meaning in cargo insurance.

For example, refrigerated food is being transported from Port C to Port I, and the voyage is expected to last 5 days and on this basis the transport is compliant with regulations in the country of destination. However, the ship breaks down on the way and has to stop at Port E which is 3 days sailing from Port I. It will take several days to repair the ship and there is no alternative to shipping the refrigerated food.

If the transportation of the refrigerated food is held at Port E until the damaged ship is repaired, it will arrive at Port I too late to be compliant with the regulations for sale.

To reduce the amount of the loss, the food is sold at Port E while it is still in saleable condition – this avoids a full
loss if one were to await the completion of repairs on the ship and then transport the goods to Port I.

   In this case the insurer will generally pay the difference between the CIF value of the cargo and the sale value received by the owner.

However, if the loss is large and likely to involve reinsurers it may be worth checking with them how they will interpret such a loss. A salvage loss is generally considered as a loss covered by the policy. But, “fear of loss costs” are not covered by the policy and any payment would be considered as “ex gratia” (a loss paid by the insurer for commercial reasons, but where there is no valid claim under the policy – and the insurer’s reinsurers may exclude ex gratia losses).

   In fact, when the food is sold at the port of refuge, it has suffered no damage!

   Finally, as in many types of insurance, salvage can simply mean property that has been saved from an accident or event. Thus, property that has been saved from a fire or recovered from a storm can equally be termed salvage.

6.5. Recoveries and subrogation

   Where an insured suffers loss through the fault of another, it will have two options. It can make a claim against the party at fault, or it can claim against its insurer if the loss is covered by an insurance policy.

   Thus, if cargo is damaged while under the responsibility of a carrier, the owner can make a claim direct against the carrier or can claim under its cargo policy from the insurer.

   If the insurer pays the claim, then the insurer has the legal right to substitute itself for the insured, with the same rights and remedies, and make a claim against the party who is liable for the loss, in the example above, against the carrier. This is known as subrogation, where an insurer who has paid a loss claims as if it were the insured.

   Naturally the insurer cannot claim for more than it has paid. It cannot make a profit from the subrogation. Nevertheless, if the insured has had to pay itself a large deductible, it may still have an interest in the proceedings to recover the deductible.

   Thus, where there is clearly a third party at fault, and the insured decides to claim against its insurer, it is very important that the insurer protects its legal position and its ability to subrogate the loss.

   Where a claims adjuster/surveyor is being used to investigate the loss, it will be important that it has been instructed to take into account the potential interest of the insurer as well.

6.6. Carrier Liability

   As with many aspects of marine insurance, most carriers will refer to rules under which claims against the carrier are to be made.


   The Hague Rules of 1924 are rules to impose minimum standards upon commercial carriers of goods by sea. They have been amended and eventually became the Hague-Visby Rules. However, all countries around the world need to ratify these rules and any amendments before they can be accepted locally, and there is a mixture of countries who have accepted only the original Hague Rules, the Hague Rules and their amendments, and/or the Hague-Visby Rules, so it is necessary to clearly understand the legal position of the country where a recovery is to be made.

   The Hamburg Rules are a set of rules governing the international shipment of goods and were an attempt to provide a uniform legal base for the transportation of goods on ocean-going vessels.

   Article 31 of the Hamburg rules requires that ratifying countries must, within five years, denounce earlier rules -
notably the Hague and Hague-Visby Rules.

Thus, the long-standing aim to have a uniform set of rules to govern the carriage of goods has currently resulted in five different sets of rules: the Hague Rules, the Hague-Visby rules, another variation known as the Hague-Visby/SDR Rules, the Hamburg Rules and the Rotterdam Rules (although the latter have only been ratified by a few countries and are not yet in force).

Given the number of different rules and their extent, it is not possible to deal with them in a manual of this nature. It is nevertheless important to know of their existence – they can all be downloaded from the internet, and to understand which rules have been applied by the carrier responsible for the loss, and which part of the rules may have been ratified by the country where the claim will be made.

### 6.7. Loss Prevention

Section 5 above has dealt with risk factors, and one of the first aspects of loss prevention is to identify the risks.

One of the advantages of working in an international arena such as marine insurance is that most of the risks have been around for tens, even hundreds, of years, and as new risks emerge, they must be faced by the international community and thus many qualified experts around the world will be reviewing how to minimise these risks and international organisations and Governments will be making rules to protect life, property and the environment.

As has been noted above, there are many, many rules relating to the packaging and safe transport of goods, to the proper classification and certification of ships, to the necessary rules of loading, stowage and unloading, and in minute detail where dangerous goods need to be transported through crowded neighbourhoods.

