[AS PASSED BY THE NATIONAL ASSEMBLY]

A

BILL

to provide for the regulation of the business of marine insurance

WHEREAS it is expedient to provide for the law relating to Marine Insurance and matters connected therewith and incidental thereto;

It is hereby enacted as follows:-

CHAPTER 1
PRELIMINARY

1. Short title, extent, commencement and application.- (1) This Act may be called the Marine Insurance Act, 2017.

(2) It extends to the whole of Pakistan, except section 91 which shall extend only to the Islamabad Capital Territory.

(3) It shall come into force at once.

(4) Notwithstanding any other law for the time being in force and save as otherwise expressly provided, this Act shall apply to every contract of Marine Insurance.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(a) "action" includes counter-claim and set off;

(b) "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money;

(c) "marine insurance" means a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure;

(d) "maritime perils" means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of

princes and peoples, jettisons, barratry and any other perils, either of the like kind or which may be designated by the policy;

(e) "moveables" means any moveable tangible property, other than the ship and includes money, valuable securities and other documents;

(f) "policy" means a marine policy; and

(g) "ship" means any vessel used for the carriage of goods by sea.

CHAPTER 2
MARINE INSURANCE

3. Mixed sea and land risks.- (1) A contract of marine insurance may, by its express terms or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage.

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined.

4. Marine adventure and maritime perils defined.- (1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

(2) In particular, there is a marine adventure, where –

(a) any ship goods or other moveables are exposed to maritime perils. Such property is in this Act referred to as "insurable property";

(b) the earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan or disbursements, is endangered by the exposure of insurable property to maritime perils; and

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

CHAPTER 3
INSURABLE INTEREST

5. Avoidance of wagering or gaming contracts.- (1) Every contract of marine insurance by way of gaming or wagering is void.

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

(a) where the assured has not an insurable interest as defined in section 6 and the contract is entered into with no expectation of acquiring such an interest; or

(b) where the policy is made "interest or no interest," or "without further proof of interest than the policy itself," or "without benefit of salvage to the insurer," or subject to any other like term:

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

6. Insurable interest defined.- (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

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

7. When interest must attach.- (1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected:

Provided that where the subject-matter is insured "lost or not lost," the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

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

8. Defeasible or contingent interest.- (1) A defeasible interest is insurable, as also is a contingent interest.

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

9. Partial interest.- A partial interest of any nature is insurable.

10. Reinsurance.- (1) The insurer under a contract of marine insurance has an insurable interest in his risk and may reinsure in respect of it.

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance.

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

12. Master's and seamen's wages.- The master or any member of the crew of a ship has an insurable interest in respect of his wages.

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

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

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

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

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

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

Provided that the provisions of this section shall not affect a transmission of interest by operation of law.

CHAPTER 4
INSURABLE VALUE

17. Measure of insurable value.- (1) Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:-

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

adventure contemplated by the policy, plus the charges of insurance upon the whole; and

(b) the insurable value, in the case of a steamship, includes also the machinery, boilers and coals and engine stores if owned by the assured and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade.

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

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

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

CHAPTER 5
DISCLOSURE AND REPRESENTATION

18. Insurance is uberrimae fidei.- 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 .

19. Disclosure by assured.- (1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

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

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

(a) any circumstance which diminishes the risk;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. When contract is deemed to be concluded.- A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the

policy be then issued or not and, for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract.

CHAPTER 6
THE POLICY

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

24. What policy must specify.- A marine policy must specify the name of the assured or of some person who effects the insurance on his behalf.

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

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

26. Voyage and time policies.- Where the contract is to insure the subject matter "at and from", or from one place to another or others, the policy is called a "voyage policy" and where the contract is to insure the subject matter for a definite period of time the policy is called a "time policy". A contract for both voyage and time may be included in the same policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 7
DOUBLE INSURANCE

33. Double insurance.- (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof and the sums insured

exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance.

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

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

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

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

(d) where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

CHAPTER 8
WARRANTIES

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

(2) A warranty may be express or implied.

(3) A warranty, as defined in sub-section (1), is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41. No implied warranty that goods are seaworthy.- (1) In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy.

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

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

CHAPTER 9
THE VOYAGE

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

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

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

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

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

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

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

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

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

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

(3) The intention to deviate is immaterial, there must be a deviation in fact to discharge the insurer from his liability under the contract.

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

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

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

50. Excuses for deviation or delay.- Deviation or delay in prosecuting the voyage contemplated by the policy is excused,-

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

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

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

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

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

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

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

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

CHAPTER 10
ASSIGNMENT OF POLICY

51. When and how policy is assignable.- (1) A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss.

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

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

52. Assured who has no interest cannot assign.- Where the assured has parted with or lost his interest in the subject matter insured and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy any subsequent assignment of the policy is inoperative:

Provided that nothing in this section affects the assignment of a policy after loss.

CHAPTER 11
THE PREMIUM

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

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

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

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

CHAPTER 12
LOSS AND ABANDONMENT

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

(2) In particular,-

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

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

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

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

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

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

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

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

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

(2) In the case of an actual total loss notice of abandonment need not be given.

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

60. Effect of transhipment, etc.- Where, by a peril insured against, the voyage is interrupted at any 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 re-shipping the goods or other moveables or in transhipping them and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment.

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

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

(a) where the assured is deprived of the possession of his ship or goods by a peril insured against and it is unlikely that he can recover the ship or goods, as the case may be, or 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; or

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

(3) In estimating the cost of repairs, no deduction shall 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.

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

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

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

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

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

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

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

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

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

(9) Where an insurer has reinsured his risk, notice of abandonment need not be given by him.

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

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned and which is earned by her subsequent to the casualty causing the loss,

less the expenses of earning it incurred after the casualty and, where a ship is carrying the owner's goods, the insurer shall be entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss.

