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Legal Notices

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Review) (Amendment) Notice, 2002.

General Notice No. 124 of 2002.

THE ELECTORAL COMMISSION ACT, 1997.

Act No. 3 of 1997.

Section 31 (1).

NOTICE.

APPOINTMENT OF ASSISTANT RETURNING OFFICER FOR MASINDI ELECTORAL DISTRICT.

The Electoral Commission hereby gives notice that in accordance with section 31(1) of the Electoral Commission Act, No. 3 of 1997, Mr. Milton Karafa Kato is hereby appointed Assistant Returning Officer for Masindi Electoral District.

By this Notice, Mr. Jack Byaruhanga is hereby gazetted.

ISSUED at Kampala this 17th day of April, 2002.

FLORA K. NKURUKENDA (MRS),
Deputy Chairperson, Electoral Commission.

General Notice No. 125 of 2002.

THE ADVOCATES ACT.

NOTICE.

APPLICATION FOR ENROLMENT OF ADVOCATE.

IT IS HEREBY NOTIFIED that a Petition has been presented to the Hon. the Chief Justice by Cecilia Ssentongo Namuddu who is stated to be a holder of Bachelor of Laws Degree of Makerere University and a Diploma in Legal Practice awarded to her by the Law Development Centre, Kampala for entry of her name on the Roll of Advocates for Uganda.

Kampala,
15th April, 2002.

STEPHEN MUSOTA,
Acting Chief Registrar.

General Notice No. 126 of 2002.

THE ADVOCATES ACT.

NOTICE.

APPLICATION FOR ENROLMENT OF ADVOCATE.

IT IS HEREBY NOTIFIED that a Petition has been presented to the Hon. the Chief Justice by Tugume Kibbotto Byensi Moses who is stated to be a holder of Bachelor of Laws Degree of Makerere University and a Diploma in Legal Practice awarded to him by the Law Development Centre, Kampala for entry of his name on the Roll of Advocates for Uganda.

Kampala,
15th April, 2002.

STEPHEN MUSOTA,
Acting Chief Registrar.

General Notice No. 127 of 2002.

THE ADVOCATES ACT.

NOTICE.

APPLICATION FOR A CERTIFICATE OF ELIGIBILITY.

IT IS HEREBY NOTIFIED that an application has been presented to the Law Council by Joyce Nalunga who is stated to be a holder of Bachelor of Laws of Makerere University having been awarded a Degree on the 8th day of October, 1999 and to have been awarded a Diploma in Legal Practice by the Law Development Centre on the 9th day of February, 2001 for the issue of a Certificate of Eligibility for entry of her name on the Roll of Advocates for Uganda.

Kampala,
3rd April, 2002.

JULIET NASSUNA (Ms.),
Acting Secretary, Law Council.

General Notice No. 128 of 2002.

TIGHT SECURITY COMPANY LIMITED.

NOTICE.

Pursuant to the provisions of regulation 2 of the Control of Private Security Organisations Regulations (Statutory Instrument No. 13 of 1997) the General Public is hereby notified that the duly recognised and operational personnel of M/s Tight Security Ltd, shall don a uniform, substituting the old one adequately described as beneath.

GUARDS

(a) Shirt

Black short sleeved shirt with double breast pockets with two yellow stripes running across at the sleeves. "Tight Security Limited" in yellow on top of the right left hand breast pocket.

(i) Black shoulder straps

(ii) Yellow applets with company logo

(b) Trousers

Black trousers with hip pockets and double back pockets with a yellow piping in both sides from waist to bottom.

(c) Belt

Black belt with two yellow parallel lines running across.

(d) Shoes

Black pair of shoes.

(e) Headdress

Black peak cap and barrets bearing, "Tight Security Ltd" written on the front top with the company logo in the sides.

(2) INSPECTORS**(a) Shirt**

White short-sleeved shirt with two yellow strips running across at the sleeves.

(i) White shoulder straps

(ii) Black applets with company logo

(iii) Black ties with two yellow stripes across.

(b) Trousers

Black trousers with hip pockets and double back pockets with a yellow piping in both sides from waist to bottom in both sides.

(c) Belt

Black belt with two yellow parallel lines running across.

(d) Jersey/Sweater

Black sleeveless/long sleeved jersey with two yellow parallel lines at the collar-base, sleeves and at the bottom.

(e) Shoes

Black shoes.

(f) Headdress

Black peak cap with barrets bearing, "Tight Security Ltd" written on the front top with the company logo in the sides.

Dated at Kampala this 8th day of February, 2002.

MOHAMED ALLIBHAI
Managing Director.

General Notice No. 129 of 2002.

THE TRADE MARKS ACT.

(Cap. 83).

NOTICE.

NOTICE IS HEREBY GIVEN that any person who has grounds to oppose the registration of any of the marks advertised herein may within sixty days from the date of this *Gazette*, lodge a Notice of opposition on Trade Mark Form No. 6 together with a fee of Shs. 4000 in case of National applicants or US\$ 250 in case of Foreign applicants. The period of lodging Notice of opposition may be extended in suitable cases by the Registrar as he thinks fit upon such terms as he may direct. Formal opposition should not be lodged until after reasonable notice has been given by letter to the applicant so that he may have an opportunity to withdraw his application before the expense of opposition proceedings is incurred. Failure to give such notice will be taken into account in considering any application by the opponent for an order for costs if the opposition is uncontested by the applicant. Representations of the marks herein advertised can be inspected at the office of the Registrar of Trade Marks, Parliamentary Buildings, P.O. Box 7151, Kampala.

(21) APPLICATION NO. 24746 IN PART "A".

(52) Class 16.

(54)



GOLDENLEAVES

Hotels & Resorts

(53) *Disclaimer*— Registration of this Trademark shall give no right to the exclusive use of the words "HOTELS & RESORTS" except as represented.

(59)

(64)

(57) *Nature of goods*— All goods listed under class 16.

(73) *Name of applicant*— Golden Leaves Hotels & Resorts Ltd.

(77) *Address*— P.O. Box 26477, Kampala.

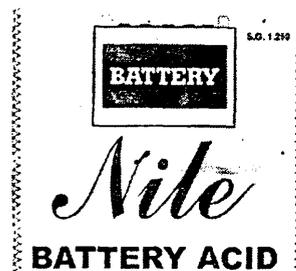
(74) C/o M/s. Nambale, Nsubuga & Co. Advocates, P.O. Box 8627, Kampala.

(22) *Date of filing application*— 25th March, 2002.

(21) APPLICATION NO. B 740 IN PART "B".

(52) Class 1.

(54)



(53) *Disclaimer*— Registration of this Trademark shall give no right to the exclusive use of the words "BATTERY", "NILE" and "BATTERY ACID" except as represented.

(59)

(64)

(57) *Nature of goods*— Chemicals used in industry, science & photography and all goods included in class 1.

(73) *Name of applicant*— Fauzia Enterprises.

(77) *Address*— P.O. Box 29226, Kampala.

(74)

(22) *Date of filing application*— 10th April, 2002.

(21) APPLICATION NO. 24800 IN PART "A".

(52) Class 33.

(54)



(53) *Disclaimer*— Registration of this Trade mark shall give no right to the exclusive use of the word "WINE" except as represented.