Compliance with the rules will already ensure a significant aspect of loss prevention. Nevertheless, developing and maintaining a strong risk prevention culture in an organisation, and working with organisations known to promote the same, will definitely enhance loss prevention and further minimise the probability of losses.

Examples of good loss prevention would include:

- **Proper packaging**  
  Ensuring that goods leave the factory in compliant packaging. Compliant packaging has been designed and tested to comply with international standards for the conveyance of the particular items. The likelihood of damage is considerably reduced if goods are properly packed.

- **Inspection of packing, stowage and unpacking**  
  Where goods are properly inspected by qualified surveyors along their journey, not only is the likelihood of loss reduced, but if there is a loss, there is proper documentation to make a speedy claim and quickly receive a loss payment from the insurer.

- **Choosing the most appropriate carrier/means of transport**  
  Clearly there are “horses for courses”, some carriers will be specialised in certain types of transport of goods, and will have the appropriate experience and vehicles and ships to ensure safe delivery. Others may be inexperienced general carriers where the risk of loss is much higher.

- **Special shipping instructions**  
  Ensuring that carriers have clear and precise instructions as to the carriage of goods again helps to reduce the probability of loss and also provides a good base to make a claim on the carrier if the instructions have not been followed and there has been a loss.

In most marine insurance marketplaces pricing in the market is given. Either the insurer goes along with the market price or it will not write any business. However, the probability of loss can vary enormously from one insured to another especially between those insureds who are loss prevention conscious and those who are not.

This is why underwriting has less today to do with pricing, and more to do with appreciating the risk.
7. MARINE CARGO REINSURANCE STRUCTURING

Learning objective: To have a basic knowledge of marine cargo reinsurance covers and their interactions.

7.1. The need for Marine reinsurance

The need for reinsurance is dealt with fully in courses 1 (Introduction to reinsurance) and 2 (Intermediate reinsurance). Here, therefore, only a summary will be provided.

Generally, reinsurance is necessary for smaller and medium sized companies. They simply cannot afford the large losses which can arise through loss severity (for example, a very large single fire or explosion) or loss frequency (a large number of small losses caused by a single natural disaster such as an earthquake or storm). These companies need to control loss volatility to provide their stakeholders with stable results. Too much volatility can cause share prices to fall and for investors to turn to more stable insurance companies to invest their money.

Another reason that reinsurance may be necessary is to provide a form of “soft capital”. An insurance company may need to increase its capacity to write marine business to be considered a valid player in its marketplace. Rather than increase its paid-up capital to finance a larger premium income it can purchase reinsurance to achieve its premium objectives (subject to local regulations).

7.2. Types of reinsurance and how they can be used in Marine Cargo

The types and forms of reinsurance are dealt with fully in courses 1 (Introduction to reinsurance) and 2 (Intermediate reinsurance). Here, therefore, only a summary will be provided.

As a brief recap.

Reinsurance can be placed in one of two forms – Facultative or Treaty.

<table>
<thead>
<tr>
<th>Facultative Reinsurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facultative reinsurance is reinsurance for <strong>INDIVIDUAL RISKS</strong> on a case by case basis</td>
</tr>
<tr>
<td>Practically, the direct insurer is free to choose which individual risks it wants to reinsure, and the reinsurer is free either to accept or refuse any risk offered to it: Hence the term <strong>FACULTATIVE.</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Obligatory Reinsurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligatory reinsurance is reinsurance for the <strong>ENTIRE PORTFOLIO</strong> on an automatic basis.</td>
</tr>
<tr>
<td>Practically, the direct insurer is obliged to cede a contractually agreed share of the risks and the reinsurer is obliged to accept that share: Hence the term <strong>OBLIGATORY.</strong></td>
</tr>
</tbody>
</table>

Both the Facultative and Treaty forms can be placed as either Contributory or Proportional Reinsurance, or Non-Contributory or Non Proportional Reinsurance.
There are two main types of reinsurance - Contributory or Proportional Reinsurance, and Non-Contributory or Non Proportional Reinsurance.

Under Contributory or Proportional Reinsurance the insurance company or cedant passes or cedes a proportion of its liability on an individual risk or number of risks to a reinsurer and pays the reinsurer the same proportion of the original premium for the risk or risks. In the event of a claim, the reinsurer in return will reimburse the insurer with the same proportion of the claim or claims.

Thus if you review a reinsurance cover and find that the reinsurance cession is calculated as a function of the sum insured, then you are looking at a contributory or proportional reinsurance.

Non-Contributory or Non Proportional Reinsurances apply not to specific risks but to losses. They limit the amount of loss an insurance company or cedant can suffer under any one claim or event.