CHAPTER 13
PARTIAL LOSSES INCLUDING SALVAGE, GENERAL AVERAGE AND PARTICULAR CHARGES

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

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

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

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

67. General average loss.- (1) A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice.

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in the 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 such contribution is called a general average contribution.

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

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

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

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

CHAPTER 14
MEASURE OF INDEMNITY

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

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

69. Total loss.- (1) Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject matter insured,-

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

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

70. Partial loss of ship.- Where a ship is damaged but not totally lost the measure of indemnity, subject to any express provision in the policy, is as follows, namely:-

(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 such repairs, computed as above and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage computed as above; or

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

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

72. Partial loss of goods, merchandise, etc.- (1) Where there is a partial loss of goods, merchandise or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows, namely:-

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

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

(c) where the whole or any part of the goods or merchandise insured has been delivered as 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) For the purposes of this section, the expression "gross value" means the wholesale price or, if there be no such price, the estimated value with, in either case, freight, landing charges and duty paid beforehand provided that in the case of goods or merchandise customarily sold in bond the bonded price is deemed to be the gross value and "gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers.

73. Apportionment of valuation.- (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

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

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

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

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

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

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

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

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

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

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

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

(2) Where under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss:

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause.

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

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

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

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

CHAPTER 15
RIGHTS OF INSURER ON PAYMENT

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

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

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

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

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

CHAPTER 16
RETURN OF PREMIUM

83. Enforcement of return.- Where the premium or a proportionate part thereof is, by this Act, declared to be returnable,-

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

(b) if unpaid, it may be retained by the assured or his agent.

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

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

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

(3) In particular,-

(a) where the policy is void or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there

has been no fraud or illegality on the part of the assured, but if the risk is not apportionable and has once attached, the premium is not returnable;

(b) where the subject-matter insured or part thereof has never been imperilled, the premium or, as the case may be, a proportionate part thereof, is returnable:

Provided that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival;

(c) where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this provision does not apply to a policy effected by way of gaming or wagering;

(d) where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable; and

(e) where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable.

(4) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable:

Provided that, if the policies are effected at different times and any earlier policy has at any time borne the entire risk or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy and when the double insurance is effected knowingly by the assured no premium is returnable.

CHAPTER 17
MUTUAL INSURANCE

86. Modification of this Act in case of mutual insurance.- (1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

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

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

(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance.

CHAPTER 18
SUPPLEMENTAL

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

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

(2) The provisions of this section extend to any right, duty or liability declared by this Act which may be lawfully modified by agreement.

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

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

91. Certain provisions to override the Transfer of Property Act 1882.- Nothing in clause (e) of section 6 of the Transfer of Property Act, 1882 (IV of 1882) , shall affect the provisions of sections 16, 51, 52 and 80.

92. Repeal.- (1) Sections 130A and 135A of the Transfer of Property Act, 1882(IV of 1882), are hereby repealed.

(2) The rules of the common law including the law merchant, save in so far as they are not inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

SCHEDULE
(see section 31)

Rules for construction of policy

The following are the rules referred to by this Act for the construction of a policy, where the context does not otherwise require, namely:-

1. Where the subject-matter is insured "lost or not lost" and the loss has occurred before the contract is concluded, the risk attaches, unless at such time the assured was aware of the loss and the insurer was not.

2. Where the subject-matter is insured "from" a particular place, the risk shall not attach until the ship starts on the voyage insured.

3. In the following circumstances,-

(a) where a ship is insured "at and from" a particular place and she is at that place in good safety when the contract is concluded, the risk attache immediately.

(b) if she be not at that place when the contract is concluded, the risk attache as soon as she arrives there in good safety and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

(c) where chartered freight is insured "at and from" a particular place and the ship is at that place in good safety when the contract is concluded the risk attaches immediately. If she be not there when the contract is concluded, the risk attache as soon as she arrives there in good safety.

(d) where freight, other than chartered freight, is payable without special conditions and is insured "at and from" a particular place, the risk attache pro rata as the goods or merchandise are shipped, provided that if there be cargo in readiness which belongs to the shipowner or which some other person has contracted with him to ship, the risk attache as soon as the ship is ready to receive such cargo.

4. Where goods or other moveables are insured "from the loading thereof," the risk does not attach until such goods or moveables are actually on board and the insurer is not liable for them while in transit from shore to ship.

5. Where the risk on goods or other moveables continues until they are "safely landed" they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge and if they are not so landed the risk cease.

6. In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

7. The expression "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8. The expression "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

9. The expression "thieves" does not cover clandestine theft or a theft committed by anyone of the ship's company, whether crew or passengers.

10. The expression "arrests, etc., of kings, princes and people" refers to political or executive acts and does not include a loss caused by riot or by ordinary judicial process.

11. The expression "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner or, as the case may be, the charterer.

12. The expression "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

13. The expression "average unless general" means a partial loss of the subject matter insured other than a general average loss and does not include "particular charges".

14. Where the ship has stranded, the insurer is liable for the expected losses although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade and also, in the case of a steamship, the machinery, boilers and coals and engine stores, if owned by the assured.

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

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

18. 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.

STATEMENT OF OBJECTS AND REASONS

The Pakistan Marine Insurance Bill, 2016 is being placed for approval to give effect *inter alia* to the following objects:

i. to encourage and promote Marine Insurance Sector in Pakistan;
ii. to provide a legal framework for regulation of Marine Insurance in the country;
iii. to remove contradictions and similarities with other laws existing in the field; and
iv. to provide rules for construction / interpretation of Marine Insurance policies.

ENGR. KHURRAM DASTAGIR KHAN
Federal Minister for Commerce