(59)

(64)

(57) *Nature of goods*— Wines.

(73) *Name of applicant*— Cadam Firm Promoters & Fruit Plantations Ltd.

(77) *Address*— P.O. Box 70515, Kampala.

(74)

(22) *Date of filing application*— 11th April, 2002.

(21) APPLICATION NO. 24529 IN PART "A".

(52) Class 16.

(54)



PONY EXPRESS

(53) *Disclaimer*— Registration of this Trade mark shall give no right to the exclusive use of the word "EXPRESS" separately and apart from the mark as a whole.

(59)

(64)

(57) *Nature of goods*— All goods included in class 16.

(73) *Name of applicant*— Skynet (Uganda) Ltd.

(77) *Address*— P.O. Box 4246, Kampala.

(74) C/o M/s. Mukwatanise & Co. Advocates, P.O. Box 6391, Kampala.

(22) *Date of filing application*— 18th December, 2001.

(21) APPLICATION No. 24284 IN PART "A".
 (52) Class 2.
 (54)



(53)
 (59)
 (64) Association— To be associated with T.M No. 24281.
 (57) Nature of goods— Coatings (paints), binders, non-insulating paints and lacquers or vanishes, primer or sizing agent dyes, binding agents for dyes, binders, diluents and thickeners for dyes, lacquers/varnishes and paints, flame-resistant paints, road-surface paints, oil putties, glazing putties, lacquers/varnishes(paints), rust preservatives and wood preserving agents, products protecting metals in laminar and powder form used by painters and decorators.
 (73) Name of applicant— Lafarge.
 (77) Address— 61 Rue Des Belles Feuilles 75116, Paris, France.
 C/o M/s. Sengendo & Co. Advocates, P.O. Box 6914, Kampala.
 (22) Date of filing application— 9th August, 2001.

(21) APPLICATION No. 24802 IN PART "A".
 (52) Class 5.
 (54)



(53)
 (59)
 (64)
 (57) Nature of goods— Veterinary and sanitary preparations.
 (73) Name of applicant— Bimeda Chemical Export.
 (77) Address— Broomhill Road Tallaght, Dublin 24 Ireland.
 C/o M/s. Christopher Bwanika Advocate, P.O. Box 8352, Kampala.
 (22) Date of filing application— 12th April, 2002.

(21) APPLICATION No. 24572 IN PART "A".
 (52) Class 12.
 (54)

X - T R A I L

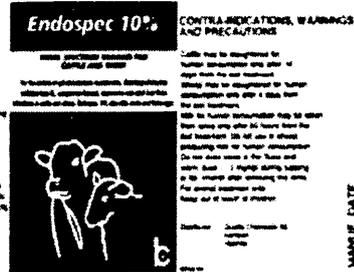
(53) Disclaimer— Registration of this application shall give no right to the exclusive use of the letter "X" apart from the mark.
 (59)
 (64)
 (57) Nature of goods— Automobiles, including, wagons, trucks, vans, forklifts, towing tractors and other utility vehicles, and structural parts thereof, excluding vehicle tyres and inner tubes.
 (73) Name of applicant — Nissan Jidosha Kabushiki Kaisha(also trading as Nissan Motor Co., Ltd).
 (77) Address— No. 2 Takaracho, Kanagawa-ku, Yokohama-shi, Kanagawa-ken, Japan.
 (74) C/o M/s. Buwule & Mayiga Advocates, P.O. Box 9516, Kampala, Uganda.
 (22) Date of filing application— 17th January, 2002.

(21) APPLICATION No. 24803 IN PART "A".
 (52) Class 5.
 (54)



(53)
 (59)
 (64)
 (57) Nature of goods— Veterinary and sanitary preparations.
 (73) Name of applicant— Bimeda Chemical Export.
 (77) Address— Broomhill Road Tallaght, Dublin 24 Ireland.
 (74) C/o M/s. Christopher Bwanika Advocate, P.O. Box 8352, Kampala.
 (22) Date of filing application— 12th April, 2002.

(21) APPLICATION No. 24804 IN PART "A".
 (52) Class 5.
 (54)



(53)
 (59)
 (64)
 (57) Nature of goods— Veterinary and sanitary preparations.
 (73) Name of applicant— Bimeda Chemical Export.
 (77) Address— Broomhill Road Tallaght, Dublin 24 Ireland.
 (74) C/o M/s. Christopher Bwanika Advocate, P.O. Box 8352, Kampala.
 (22) Date of filing application— 12th April, 2002.

Kampala, RITA BBANGA-BUKENYA (MRS.),
 12th April, 2002. Assistant Registrar of Trade Marks.

ADVERTISEMENTS

THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Mailo Register—Kyaggwe Block 101 Plot 22, Area 4.05 Hectares at Misindi & Namwezi.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Zekyeri Kasule, a special Certificate of Title under the above Block and Plot, the duplicate Certificate of Title which was originally issued having been lost.

Mukono,
 20th February, 2002.

SARAH KULATA-BASANGWA,
 for Chief Registrar of Titles.

LAW DEVELOPMENT REFERENCE LIBRARY

THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Kibuga Block 12 Plot 139, Area 0.12 Hectare at Mengo.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of L.S.S Wasswa & Ruth Nakato (Joint Tenants) of P.O. Box 7010, Kampala, a special Certificate of Title under the above Block and Plot, the Certificate of Title which was originally issued having been lost.

Kampala,
18th January, 2002.

OPIO ROBERT,
for Chief Registrar of Titles.

THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Leasehold Register—Volume 1217 Folio 3, Plot No. 13
Kabalega Road, Lira.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Arthur Haggai Okelo Oder of P.O. Box 7085, Kampala, a special Certificate of Title under the above Volume and Folio, the Certificate of Title which was originally issued having been lost.

Kampala,
16th April, 2002.

ROBERT V. NYOMBBI,
for Chief Registrar of Titles.

THE REGISTRATION OF TITLES ACT, 1964.

(Cap. 205).

NOTICE.

ISSUE OF SPECIAL CERTIFICATE OF TITLE.

Leasehold Register—Volume 282 Folio 18, Plot No. 88
High Street, Mbarara.

NOTICE IS HEREBY GIVEN that after the expiration of one month from the publication hereof, I intend to issue in the names of Zairakhanu, of P.O. Kafunzo, a special Certificate of Title under the above Volume and Folio, the Certificate of Title which was originally issued having been lost.

Kampala,
15th April, 2002.

ROBERT V. NYOMBBI,
for Chief Registrar of Titles.

IN THE HIGH COURT OF UGANDA
AT KAMPALA.

ADMINISTRATION CAUSE No. 346 OF 2002.

In the Matter of the Estate of the Late Hussein Kalumba
Formerly of Magogo Parish, Nakifuma Sub-county, Mukono
District

and

In the Matter of an application for Letters of Administration
by Nansubuga Zulufa, Sarah Nakalubi and Masitula
Nabweyeme.

TO WHOM IT MAY CONCERN

TAKE NOTICE that an application for Letters of Administration of the estate of the late Hussein Kalumba formerly of Magogo Parish, Nakifuma Sub-county, Mukono District, has been lodged in this Honourable Court by Nansubuga Zulufa, Sarah Nakalubi and Masitula Nabweyeme daughters of the deceased.