Unlike contributory or proportional reinsurance, the cedant does not cede risks to the reinsurer but the reinsurer agrees to pay the amount of a loss over and above, or in excess of, a fixed amount referred to as the cedant’s “retention”, or “deductible”, or “priority”. The portion payable by the reinsurer is referred to as the “cover”. Thus, the cover relates to losses rather than individual risks forming the ceding company’s portfolio.

As noted above reinsurance is bought to either reduce volatility or as “soft capital”.

Volatility is caused by unexpected loss severity or by unexpected loss frequency.

Good portfolio management dictates that there must be a certain homogeneity of risks in the cargo portfolio, thus a wise insurer will decide a maximum limit it will accept any one risk and will use proportional or non-proportional facultative reinsurance to cede the risks above that limit.

Facultative reinsurance can also be very helpful to deal with unusual cargos – oversized, heavy, or dangerous cargos where the insurer may have limited experience and can be guided as to rating and suitable wordings by an experienced reinsurer.

In this way the cargo portfolio can be, on average, reasonably rated and loss severity regarding single losses controlled.

This leaves the portfolio exposed as a whole to frequency and catastrophe losses.

Frequency losses arise where there is an unexpected number of losses during any one year, simply lots of cargo risks are lost or damaged and the insurer must pay out much more than expected. This is best addressed through a quota share reinsurance treaty. In this way the insurer retains a fixed percentage of the portfolio and cedes the balance to reinsurers.

If an insurer feels it is faced with too many facultative cessions above its retention, it may opt to place a surplus treaty to reduce its administration. Thus, while quota share treaties are more common, placing a surplus treaty is also possible.
7.3. Accumulation

The last remaining issue is that of catastrophe losses, and this is one of the most difficult areas to address. As we have seen above, it is extremely difficult for an insurer to assess its accumulations in cargo insurance. Cargos may find themselves in the same container, or on the same vessel, or on the same dock or in the same warehouse by chance or design, due to storms, delays or strikes or incidents at sea.

The insurer must try to dissect its portfolio. How many risks tend to be exposed at any one time? What is the destination of those risks? How might they end up at the same place at the same time? How many could end up at the same place at the same time?

With these types of guesstimates an insurer can estimate where its maximum catastrophic severity limit may be and the stretch of non-proportional cover it may require between its retention net of proportional covers and this limit.

It may get optimum pricing by layering this stretch and will likely take advice from its reinsurance intermediary to best structure its reinsurance requirements.

Reinsurers also have a big problem to understand and control their accumulations, especially as they are one step removed from the data the insurer will collect.

The reinsurer may thus want to limit the extent of cover under a proportional treaty by introducing a limit per policy or shipment or per vessel. There may even be an ‘event limit’ should a catastrophe occur.

This can present a problem for the ceding company, as then the ceding company cannot be sure if it has sufficient cover or not. If, for example, the reinsurer imposes a limit of 200% of the maximum policy limit per shipment, how can the insurer control that it does not have more exposure on that particular vessel?

This is a typical situation where the insurer and reinsurer have conflicting interests and it will be a matter of negotiation as to how much cover the insurer can obtain.

This is a good example where the quality of data can assist both parties in understanding their respective potential accumulations and how best to share them for an optimum cost/benefit ratio.

7.4. Treaty reinsurance for start-ups versus established cedants

As we have noted above, reinsurance can be purchased to reduce volatility and also for “soft capital”.

Start-ups generally have limited capital and need to build their portfolio from scratch. It may be very difficult at the beginning to build a homogenous portfolio, and it may also be necessary to “buy” one’s way into the market by accepting business that is more competitively priced or affords wider cover.

Reinsurers are aware of these challenges and may set tougher conditions for start-ups to take account of the likely lower quality business.

Nevertheless start-ups, given also their limited capital, are best served with a quota share treaty, perhaps taking only 10% or 15% for themselves to give them both capacity, experienced reinsurers to help them with the more challenging risks and to enable them to remain comfortably below the required solvency margin.

Established cedants may not require a reinsurer’s experience except for a few exceptional risks, and may have sufficient capital to cover their cargo capacity needs in the markets in which they operate.

They may not need a quota share treaty and may prefer to retain their business, especially if it is very profitable, for themselves. Once again if they find they are requiring too may facultative placements they may opt to place a surplus treaty.

However no wise company is likely to retain its catastrophe exposure as going without cover in this highly volatile area will normally expose its balance sheet to potentially damaging variations from results promised to sharehol-
ders. A really embarrassing large loss is likely to cause “heads to roll”.

