

Marine insurance

01 | The law of marine insurance is Roman– Dutch law

Despite the influence of English law and practice on the South African insurance market generally, Marine Insurance in South Africa is governed by Roman-Dutch law principles. The English 1906 Marine Insurance Act, which, by and large, codified the English law of marine insurance, does not apply unless specifically incorporated into the insurance contract.

02 | Standard industry terms

The Institute of London Underwriters has developed standard forms of marine insurance cover that are often incorporated into policies and include an English law and practice clause that purports to cover “this insurance”. Potentially English law and practice may then apply to the entire insurance contract. If this is not what is desired, then care should be taken to override this provision in the policy or schedule.

03 | Warranties without consequences for breach are meaningless

Whenever you include a warranty in an insurance contract, ask yourself – what are the consequences if it is breached? Have these consequences been recorded in the insurance contract? If not, the warranties may well be meaningless.

04 | General Average (GA) and Salvage: marine oddities

Cover can be obtained not just for risks to cargo or ships – most cargo clauses have standard, limited liability cover too. This is especially so for liabilities incurred to shipowners and salvors for GA and Salvage claims. GA usually arises where a shipowner incurs extra-ordinary expenses in order to complete a voyage – such as incurring costs of towage, engine repairs etc. Cargo interests are often obliged to contribute to those GA expenses. Cargo interests must pay salvors where the salvor saves cargo from a total or constructive total loss. That said, liability for damage caused by cargo is not usually included in standard cover.

05 | Abandonment

Insurers should be wary about accepting goods that have been abandoned or salvaged – insurers may become liable for their removal or destruction – costs which can be considerable. It may also be extremely difficult to realise any value in the abandoned goods.

06 | “All risks” insurance

Despite the reference to “all risks”, insurance generally only covers risks that arise fortuitously. Inevitably, such insurance also contains a fairly lengthy list of exceptions.

07 | Insurable interest

Under Roman Dutch law, the approach to insurable interest is relatively straightforward and is not limited to factors such as ownership or risk of loss or damage in and to the subject matter insured – but the insured must have some financial interest in the thing being insured. The policy must not amount to a wager, such as insuring against the non-arrival of a ship or cargo in respect of which the insured has no interest whatsoever.

08 | Cyber cover issues

There is almost no marine cover available for losses suffered by a ship or cargo interest as a result of cyber events (hacking into electronic charts, ransom ware etc. – this risk is generally excluded – save for cover for certain recovery costs). Insurers are now developing policies to respond to cyber risks.

09 | Admiralty jurisdiction

Claims for, arising out of or relating to marine insurance are regarded as maritime claims. The prosecution of maritime claims is governed by the Admiralty Jurisdiction Regulation Act. This Act provides that maritime claims must be prosecuted out of the admiralty jurisdiction of South Africa’s High Courts. In certain circumstances even inland Courts will have admiralty jurisdiction – where a marine insurance policy is concluded in Johannesburg, then the relevant Gauteng High Court will have Admiralty jurisdiction to hear the dispute.

10 | Duty to place third parties on notice

Marine insurance covers transport of goods by land, sea or air. Where local transporters cause damage, they should be put on notice immediately – where shipowners or shipping lines may be at fault, security for the claims should be obtained before the vessel sails as they may not be regular callers to South African ports. Policies usually include an “Important Clause” which places fairly onerous obligations upon the insured to protect rights of recovery and need to be carefully drafted.

10 Things to Know – Marine insurance

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Our South African marine insurance team is widely regarded as a leader in this practice area. Aided by our master mariner we are able to provide commercially focused marine insurance and shipping advice needed by underwriters, brokers and insured companies in the marine sector. We act for the world's leading marine insurance companies involved in cargo, liability, P&I and hull and machinery insurance.

We advise on all aspects of insurance risk in relation to shipping and logistics and provide guidance on good corporate governance in mitigating such risks. We have played a leading role in almost every major marine casualty off the coast of South Africa for the past 25 years.