This court will proceed to grant the same if no caveat is lodged within fourteen days from the date of publication of this notice unless cause be shown to the contrary.

Dated at Kampala this 10th day of April, 2002.

E.O KISAWUZI,
Registrar.

DEED POLL

By this Deed I the undersigned Teddy Atim Batima do hereby absolutely renounce and relinquish and abandon the use of my names of Teddy Atim and in lieu thereof I have assumed the name of Teddy Atim Batima and in pursuance of such change aforesaid hereby declare that I shall at all times thereafter in actions and proceedings and in dealings and transactions upon all occasions whatsoever sign and style myself by the names Teddy Atim Batima and I hereby authorise and request all persons to do designate and address me by such names only.

In witness whereof I have hereunto signed and subscribed my adopted and substituted name of Teddy Atim Batima this 13th day of November, 1998.

Signed, sealed and delivered by the above in the names

TEDDY ATIM BATIMA
Renouncer.

IN THE HIGH COURT OF UGANDA AT KAMPALA

PROBATE AND ADMINISTRATION
CAUSE No. 53 OF 2002.

In the Matter of the Estate of the Late Livingstone Mugenyi
and

In the Matter of an application for Letters of Administration
by Christine Kabasweka (Widow).

NOTICE OF APPLICATION

TO WHOM IT MAY CONCERN

TAKE NOTICE that an application for Letters of Administration to the estate of the late Livingstone Mugenyi has been lodged in this Court by Christine Kabasweka, widow of the deceased.

This court will proceed to grant the same if no caveat is lodged with this Court within fourteen days from the date of publication of this notice unless cause be shown to the contrary.

Dated at Kampala this 17th day of January, 2002.

E.O KISAWUZI,
Deputy Registrar (Family).

ACTS SUPPLEMENT

to The Uganda Gazette No. 24 Volume XCV dated 19th April, 2002.

Printed by UPPC, Entebbe, by Order of the Government.

Act 8 *Excise Tariff (Amendment) Act* **2002**

THE EXCISE TARIFF (AMENDMENT) ACT, 2002.

ARRANGEMENT OF SECTIONS.

Section.

1. Short title and commencement.
2. Insertion of new section 3A.
3. Repeal of section 6(2).
4. Addition of Schedule 2.

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THE EXCISE TARIFF (AMENDMENT) ACT, 2002.

An Act to amend the Excise Tariff Act, Cap. 174.

DATE OF ASSENT: 24th December, 2001.

Date of commencement: 1st July, 2001.

SEE ACT 5 OF 2012 FOR
AMENDMENT OF SECTION 3A

BE IT ENACTED by Parliament as follows:

1. This Act may be cited as the Excise Tariff (Amendment) Act, 2002 and shall come into force on 1st July, 2001.

Short title and commencement.

2. The Excise Tariff Act is amended by inserting immediately after section 3, the following new section—

Insertion of new section 3A.

“Excise duty on air or talk time

3A (1) There shall be charged in respect of the provision of air time or talktime for mobile cellular phones, excise duty at the rate specified in Schedule 2 to this Act.

(2) The duty shall be levied on the usage charges and access charges pre-paid or post-paid, charged by mobile cellular phone service providers for the use of cellular phone services.

(3) The duty shall be collected and paid by the mobile cellular phone service providers licensed by the Uganda Communications Commission established by the Uganda Communications Act, 1997, in accordance with the provisions of the Management Act.

(4) Where no usage fee is charged, or where there is an application to own use by the cellular phone service provider for the purpose of its business activities, the duty shall be charged on the market value of the cellular phone services provided, as if this were a sale in the open market.

(5) The excise duty shall be charged together with the Value Added Tax but the credit input tax allowed under section 29 of the Value Added Tax Statute shall not apply to the excise duty.

(6) The taxable value of the usage charges shall be determined in accordance with section 22 of the Value Added Tax Statute.

(7) Every mobile cellular phone service provider that collects excise duty under this Act shall lodge a tax return with the Commissioner General on a prescribed form and pay the tax due by the fifteenth day of the following month.

(8) The provisions of the Management Act shall, with necessary modifications, apply to the collection, payment and enforcement of the duty."

3. The Excise Tariff Act is amended by repealing subsection (2) of section 6.

4. The Excise Tariff Act is amended by adding after Schedule 1, the following new Schedule—

Act No. 8
of 1997.

Statute No.
9 of 1996.

Repeal of
section 6(2).

Addition of
Schedule 2.

“SCHEDULE 2.

SECTION 3A.

RATE OF DUTY ON AIRTIME OR TALKTIME FOR MOBILE
CELLULAR PHONES.

The rate of duty is 7%.”

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ACTS SUPPLEMENT

to The Uganda Gazette No. 24 Volume XCV dated 19th April, 2002.

Printed by UPPC, Entebbe, by Order of the Government.

Act 9

Customs Tariff (Amendment) Act

2002

THE CUSTOMS TARIFF (AMENDMENT) ACT, 2002.

ARRANGEMENT OF SECTIONS.

Section.

1. Short title and commencement.
2. Repeal of section 4.

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THE CUSTOMS TARIFF (AMENDMENT) ACT, 2002.

**An Act to repeal section 4 of the Customs Tariff Act, 1970, Act
No. 17 of 1970.**

DATE OF ASSENT: 24th December, 2001.

Date of commencement: 1st July, 2001.

BE IT ENACTED by Parliament as follows:

1. This Act may be cited as the Customs Tariff (Amendment) Act, 2002 and shall come into force on 1st July, 2001.

Short title
and
commence-
ment.

2. The Customs Tariff Act, 1970 is amended by repealing section 4.

Repeal of
section 4.

ACTS SUPPLEMENT

to The Uganda Gazette No. 24 Volume XCV dated 19th April, 2002

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Act 10 *Income Tax (Amendment) Act*

2002

Sec 37 2003

THE INCOME TAX (AMENDMENT) ACT, 2002.

ARRANGEMENT OF SECTIONS.

PART I—PRELIMINARY.

Section.

1. Short title.
2. Application.
3. Construction of Act.

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PART II—AMENDMENT TO THE INCOME TAX ACT, 1997.

4. Amendment to section 6.
5. Amendment to section 20.
6. Amendment to section 22.
7. Amendment to section 23.
8. Amendment to section 25.
9. Amendment to section 31.
10. Amendment to section 36.
11. Amendment to section 37.
12. Amendment to section 39.
13. Amendment to section 45.
14. Amendment to section 46.
15. Amendment to section 47.
16. Amendment to section 53.
17. Amendment to section 54.
18. Amendment to section 58.
19. Amendment to section 66.
20. Amendment to section 69.

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Section.