7.5. Catastrophe covers for the combined hull and cargo portfolios

Covering the hull and cargo portfolios on a combined basis for catastrophe protection is simply a question of the outcome of a pros and cons analysis.

If an insurer has a large cargo and a large hull portfolio it will need to review pricing on a separate and a combined basis and also the impact a loss might have on future pricing. If the insurer has a certain claims frequency in cargo or hull it may be better to isolate the respective portfolios to maintain a more beneficial pricing for the portfolio that has a good claims record. It may even be a negotiation tactic to place some of the cream with the portfolio with a poorer loss record to improve terms.

On the other hand, if the insurer has a large cargo portfolio, but a small hull portfolio, the hull portfolio may be considered as “incidental” to the whole and it may be possible to get a combined catastrophe cover for little more than the cost of a catastrophe cover just for the cargo portfolio.

Once again advice from a competent reinsurance intermediary or trusted experienced reinsurer may provide the best solution.
8. CONCLUSION

There is a saying “only the strong survive”. Strength comes not only from physical power, but from the knowledge of how to wisely use it ... or to avoid using it!

In the insurance industry power is defined by the capital at the company’s disposal and how wisely that capital is used, and, once again, only the strong will survive.

In contrast to the tsunami of information everyone is flooded with, the world is becoming a smaller and smaller place and is being dominated by larger and larger companies such as Amazon and Google.

If Amazon becomes one of the largest supplier of goods in the world, with a massive customer database, why not just provide the insurance needs as well?

What easier area to do this than simply insuring the carriage of the goods they sell?

Cargo insurance is international business. There are a number of rules, regulations and conventions which help to control the market. The business is thus vulnerable to competitors from other sectors and we live in a “brave new world” which will be dominated by technology.

Adding value will be the buzz word. If you don’t master the business you’re in, you will not be able to add value. Companies will face mergers where they can’t add value.

Also understanding your business will help you choose the best risks at a given market price to keep your results in the upper quartile of your industry – where you can add more value.

Understanding the vocabulary and the basic concepts of cargo insurance will also help you to best master the innovations and developments as they unfold in your business ... and unfold they will ... at an ever increasing rate.
9. TEST

1) **Which if the following statements is correct:**

a. Marine law in the UK is part of common law.
b. MAT stands for marine associated tonnage.
c. Marine law in the UK is codified.
d. The concept of General Average was introduced at the beginning of the twentieth century.

2) **Which if the following statements is correct:**

a. The concept of salvage in marine insurance is the same as in property insurance.
b. The law of general average is founded upon equity.
c. General average only applies if the sum insured is inadequate.
d. General average follows the same principles as in property insurance.

3) **Which if the following statements is correct:**

a. Freight, Demurrage and Defence (FD&D) insurance covers cargo passing through a war zone.
b. Protection and Indemnity (P&I) cover exposure to liability risks arising from the operation of a vessel.
c. Strike cover is generally included in the ICC “B” clauses.
d. Strike cover is automatically covered in the ICC “A” clauses.

4) **Which if the following statements is correct:**

a. The ICC “C” clauses are the most comprehensive.
b. The ICC “B” clauses provide the best cover.
c. The ICC “A” clauses only provide for named perils.
d. P&I clubs tend to be mutual companies.

5) **Which if the following statements is correct:**

a. Like property insurance, a marine insurance broker is not liable for the payment of the premium to the underwriter.
b. Unlike property insurance, any broker with adequate professional indemnity insurance can place marine business at Lloyd’s.
c. Lloyd’s agents do marine surveying and claims adjusting.
d. Lloyd’s agents are companies specialised in selling marine insurance on behalf of Lloyd’s.
6) **Which if the following statements is correct:**

a. A ship sailing in EEZ waters is subject to the laws of the country in which it is registered.
b. There is a clear distinction between maritime law and civil law.
c. In marine insurance law a claimant must have had an insurable interest at the time the policy is taken out.
d. In marine insurance law a claimant need only have an insurable at the time it has suffered a loss.

7) **Which if the following statements is correct:**

a. Particular average can only be caused by a loss that is accidental and unforeseen.
b. General average can only be caused by a loss that is accidental and unforeseen.
c. A “standard” container is only 20ft long.
d. A “standard” container is only 40ft long.

8) **Which if the following statements is correct:**

a. CIF cover is cheaper than FCA cover.
b. Import and Export Trade covers protect cargo against damage once it crosses the border of the country in which it was manufactured.
c. Project cargo insurance covers the financial consequences of a delay in start-up.
d. Broker wordings are standard wordings that can only be used by brokers.