21. Amendment to section 70.
22. Amendment to section 71.
23. Amendment to section 80.
24. Amendment to section 82.
25. Amendment to section 83.
26. Amendment to section 84.
27. Amendment to section 85.
28. Amendment to section 87.
29. Amendment to section 94.
30. Amendment to section 100.
31. Amendment to section 107.
32. Amendment to section 109.
33. Amendment to section 112.
34. Amendment to section 114.
35. Amendment to Heading.
36. Amendment to section 115.
37. Insertion of section 119A.
38. Amendment to section 120.
39. Amendment to section 123.
40. Amendment to section 130.
41. Amendment to section 131.
42. Amendment to section 142.
43. Amendment to section 145.
44. Amendment to section 154.
45. Amendment to section 158.
46. Amendment to section 168.
47. Amendment to the Fourth Schedule.
48. Amendment to the Fifth Schedule.
49. Amendment to the Sixth Schedule.

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LAW DEVELOPMENT CENTRE
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THE INCOME TAX (AMENDMENT) ACT, 2002.

An Act to amend the Income Tax Act, 1997

DATE OF ASSENT: 24th December, 2001.

Date of commencement: 1st July, 2001.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

- 1. This Act may be cited as the Income Tax (Amendment) Act, 2002. Short title.
- 2. This Act shall come into force on 1st July, 2001. Application.
- 3. This part of the Act shall be read and construed as one with the Income Tax Act, 1997 in this Act referred to as the principal Act. Construction of Act.

PART II—AMENDMENT TO THE INCOME TAX ACT, 1997.

Amendment
to section 6.

4. Section 6 of the principal Act is amended by substituting for subsection (3) the following new subsection—

“(3) The tax imposed under this section on an individual is separate from the tax imposed under section 5 and —

(a) the rent derived by an individual shall not be included in the gross income subject to tax under this Act of the individual for any year of income;

(b) expenditures and losses incurred by the individual in the production of rent shall be allowed as a deduction under this Act for any year of income only as provided in paragraph (c) of subsection (1) of section 23;

(c) the tax payable by the resident individual under this section shall not be reduced by any tax credits allowed to the individual under this Act”.

Amendment
to section
20.

5. Section 20 of the principal Act is amended in subsection (2), by substituting for paragraph (g) the following new paragraph—

“(g) any contribution or similar payment by the employer made to a retirement fund for the benefit of the employee or any of his or her dependants.”

Amendment
to section
22.

6. Section 22 of the principal Act is amended in subsection (1)—

(a) by repealing paragraph (i);

(b) by adding the following new paragraph—

“(r) the income of the Government of the Republic of Uganda and the Government of any other country.”

7. Section 23 of the principal Act is amended—
- (a) in subsection (1) by inserting immediately after paragraph (c) the following new paragraph—
- “(d) graduated tax paid by an individual.”
- (b) in subsection (2), by repealing paragraph (g).
8. Section 25 of the principal Act is amended in paragraph (a) of subsection (2), by substituting for the words “the person’s income” the words the person’s gross income;
9. Section 31 of the principal Act is amended by substituting for the words “gross income” the words “gross income or in the initial public offering at the stock market.”
10. Section 36 of the principal Act is amended—
- (a) in subsection (2), by inserting after the word “Uganda” the words “to produce income included in gross income”;
- (b) in the definition of “farm works” in subsection (4), by inserting after “operations” the words “carried on to produce income included in gross income.”
11. Section 37 of the principal Act is amended by inserting after “operations” the words “to produce income included in gross income.”
12. Section 39 of the principal Act is amended in subsection (3) by inserting after “creditors” where it first occurs the word “in the course of an insolvency.”
13. Section 45 of the principal Act is amended—
- (a) in subsection (1), by substituting for the words “an amount in income” the words “an amount in gross income”;

Amendment
to section
23.

Amendment
to section
25.

Amendment
to section
31.

Amendment
to section
36.

Amendment
to section
37.

Amendment
to section
39.

Amendment
to section
45.

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CENTRE

(b) in subsection (3), by substituting for the words “an amount in income” the words “an amount in gross income.”

Amendment
to section
46.

14. Section 46 of the principal Act is amended in subsection (3) by substituting for the words “amount in income” the words “an amount in gross income.”

Amendment
to section
47.

15. Section 47 of the principal Act is amended in subsection (3) by substituting for paragraph (b) the following new paragraph—

“(b) where the taxpayer commenced business during the year of income, the market value at the time of commencement of the business of trading stock acquired prior to the commencement of the business”.

Amendment
to section
53.

16. Section 53 of the principal Act is amended in subsection (2) by inserting after the word “value” the words “at the date of acquisition”.

Amendment
to section
54.

17. Section 54 of the principal Act is amended—

(a) in subsection (1), by inserting after “value” the words “at the date of the disposal”; and

(b) by repealing subsection (4).

Amendment
to section
58.

18. Section 58 of the principal Act is amended —

(a) in subsection (1), by substituting for the words “Amounts taken into account” the words “Chargeable income”; and

(b) in subsection (2), by substituting for the words “the calculation of chargeable income involves an amount” the words “an amount taken into account under this Act is”.

19. Section 66 of the principal Act is amended by inserting after subsection (4) the following subsection—

Amendment
to section
66.

“(5) Unless the context otherwise requires, partnership assets are treated as owned by the partnership and not the partners”.

20. Section 69 of the Act is amended in paragraph (a) of subsection (1)—

Amendment
to section
69.

(a) by repealing the word or at the end of subparagraph (iv): and

(b) by inserting after subparagraph (iv) the following new paragraph—

“(v) the interest in the partnership received by the partner in return for the contribution equals the market value of the asset contributed at the time of the contribution; or”

21. Section 70 of the Act is amended by substituting for subsection (2) the following new subsection—

Amendment
to section
70.

“(2) Subject to subsection (3) and (4), the cost base of a partner’s interest in a partnership is—

(a) in the case of an interest acquired by contribution of property (including money) to the partnership, the amount of any such money contributed plus—

(i) the cost base of an asset contributed to the partnership by the partner where paragraph (a) of subsection (1) of section 69 applies: and

(ii) the market value of any asset contributed to the partnership by the partner where paragraph (b) of subsection (1) of section 69 applies: or

(b) in any other case, the price paid for the interest”.

Amendment
to section
71.

22. Section 71 of the principal Act is amended in the definition of “settlor” by inserting at the end of the definition the words “at the date of the transfer or conferral”.

Amendment
to section
80.

23. Section 80 of the principal Act is amended in subparagraph (ii) of paragraph (j), by substituting for the word “imparting” the word “import”.

Amendment
to section
82.

24. Section 82 of the principal Act is amended in paragraph (2) by substituting for the word “calculating” the word “calculated”.

Amendment
to section
83.

25. Section 83 of the principal Act is amended in subsection (5) by inserting at the end of the subsection the words “under section 5, but is otherwise treated for all purposes of this Act as a tax on chargeable income”.

Amendment
to section
84.

26. Section 84 of the principal Act is amended—

(a) in subsection (1) by inserting after a royalty the word “rent”;

(b) in paragraph (a) of subsection (5)—

(i) by inserting after the word “company” the words “to a non-resident person”;

(ii) by substituting for the words “debentures were issued” with the words “debentures were widely issued”

(c) by inserting after subsection (5) the following subsection—

“(6) Subsection (1) does not apply to an amount attributable to the activities of a branch of the non-resident in Uganda and such amount is subject to the operation of section 18”.