9) **Which if the following statements is correct:**

a. Accumulations only arise when containers are stacked on board a ship.
b. It is usually easy to compute accumulations as the destination of each cargo is stated in the policy.
c. Accumulations can arise at numerous places on land, on the sea, and even in the air.
d. Accumulation can only arise as regards bulk cargo.

10) **Which if the following statements is correct:**

a. Large risks are best covered by a non-proportional catastrophe treaty.
b. Generally start-ups are best covered by non-proportional facultative reinsurance.
c. A large cargo portfolio is best covered by both proportional treaties and non-proportional catastrophe excess of loss treaties.
d. A large cargo portfolio is best covered by non-proportional per risk excess of loss treaties.
10. APPENDIX A

Answers to test questions.

1)  c
2)  b
3)  b
4)  d
5)  c
6)  d
7)  a
8)  c
9)  c
10) c
11. APPENDIX B

MARINE CARGO INSURANCE CLAUSES (for Individual Policy)

Institute Cargo Clauses as agreed between the Applicant and this Company shall be applied

1/1/09 INSTITUTE CARGO CLAUSES (A)

RISKS COVERED

1. Risks

This insurance covers all risks of loss of or damage to the subject-matter insured except as excluded by the provisions of Clauses 4, 5, 6 and 7 below.

2. General Average

This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

3. "Both to Blame Collision Clause"

This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim

EXCLUSIONS

4. General Exclusions Clause

In no case shall this insurance cover

4.1 loss damage or expense attributable to wilful misconduct of the Assured

4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured

4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses “packing” shall be deemed to include stowage in a container and “employees” shall not include independent contractors)

4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured

4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage

This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

4.7 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

5. Unseaworthiness and Unfitness Exclusion Clause

5.1 In no case shall this insurance cover loss damage or expense arising from
5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.

5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading.

5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

6. War Exclusion Clause

In no case shall this insurance cover loss damage or expense caused by

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

6.2 capture seizure arrest restraint or detention (piracy excepted), and the consequences thereof or any attempt thereat

6.3 derelict mines torpedoes bombs or other derelict weapons of war.

7. Strikes Exclusion Clause

In no case shall this insurance cover loss damage or expense

7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions

7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted

7.4 caused by any person acting from a political, ideological or religious motive.

DURATION

8. Transit Clause

8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit, continues during the ordinary course of transit and terminates either

8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or

8.1.4 on the expiry of 60 days after completion of discharge overside of the subject-matter insured from the oversea vessel at the final port of discharge, whichever shall first occur.
8.2 If, after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

9. Termination of Contract of Carriage

If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers, either

9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur,

or

9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

10. Change of Voyage

10.1 Where, after attachment of this insurance, the destination is changed by the Assured, this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.

10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

CLAIMS

11. Insurable Interest

11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.

11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

12. Forwarding Charges

Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

13. Constructive Total Loss
No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

14. Increased Value

14.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

14.2 Where this insurance is on Increased Value the following clause shall apply:

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

15. This insurance

15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

15.2 shall not extend to or otherwise benefit the carrier or other bailee

MINIMISING LOSSES

16. Duty of Assured

It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder is and

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss,

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

17. Waiver

Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY

18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

19. This insurance is subject to English law and practice.

NOTE: —Where a continuation of cover is requested under Clause 9, or a change of destination is notified
under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.

1/1/09 INSTITUTE CARGO CLAUSES (B)

As INSTITUTE CARGO CLAUSES (A) above with Clauses 1, 4 and 6 deleted and substituted the following.

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,
   1.1 loss of or damage to the subject-matter insured reasonably attributable to
      1.1.1 fire or explosion
      1.1.2 vessel or craft being stranded grounded sunk or capsized
      1.1.3 overturning or derailment of land conveyance
      1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
      1.1.5 discharge of cargo at a port of distress
      1.1.6 earthquake volcanic eruption or lightning,
   1.2 loss of or damage to the subject-matter insured caused by
      1.2.1 general average sacrifice
      1.2.2 jettison or washing overboard
      1.2.3 entry of sea lake or river water into vessel craft hold conveyance container or place of storage,
   1.3 total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft.

4. In no case shall this insurance cover
   4.1 loss damage or expense attributable to wilful misconduct of the Assured
   4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
   4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses «packing» shall be deemed to include stowage in a container and «employees» shall not include independent contractors)
   4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
   4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
   4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage

This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons

4.8 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

6. In no case shall this insurance cover loss damage or expense caused by
6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
6.3 derelict mines torpedoes bombs or other derelict weapons of war.
1/1/09 INSTITUTE CARGO CLAUSES (C)

As INSTITUTE CARGO CLAUSES (A) above with Clauses 1, 4 and 6 deleted and substituted the following.