27. Section 85 of the principal Act is amended in subsection (4) by substituting for the words “tax due” the words “to the Commissioner the tax due”. Amendment to section 85.
28. Section 87 of the principal Act is amended— Amendment to section 87.
- (a) in subsection (1) by inserting, immediately after “Uganda” the words “and on a road transport operator who derives income from the carriage of cargo or mail which is embarked in Uganda”;
- (b) in subsection (2) by inserting at the end the words “and is treated for all purposes of the Act as a tax on chargeable income”.
29. Section 94 of the principal Act is amended— Amendment to section 94.
- (a) in paragraph (a) by substituting for the words “section 88 applies” the words “subsection (4) of section 5 or paragraph (c) of section 88 or both apply”; and
- (b) in subparagraph (i) of paragraph (b), by deleting “or (5)”.
30. Section 100 of the principal Act is amended in subsection (4) by substituting for “Tribunal” the words “Tribunal referred to in paragraph (a) of subsection (1) of section 101”. Amendment to section 100.
31. Section 107 of the principal Act is amended by substituting for subsection (8) the following subsection— Amendment to section 107.
- “(8) An amount due under this section is treated for all purposes of this Act as if it were tax due”
32. Section 109 of the principal Act is amended— Amendment to section 109.
- (a) in subsection (5) by substituting for the words “subsection (1)” the words subsection (1), (3) or (4); and

- (b) substituting for subsection (6) the following subsection—

“(6) An amount due under this section is treated for the purposes of the tax as if it were tax due”.

Amendment
to section
112.

33. Section 112 of the principal Act is amended in subsection (3) by substituting for the formula the following new formula—

“(50% X A)—B”

Amendment
to section
114.

34. Section 114 of the principal Act is amended—

- (a) in subsection (3) by inserting immediately after paragraph (b) the following new paragraph—

“(c) refund the remainder, if any to the taxpayer”,

- (b) in paragraph (c) of subsection (4) by substituting for the words “a Tax Tribunal” the word “Tribunal”;

- (c) after paragraph (d) of subsection (4) by substituting for the words “commencing on the date the person paid the tax refunded” the words commencing on the date the person made the application for refund”

- (d) in subsection (6), by substituting for the words “subsection (6)” the words “subsection (5)”;

PART XII

Amendment
to heading.

35. The principal Act is amended by deleting “Gross” from the heading to Part XII and the heading to section 115.

Amendment
to section
115.

36. Section 115 of the principal Act is amended—

- (a) in subsection (1)—

- (i) by substituting for the words “A resident individual the words “An individual”.

(ii) substituting for the words “gross rental income” the words “rental income.”

(b) in subsection (3), by substituting for the words “gross rental income” the words “rental income”.

37. The principal Act is amended by inserting immediately after section 119 the following new section—

Insertion of
section
119A.

119A. (1) A resident person who pays management of professional fees to a resident professional shall withhold tax on the gross amount of the payment at the rate prescribed in Part VIII of the Third Schedule.

(2) This section does not apply to a professional who the Commissioner is satisfied has regularly complied with the obligations imposed on that person under this Act.”

38. Section 120 of the principal Act is amended in subsection (6), by substituting for “withholding tax” the words “tax withheld”.

Amendment
to section
120.

39. Section 123 of the Act is amended in paragraph (e) by substituting for the word “losses actually incurred”; the words “losses incurred”.

Amendment
to section
123.

40. Section 130 of the principal Act is amended in subsection (3) by inserting at the end of the subsection the words “after the end of the year of income to which the record or evidence relates”.

Amendment
to section
130.

41. Section 131 of the principal Act is amended in subsection (1) by repealing “other than employment of income”.

Amendment
to section
131.

42. Section 142 of the principal Act is amended by substituting for the words “taxpayer identification number” wherever it appears in the section the words “tax identification number”.

Amendment
to section
142.

Amendment
to section
145.

43. Section 145 of the principal Act is amended by repealing the words “referred to as the “original offence” in this section”.

Amendment
to section
154.

44. Section 154 of the Act is amended—

(a) in subsection (1), by substituting for the word “information”, the words “statement or omission”.

(b) in subsection (2), by substituting for the word “official” the word “officer”.

Amendment
to section
158.

45. Section 158 of the Act is amended in subsection (2)—

(a) by substituting for the words “the tribunal” the words, “a tribunal referred to in paragraph (a) of section 101”;

(b) by inserting after the word “performance”, the words “of duties”.

Amendment
to section
68.

46. Section 168 of the principal Act is amended—

(a) in subsection (9), by substituting, for the words “30th June, 1997” wherever they appear in the subsection the words “31st March, 1998.

(b) in subsection (13), by substituting for “subsection (7)” the words “subsection (6)”;

(c) by substituting, for subsection (19) following new subsection—

“(19) Finance leases, as defined in section 60 of this Act, entered into before 1st July, 1997 shall be dealt with in terms of the Income Tax Decree, 1974”, and

(d) by substituting for paragraph (a) of subsection (23) the following new paragraph—

“(a) subsections (8) to (11) apply to the person on the basis that the reference in those subsections to 31st March, 1998 is treated as a reference to the day on which the exemption expired”.

47. The Fourth Schedule to the principal Act is amended in subparagraph (b) of paragraph 2, by substituting for the words “such a business any gains” the words “such a business and any gains”.

Amendment to the Fourth Schedule.

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48. The Fifth Schedule to the principal Act is amended—

Amendment to the Fifth Schedule.

(a) in paragraph (9) by substituting for the words “property or service” the words “property or services at the time the benefit is provided”.

(b) in paragraph 11, by substituting for the words “benefit, reduced” the words benefits, at the time the benefit is reduced”.

49. The Sixth Schedule to the principal Act is amended in Part I by substituting for the words “more than 7 tonnes” the words “7 tonnes or more”

Amendment to the Sixth Schedule.

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ACTS SUPPLEMENT

to The Uganda Gazette No. 24 Volume XCV dated 19th April, 2002.

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Act 11

Marine Insurance Act

2002

THE MARINE INSURANCE ACT, 2002.

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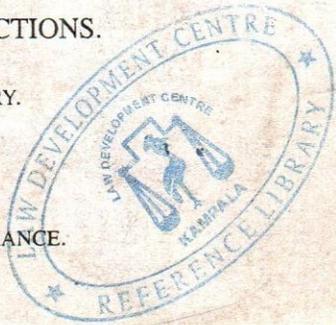
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Act 11

Marine Insurance Act

Section.

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THE MARINE INSURANCE ACT, 2002.

An Act to make provision in Uganda in relation to Marine Insurance.

DATE OF ASSENT: 22nd March, 2002.

Date of Commencement: See section 1(2).

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. (1) This Act may be cited as the Marine Insurance Act, 2002.

Short title and commencement.

(2) This Act shall come into force on a date appointed by the Minister by statutory instrument; and the Minister may appoint different dates for different provisions of this Act.

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2. In this Act unless the context otherwise requires—

Interpretation.

“abandonment” means the surrender, relinquishment, disclaimer, or cession of property or of rights or the voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it;

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“action” includes suit, counterclaim and set-off;

“barratry” means an act committed by a master or mariners of a vessel for some fraudulent or unlawful purpose contrary to their duty to the owner and resulting in injury to the owner;

“bottomry” means a contract by which the owner of a ship borrows for use, equipment, or repair of the vessel, and for a definite term, and pledges the ship or the keel or bottom of the ship or part of it for security, it being stipulated that if the ship is lost in the specified voyage, or during the limited time, by any of the perils enumerated, the lender shall lose his or her money;

“contingent interest” means an interest which depends for its effect upon an event which may or may not happen;

“currency point” has the meaning assigned to it in the First Schedule to this Act;

“defeasible interest” means an insurable interest which ceases during the currency of the voyage;

“floating policy” has the meaning assigned to it in section 29;

“freight” includes the profit derivable by a shipowner from the employment of his or her ship to carry his or her own goods or movables as well as freight payable by a third party, but does not include passage money;

“hypothecation” means the pledging of property as security or collateral for a debt;

“insurable property” means any ship or movables capable of being insured against maritime perils;

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“maritime perils” means the perils consequent on or incidental to the navigation of the sea and inland waters, namely, perils of the seas and inland waters, fire, war, pirates, rovers, thieves, captures, seizures, restraints and detainment of foreign governments and peoples, jettisons and barratry, and any other perils of the like kind or which may be designated by the policy and perils of land incidental to sea voyage;

“Minister” means the Minister to whom the functions of the Minister under this Act have been assigned by the President;

“movables” means any movable tangible property other than the ship, including money, valuable securities and other documents;

“mutual assurance” has the meaning assigned to it by section 85;

“policy” means a policy expressing a contract of marine insurance;

“respondentia” means hypothecation of the cargo or goods on board a ship as security for the repayment of a loan.

PART II—MARINE INSURANCE.

3. (1) A contract of marine insurance is a contract by which the insurer undertakes to indemnify the assured, in a manner and to an extent agreed under the contract, against the losses incidental to marine adventure.

(2) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters, or on any land or air risk which may be incidental to any sea voyage.

(3) Where a ship in the course of building, or the launch of a ship or any adventure analogous to a marine adventure, is covered by a policy, this Act applies to it so far as it may, but, except so far as this section provides, this Act does not alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance.

Marine
adventure
defined.

4. (1) Subject to 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 insurable property is exposed to maritime perils;
- (b) the earning or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loan disbursements, is endangered by the exposure of insurable property to maritime perils; or
- (c) any liability to a third party may be incurred by the owner of, or the other person interested in or responsible for, insurable property, by reason of maritime perils.

PART III—INSURABLE INTEREST.

Insurable
interest
defined.

5. (1) Subject to this Act, every person has an insurable interest who is interested in a marine adventure.

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

When
interest
must attach.

6. (1) The assured must be interested in the subject matter insured at the time of the loss, though he or she need not be interested when the insurance is effected.



(2) Where the subject-matter is insured "lost or not lost" the assured may recover although he or she may not have acquired his or her 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.

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

7. (1) A defeasible interest and a contingent interest are insurable.

Defeasible
or
contingent
interest.

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

8. A partial interest of any nature is insurable.

Partial
interest.

9. (1) The insurer under a contract of marine insurance has an insurable interest in his or her risk, and may re-insure in respect of it.

Re-
insurance.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of a re-insurance under subsection (1).

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

Bottomry.

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

Master's
and
seamen's
wages.

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

Advance
freight.

Charges of insurance.

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

Quantum of interest.

14. (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in its full value, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

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

(3) The owner of insurable property has an insurable interest in respect of its full value, even though some third person may have agreed, or be liable, to indemnify him or her in case of loss.

Assignment of interest.

15. (1) Where the assured assigns or otherwise parts with his or her interest in the subject-matter insured, he or she does not by that transfer to the assignee his or her rights under the contract of insurance, unless there is an express or implied agreement with the assignee to that effect.

(2) Subsection (1) of this section does not affect a transmission of interest by operation of law.

PART IV—INSURABLE VALUE.

Measure of insurable value.

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

(a) in insurance on a ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements if any, incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the

charges of insurance upon the whole, and the machinery and boilers, and the fuel and engine stores if owned by the insured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade;

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

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

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

PART V—DISCLOSURE AND REPRESENTATIONS.

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

Insurance is
*uberrimae
fidei.*

18. (1) Subject to 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 or her; and, if the assured fails to make that disclosure, the insurer may avoid the contract.

Disclosure
by the
assured.

(2) A circumstance is material if it would influence the judgement of a prudent insurer in fixing the premium, or determining whether he or she will take the risk.

(3) In the absence of inquiry, the following circumstances need not be disclosed—

(a) any circumstance which diminishes the risk;

known or presumed

(b) any circumstance which is known or presumed to be known to the insurer; and the insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his or her business, as such ought to know;

(c) any circumstance as to which information is waived by the insurer;

(d) any circumstance which it is superfluous to disclose by reason of any express or implied warranty.

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

(5) In this section "circumstance" includes any communication made to, or information received by, the insured.

Disclosure by agent or broker effecting insurance.

19. Subject to section 18 of this Act relating to circumstances which need not be disclosed, where a contract of marine insurance is effected for the assured by an agent or a broker, the agent or broker must disclose to the insurer—

(a) every material circumstance which is known to himself or herself; and an agent or broker to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him or her; and

(b) every material circumstance which the assured is bound to disclose, unless it comes to his or her knowledge too late to communicate it to the agent or broker.

Representations pending negotiation of contract.

20. (1) Every material representation made by the assured or his or her agent to the insurer during the negotiations for a contract of marine insurance, and before the contract is concluded, must be true; and if any such representation is untrue the insurer may avoid the contract.

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

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

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

(5) A representation as to a matter of expectation or belief is true if it is made in good faith.

(6) A representation may be withdrawn or corrected before the contract is concluded.

(7) Whether a particular representation is material or not is, in each case, a question of fact.

21. (1) A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer; 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.

When contract deemed to be concluded.

(2) When the contract of marine insurance is deemed to be concluded as described in subsection (1) of this section, the assured is entitled to require the issue of the policy on the basis of the contract.

PART VI—THE POLICY.

22. (1) Subject to any other written law, a contract of marine insurance is inadmissible in evidence unless it is embodied in a policy in accordance with this Act.

Contract to be embodied in policy.

(2) The policy may be executed and issued either at the time when the contract is concluded, or afterwards.

What the policy must specify.

23. A policy must specify—

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

Signature of insurer.

24. (1) A policy must be signed by or on behalf of the insurer, and if the insurer is a corporation the policy may be executed under the common seal of the corporation or in any other lawful manner.

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

Voyage and time policies.

25. (1) Where the contract is to insure the subject-matter "at and from" or from one place to another or others, the policy is called a voyage policy, and where the contract is to insure the subject-matter for a definite period of time the policy is called a time policy.

(2) A contract for both voyage and time may be included in the same policy.

(3) A time policy which is made for any time exceeding twelve months is invalid.

(4) Notwithstanding subsection (3) of this section, a time policy containing a continuation clause shall not be invalid on the ground only that by reason of the continuation clause it may become available for a period exceeding twelve months.

(5) In this section "continuation clause" means an agreement to the following or the similar effect, namely, that where the ship is at sea or the voyage is otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time afterwards not exceeding thirty days.