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,
   1.1 loss of or damage to the subject-matter insured reasonably attributable to
      1.1.1 fire or explosion
      1.1.2 vessel or craft being stranded grounded sunk or capsized
      1.1.3 overturning or derailment of land conveyance
      1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
      1.1.5 discharge of cargo at a port of distress,
   1.2 loss of or damage to the subject-matter insured caused by
      1.2.1 general average sacrifice
      1.2.2 jettison.

4. In no case shall this insurance cover
   4.1 loss damage or expense attributable to wilful misconduct of the Assured
   4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
   4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses «packing» shall be deemed to include stowage in a container and «employees» shall not include independent contractors)
   4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
   4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
   4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage

This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons

4.8 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

6. In no case shall this insurance cover loss damage or expense caused by
   6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
   6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereof
   6.3 derelict mines torpedoes bombs or other derelict weapons of war.
12. APPENDIX C

1/1/09 INSTITUTE STRIKES CLAUSES (CARGO)

RISKS COVERED

Risks

1. This insurance covers, except as excluded by the provisions of Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by

1.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

1.2 any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted

1.3 any person acting from a political, ideological or religious motive.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these Clauses.

EXCLUSIONS

3. In no case shall this insurance cover

3.1 loss damage or expense attributable to wilful misconduct of the Assured

3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured

3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of this Clause 3.3 «packing» shall be deemed to include stowage in a container and «employees» shall not include independent contractors)

3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured

3.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

3.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the As-
sured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage.

This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

3.7 loss damage or expense arising from the absence shortage or withholding of labour of any description whatsoever resulting from any strike, lockout, labour disturbance, riot or civil commotion.

3.8 any claim based upon loss of or frustration of the voyage or adventure.

3.9 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

3.10 loss damage or expense caused by war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power.

4. 4.1 In no case shall this insurance cover loss damage or expense arising from

4.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.

4.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or

by the Assured or their employees and they are privy to such unfitness at the time of loading.

4.2 Exclusion 4.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

4.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

DURATION

Transit Clause

5. 5.1 Subject to Clause 8 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit, continues during the ordinary course of transit and terminates either

5.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

5.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

5.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or
5.1.4 on the expiry of 60 days after completion of discharge overside of the subject-matter insured from the oversea vessel at the final port of discharge, whichever shall first occur.

5.2 If, after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 5.1.1 to 5.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.

5.3 This insurance shall remain in force (subject to termination as provided for in Clauses 5.1.1 to 5.1.4 above and to the provisions of Clause 6 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

Termination of Contract of Carriage

6. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 5 above, then this insurance shall also terminate unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers, either

6.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur,

or

6.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 5 above.

Change of Voyage

7. 7.1 Where, after attachment of this insurance, the destination is changed by the Assured, this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.

7.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 5.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

CLAIMS

Insurable Interest

8. 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter...
ter insured at the time of the loss.

8.2 Subject to Clause 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

Increased Value

9. 9.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

9.2 Where this insurance is on Increased Value the following clause shall apply:

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

10. This insurance

10.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

10.2 shall not extend to or otherwise benefit the carrier or other bailee.

MINIMISING LOSSES

Duty of Assured

11. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

11.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

11.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver
12. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY

13. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

14. This insurance is subject to English law and practice.

NOTE: — Where a continuation of cover is requested under Clause 6, or a change of destination is notified under Clause 7, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.

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1/1/09 INSTITUTE WAR CLAUSES (CARGO)

RISKS COVERED

Risks

1. This insurance covers, except as excluded by the provisions of Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by

1.1 war civil war revolution insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

1.2 capture seizure arrest restraint or detainment, arising from risks covered under 1.1 above, and the consequences thereof or any attempt thereat

1.3 derelict mines torpedoes bombs or other derelict weapons of war.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these Clauses.
EXCLUSIONS

3. In no case shall this insurance cover

3.1 loss damage or expense attributable to wilful misconduct of the Assured

3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured

3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses «packing» shall be deemed to include stowage in a container and «employees» shall not include independent contractors)

3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured

3.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

3.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage

This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

3.7 any claim based upon loss of or frustration of the voyage or adventure

3.8 loss damage or expense directly or indirectly caused by or arising from any hostile use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

4. In no case shall this insurance cover loss damage or expense arising from

4.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein

4.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out

prior to attachment of this insurance or

by the Assured or their employees and they are privy to such unfitness at the time of loading.

4.2 Exclusion 4.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

4.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

DURATION

Transit clause
5. 5.1 This insurance

5.1.1 attaches only as the subject-matter insured and as to any part as that part is loaded on an oversea vessel and

5.1.2 terminates, subject to 5.2 and 5.3 below, either as the subject-matter insured and as to any part as that part is discharged from an oversea vessel at the 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;

nevertheless,

subject to prompt notice to the Insurers and to an additional premium, such insurance

5.1.3 reattaches when, without having discharged the subject-matter insured at the final port or place of discharge, the vessel sails therefrom,

and

5.1.4 terminates, subject to 5.2 and 5.3 below, either as the subject-matter insured and as to any part as that part is thereafter discharged from the vessel at the final (or substituted) port or place of discharge,

or

on expiry of 15 days counting from midnight of the day of re-arrival of the vessel at the final port or place of discharge or arrival of the vessel at a substituted port or place of discharge,

whichever shall first occur.

5.2 If during the insured voyage the oversea vessel arrives at an intermediate port or place to discharge the subject-matter insured for on-carriage by oversea vessel or by aircraft, or the subject-matter insured is discharged from the vessel at a port or place of refuge, then, subject to 5.3 below and to an additional premium if required, this insurance continues until the expiry of 15 days counting from midnight of the day of arrival of the vessel at such port or place, but thereafter reattaches as the subject-matter insured and as to any part as that part is loaded on an on-carrying oversea vessel or aircraft. During the period of 15 days the insurance remains in force after discharge only whilst the subject-matter insured and as to any part as that part is at such port or place. If the subject-matter insured is on-carried within the said period of 15 days or if the insurance reattaches as provided in this Clause 5.2

5.2.1 where the on-carriage is by oversea vessel this insurance continues subject to the terms of these Clauses,

or

5.2.2 where the on-carriage is by aircraft, the current Institute War Clauses (Air Cargo) (excluding sendings by Post) shall be deemed to form part of the contract of insurance and shall apply to the on-carriage by air.

5.3 If the voyage in the contract of carriage is terminated at a port or place other than the destination agreed therein, such port or place shall be deemed the final port of discharge and this insurance terminates in accordance with 5.1.2. If the subject-matter insured is subsequently reshipped to the original or any other destination, then provided notice is given to the Insurers before the commencement of such further transit and subject to an additional premium, this insurance reattaches

5.3.1 in the case of the subject-matter insured having been discharged, as the subject-matter insured and as to any part as that part is loaded on the on-carrying vessel for the voyage;

5.3.2 in the case of the subject-matter not having been discharged, when the vessel sails from such deemed
final port of discharge;
thereafter this insurance terminates in accordance with 5.1.4.

5.4 The insurance against the risks of mines and derelict torpedoes, floating or submerged, is extended whilst the subject-matter insured or any part thereof is on craft whilst in transit to or from the oversea vessel, but in no case beyond the expiry of 60 days after discharge from the oversea vessel unless otherwise specially agreed by the Insurers.

5.5 Subject to prompt notice to Insurers, and to an additional premium if required, this insurance shall remain in force within the provisions of these Clauses during any deviation, or any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

(For the purpose of Clause 5

“arrival” shall be deemed to mean that the vessel is anchored, moored or otherwise secured at a berth or place within the Harbour Authority area. If such a berth or place is not available, arrival is deemed to have occurred when the vessel first anchors, moors or otherwise secures either at or off the intended port or place of discharge.

“oversea vessel” shall be deemed to mean a vessel carrying the subject-matter from one port or place to another where such voyage involves a sea passage by that vessel)

Change of Voyage

6. 6.1 Where, after attachment of this insurance, the destination is changed by the Assured, this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.

6.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 5.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

7. Anything contained in this contract which is inconsistent with Clause 3.7, 3.8 or 5 shall, to the extent of such inconsistency, be null and void.

CLAIMS

Insurable Interest

8. 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.

8.2 Subject to Clause 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

Increased Value
9. 9.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

9.2 Where this insurance is on Increased Value the following clause shall apply:

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

10. This insurance

10.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

10.2 shall not extend to or otherwise benefit the carrier or other bailee.

MINIMISING LOSSES

Duty of Assured

11. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

11.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

12. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY
13. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

14. This insurance is subject to English law and practice.

NOTE: — Where a reattachment of cover is requested under Clause 5, or a change of destination is notified under Clause 6, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.
01/03/2017

FROZEN/CHILLED FOOD EXTENSION CLAUSES

(suitable for food in a mechanically temperature-controlled environment)

Risks

1. Subject always to the subject-matter insured being in sound condition at the time of attachment, this insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below, loss of, deterioration of, or damage to the subject-matter insured which shall arise during the currency of this insurance.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

«Both to Blame Collision Clause»

3. This insurance indemnifies the Assured in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

EXCLUSIONS

4. In no case shall this insurance cover

4.1 loss damage or expense attributable to wilful misconduct of the Assured

4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured

4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses «packing» shall be deemed to include stowage in a container and «employees» shall not include independent contractors)

4.4 loss damage or expense arising from infection prior to attachment of this insurance, bone taint, salmonella, fault in preparation dressing cooling freezing wrapping or packaging

4.5 claims arising from loss of market

4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel/aircraft where, at the time of loading of the subject-matter insured on board the vessel/aircraft, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage.