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

Designation
of subject
matter.

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

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

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

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

Valued
policy.

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

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

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

Unvalued
policy.

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

Floating
policy by
ship or
ships.

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

(2) The subsequent declaration or declarations may be made by endorsement on the policy, or in any other customary manner.

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment and must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated; but an omission or erroneous declaration may be rectified even after loss or arrival, if the omission or declaration was made in good faith.

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

Construction
of terms in
policy.

30. Subject to this Act, unless the context of the policy otherwise requires, the terms and expressions used in a policy shall be construed as having the scope and meaning assigned to them in the Second Schedule to this Act.

Premium to
be arranged.

31. (1) Where a contract of marine insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable.

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

PART VII—DOUBLE INSURANCE.

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

Double
insurance.

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

(a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he or she thinks fit, but he or she is not entitled to receive any sum in excess of the indemnity allowed by this Act;

(b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him or her under any other policy without regard to the actual value of the subject-matter insured;

(c) where the policy under which the assured claims is an unvalued policy he or she must give credit, as against the full insurable value, for any sum received by him or her under any other policy;

(d) where the assured receives any sum in excess of the indemnity allowed by this Act, he or she holds that sum in trust for the insurer, according to their right of contribution among themselves.

PART VIII—WARRANTIES, ETC.

33. (1) A warranty in the following sections of this Part relating to warranties, means a promissory warranty, namely, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or by which he or she affirms or negatives the existence of a particular state of facts.

Nature of
warranty.

(2) A warranty may be express or implied.

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

When
breach of
warranty
excused.

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

(2) Where a warranty is broken, the assured cannot avail himself or herself of the defence that the breach has been remedied, and the warranty complied with, before loss.

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

Express
warranties.

35. (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

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

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

Warranty of
neutrality.

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

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

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

No implied warranty of nationality.

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

Warranty of good safety.

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

Warranty of seaworthiness of ship.

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

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

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

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

No implied warranty that goods are seaworthy.

40. (1) In a policy on goods or other movables there is implied warranty that the goods or movables are seaworthy.

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

Warranty of legality.

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

PART IX—THE VOYAGE.

Implied condition as to commencement of risk.

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

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

Alteration of port of departure.

43. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach unless the insurer is notified in advance and concurrence obtained.

Sailing for different destination.

44. Where the destination is specified in the policy and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach unless the insurer is notified in advance and concurrence obtained.

Change of voyage.

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

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

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

Deviation.

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

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

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

(3) To discharge the insurer from his or her liability under the contract, there must be a deviation in fact; and a mere intention to deviate is not sufficient.

47. (1) Where several ports of discharge are specified in the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, the ship must proceed to them, or such of them as she goes to, in the order designated by the policy; and if she does not, there is a deviation.

Several ports of discharge.

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

Delay in
voyage.

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

Excuses for
deviation or
delay.

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

- (a) where authorised by any special term in the policy; or
- (b) where caused by circumstances beyond the control of the master and the master's employer; or
- (c) where reasonably necessary in order to comply with an express or implied warranty; or
- (d) where reasonably necessary for the safety of the ship or subject-matter insured; or
- (e) for the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or
- (f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or
- (g) where caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.

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

PART X—ASSIGNMENT OF POLICY.

50. (1) A policy is assignable unless it contains terms expressly prohibiting assignment; and it may be assigned either before or after loss.

When and
how policy
is
assignable.

(2) Where a policy has been assigned so as to pass the beneficial interest in the policy, the assignee of the policy is entitled to sue on it in his or her own name; and the defendant is entitled to make any defence arising out of the contract which he or she would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(3) A policy may be assigned by endorsement on it or in any other customary manner.

51. (1) Where the assured has parted with or lost his or her interest in the subject-matter insured and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative.

Assured who has no interest cannot assign.

(2) Subsection (1) of this section does not apply to the assignment of a policy after loss.

PART XI—THE PREMIUM.

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

When premium payable.

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

Policy effected through broker.

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and charges in respect of effecting the policy; and, where the broker has dealt with the person who employs him or her as principal, the broker has a lien on the policy in respect of any

balance on any insurance account which may be due to him or her from that person, unless when the debt was incurred the broker had reason to believe that that person was only an agent.

54. Where a policy effected on behalf of the assured by a broker, acknowledges the receipt of the premium, the acknowledgement is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and the broker.

PART XII—LOSS AND ABANDONMENT.

55. (1) Subject to this Act and to any express provision in the policy, the insurer is liable for any loss proximately caused by a peril insured against, but, he or she is not otherwise liable for any loss which is not proximately caused by a peril insured against.

(2) In particular—

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

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

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

56. (1) A loss may be either total or partial; and any loss other than a total loss is a partial loss.

Partial and total loss.

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

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

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

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

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

Actual total loss.

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

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

Missing ship.

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

Effect of trans-shipment, etc.

Constructive
total loss
defined.

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

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

(a) where the assured is deprived of the possession of a ship or goods by a peril insured against; and

(i) it is unlikely that he or she can recover the ship or goods, as the case may be; or

(ii) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

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

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

Effect of
constructive
total loss.

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

62. (1) Subject to this section, where the assured elects to abandon the subject-matter insured to the insurer, the assured shall give notice of abandonment; and if the assured fails to do so, the loss shall be treated as a partial loss.

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

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

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

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

(6) Where notice of abandonment is accepted the abandonment is irrevocable, and the acceptance of the notice is conclusive evidence of admission of liability for the loss and the sufficiency of the notice.

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

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

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

Effect of
abandon-
ment.

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

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

PART XIII—PARTIAL LOSSES (INCLUDING SALVAGE GENERAL AVERAGE AND PARTICULAR CHARGES).

Particular
average
loss.

64. (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

(2) Particular charges are expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, and particular charges are not included in particular average.

Salvage
charges.

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

(2) Salvage charges are the charges recoverable under maritime law by a salvor independently of contract; but they do not include the expenses of services in the nature of salvage rendered by the assured or his or her agents, or any person employed for hire by them, for the purpose of averting a peril insured against, and those expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred.

66. (1) A general average loss is a loss caused by or directly consequential on, a general average act, and it includes average expenditure as well as a general average sacrifice.

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

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

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

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject-matter insured, he or she may recover for it from the insurer.

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection which the avoidance of, a peril insured against.

(7) Where a ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions shall be determined as if those subjects were owned by different persons.

PART XIV—MEASURE OF INDEMNITY.

Extent of liability of insurer for loss.

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

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

Total loss.

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

(a) if the policy is a valued policy, the measure of indemnity is the sum fixed by the policy;

(b) if the policy is an unvalued policy, the measure of indemnity is the insurable value of the subject matter insured.

Partial loss of a ship.

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

(a) where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty;

(b) where the ship has been only partially repaired the assured is entitled to the reasonable cost of the repairs, computed as described in paragraph (a), and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage but so that the aggregate amount does not exceed the cost of repairing the whole damage, computed as described in paragraph (a);

- (c) where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing the damage, computed as described in paragraph (a).

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

Partial loss
of freight.

71. (1) Where there is a partial loss of goods, merchandise or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows—

Partial loss
of goods,
merchandise,
etc.