This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract

4.7 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

4.8 loss damage or expense arising from any failure of the Assured or their employees to take all reasonable precautions to ensure that the subject-matter insured is kept refrigerated or, where appropriate, properly
insulated and cooled space

4.9 any loss damage or expense otherwise recoverable hereunder unless prompt notice thereof is given to the Insurers and, in any event, not later than 30 days after the termination of this insurance.

5. In no case shall this insurance cover loss damage or expense arising from

5.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.

5.1.1 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading.

5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

6. In no case shall this insurance cover loss damage or expense caused by

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

6.2 capture seizure arrest restraint or detention (piracy excepted), and the consequences thereof or any attempt thereat

6.3 derelict mines torpedoes bombs or other derelict weapons of war

6.4 embargo, or by rejection prohibition or detention by any government or their agencies or departments.

7. In no case shall this insurance cover loss damage or expense

7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions

7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted

7.4 caused by any person acting from a political, ideological or religious motive.

DURATION

Transit Clause

8. Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is loaded into the conveyance at the freezing/cooling works or at the cold store (at the place named in the contract of insurance) for the commencement of transit, continues during the ordinary course of transit and terminates either

8.1 on delivery to the cold store or place of storage at the destination named in the contract of insurance, or

8.1.1 on delivery to the cold store or place of storage at the destination named in the contract of insurance, or

8.1.2 on delivery to any other cold store or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit, or
8.1.4 on the expiry of 5 days after completion of discharge overside of the subject-matter insured from the 
oversea vessel, or, after completion of unloading of the subject-matter insured from the aircraft at the final 
place of discharge, whichever shall first occur.

8.2 If, after discharge overside from the oversea vessel, or after unloading from the aircraft at the final place 
of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a desti-
nation other than that to which it is insured, this insurance, whilst remaining subject to termination as provided 
for in Clauses 8.1.1 to 8.1.4 above, shall not extend beyond the commencement of transit to such other destination.

8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above 
and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced 
discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a 
liberty granted to carriers under the contract of carriage.

8.4 In the absence of prior notice to the Insurers and agreement of any additional premium required by them, 
this insurance excludes any claim for deterioration of or damage to the subject-matter insured where the pe-
riod between the first passing of the subject-matter insured into a freezing/cooling chamber and attachment of 
this insurance exceeds 60 days.

Termination of Contract of Carriage

9. If owing to circumstances beyond the control of the Assured either the contract of carriage is termi-
nated at a port or place other than the destination named therein or the transit is otherwise terminated before 
delivery of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also termi-
nate unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance 
shall remain in force, subject to an additional premium if required by the Insurers, either

9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially 
agreed, until the expiry of 30 days after arrival of the subject-matter insured at such port or place, whichever 
shall first occur,

or

9.2 if the subject-matter insured is forwarded within the said period of 30 days (or any agreed extension 
thereof) to the destination named in the contract of insurance or to any other destination, until terminated in 
accordance with the provisions of Clause 8 above.

Change of Voyage/Transit

10. 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, this must be 
notified promptly to the Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement 
being obtained cover may be provided but only if cover would have been available at a reasonable commercial 
market rate on reasonable market terms.

10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance 
with Clause 8.1 above), but, without the knowledge of the Assured or their employees the vessel sails/aircraft 
leaves for another destination, this insurance will nevertheless be deemed to have attached at commencement 
of such transit.

CLAIMS

Insurable Interest

11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the sub-
ject-matter insured at the time of the loss.

11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during 
the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance 
was concluded, unless the Assured were aware of the loss and the Insurers were not.

Forwarding Charges
12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured. This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

Constructive Total Loss

13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

Increased Value

14. 14.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

14.2 Where this insurance is on Increased Value the following clause shall apply

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

15. This insurance

15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

15.2 shall not extend to or otherwise benefit the carrier or other bailee.

MINIMISING LOSSES

Duty of Assured

16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss,

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

17. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.
AVOIDANCE OF DELAY

18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

19. This insurance is subject to English law and practice.

NOTE: Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.

CL.422

01/03/2017