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

(2) In subsection (1) of this section—

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

“gross value” means the wholesale price or, if there is no such price, the estimated value, with, in either case, freight, landing charges and duty paid beforehand, or, in the case of goods or merchandise customarily sold in bond, the bonded price.

Apportionment of valuation.

72. (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy.

(2) The insured value of any part of a species is such proportion of the total insured value of the species as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

(3) Where a valuation has to be apportioned, and particulars of a prime cost of each separate species, quality or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities or descriptions of goods.

General average contributions and salvage charges.

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

(2) Where the insurer is liable for salvage charges, the extent of his or her liability must be determined on the same principle as set out in subsection (1).

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

Liabilities
to third
parties.

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

General
provisions
as to
measure of
indemnity.

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

76. (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy is apportionable; but, if the contract is apportionable, the assured may recover for a total loss of any apportionable part.

Particular
average
warranties.

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred in accordance with the suing the labouring clause in order to avert a loss insured against.

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

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

Successive losses.

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

(2) Where, under the same policy, a partial loss which has not been repaired or otherwise made good is followed by a total loss, the assured can only recover in respect of the total loss; except that this section shall not affect the liability of the insurer under the suing and labouring clause.

Suing and labouring clause.

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

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

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

(4) It is the duty of the assured and his or her agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss.

PART XV—RIGHT OF INSURER ON PAYMENT.

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

Right of subrogation

(2) Subject to subsection (1) of this section, where the insurer pays for a partial loss, the insurer acquires no title to the subject-matter insured, or such part of it as may remain, but the insurer is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by that payment for the loss.

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

Right of contribution.

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

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

Effect of under insurance.

PART XVI—RETURN OF PREMIUM.

82. Where the premium or a proportionate part of it is, declared by this Act to be returnable—

Enforcement of return.

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

Return by
agreement.

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

Return for
failure of
consideration.

84. (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his or her agents, the premium is thereupon returnable to the assured.

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the same conditions as described in subsection (1), thereupon returnable to the assured.

(3) In particular—

(a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, if there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;

(b) where the subject-matter insured, or part of it, has never been imperilled, the premium or, as the case may be, a proportionate part of it is returnable; except that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable, unless, at that time, the insurer knew of the safe arrival;

- (c) where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, though not in the case of a policy effected by way of gaming or wagering;
- (d) where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable;
- (e) where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;
- (f) subject to the provisions of this subsection, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable.

(4) Notwithstanding paragraph (f) of subsection (3), if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured by the policy, no premium is returnable in respect of that policy; and when the double insurance is effected knowingly by the assured, no premium is returnable.

PART XVII—MUTUAL INSURANCE.

85. (1) There is mutual insurance where two or more persons mutually agree to insure each other against marine losses.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

Modification
of Act in
case of
mutual
insurance.

(4) Subject to the exceptions mentioned in this section, this Act applies to mutual insurance.

(5) In this section "association" means any association formed for effecting a mutual insurance.

PART XVIII—MISCELLANEOUS.

Ratification
by assured.

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

Implied
obligations
varied by
agreement
or usage.

87. (1) Where any right, duty or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage is such as to bind both parties to the contract.

(2) This section extends to any right, duty, or liability declared by this Act which may be lawfully modified by agreement.

Reasonable
time, etc., a
question of
fact.

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

Slip as
evidence.

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

Avoidance
of wagering
or gaming
contracts.

90. (1) Every contract of marine insurance by way of gaming or wagering is void.

(2) A contract of marine insurance is deemed to be a gaming or wagering contract—

(a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or

(b) where the policy is made "interest or no interest" or "without further proof of interest than the policy itself" or "without benefit of salvage to the insurer", or subject to any other similar term; except that, where there is no possibility of salvage to the insurer the policy may be effected without benefit of salvage.

91. (1) If—

(a) any person effects a contract of marine insurance without having any *bona fide* interest, direct or indirect, either in the safe arrival of the ship in relation to which the contract is made or in the safety or preservation of the subject-matter insured, or a *bona fide* expectation of acquiring such an interest; or

(b) any person in the employment of the owner of a ship, not being a part owner of the ship, effects a contract of marine insurance in relation to the ship, and the contract is made "interest or no interest" or "without further proof of interest than the policy itself" or "without benefit of salvage to the insurer" or subject to any other similar term,

the contract shall be deemed to be a contract by way of gambling on loss by maritime perils, and the person effecting it commits an offence and is liable on conviction to a fine not exceeding fifteen currency points or imprisonment not exceeding six months or both, and in each case to forfeit any money he or she may receive under the contract.

(2) Any broker or other person through whom, and any insurer with whom, any contract described in subsection (1) is effected commits an offence and is liable on conviction, to the same penalties specified in subsection (1), if he or she acted knowing that the contract was by way of gambling on loss by maritime perils within the meaning of this section.

Prohibition
of gambling
on loss by
maritime
perils.

(3) A person shall not be prosecuted under this section except with the consent of the Director of Public Prosecutions.

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

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

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

(7) In this section, "owner" includes a charterer.

(8) This section does not affect the operation of section 5 of this Act.

Minister's
power to
amend First
Schedule.

92. The Minister may, by statutory instrument, amend the First Schedule.

Savings for
other laws.

93. The rules of the common law, including the law merchant, shall continue to apply to contracts of marine insurance, so far as those rules are for the time being in force and are not inconsistent with this Act, and the rules of construction of a policy set out in the Second Schedule to this Act shall apply.

Act 11

Marine Insurance Act

2002

FIRST SCHEDULE.

SECTIONS 2 AND 92.

CURRENCY POINT.

A currency point is equivalent to twenty thousand shillings.

SECOND SCHEDULE.

SECTIONS 30 AND 93.

RULES FOR CONSTRUCTION OF POLICY.

1. Where the subject-matter is insured "lost or not lost", and the loss has occurred before the contract is concluded, the risk attaches unless, at that time the assured was aware of the loss, and the insurer was not.
2. Where the subject-matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured.
3. Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately.
4. If she is not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.
5. Where chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately. If she is not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.
6. Where freight, other than chartered freight, is payable without special condition and is insured "at and from" a particular place, the risk attaches *pro rata* as the goods or merchandise are shipped; except that if there is any cargo in readiness which belongs to the ship owner, or which some other person has contracted with him or her to ship, the risk attaches as soon as the ship is ready to receive that cargo.
7. Where goods or other movables are insured "from their loading; the risk does not attach until the goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship.
8. Where the risk on goods or other movables continues until they are "safely landed", they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

9. In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.
10. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas and it does not include the ordinary action of the winds and waves.
11. The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.
12. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.
13. The term "arrests, etc., of kings, princes and people" refers to political or executive acts, and does not include a loss caused by a riot or by ordinary judicial process.
14. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.
15. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.
16. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges".
17. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding if when the stranding takes place, the risk has attached and, if the policy is on the goods, the damaged goods are on board.
18. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals and engine stores, if owned by the assured.

19. The term "freight" includes the profit derivable by a shipowner from the employment of his or her ship to carry his or her own goods or movables, as well as freight payable by a third party, but does not include passage money.

20. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

21. In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

