

MISCELLANEOUS INSURANCE

CONTENTS

All risk insurance – Burglary Insurance – money in transit insurance – Liability insurance- public liability – product liability – professional indemnity – jewelers block insurance – health insurance – micro insurance – bullet questions – trade questions

MISCELLANEOUS INSURANCE

A. ALL RISK INSURANCE

All risks policies are issued on Named exclusion basis.

Subject matter for Insurance:

- Gold and silver ornaments, cameras, watches, cell phones, laptops, calculators and such other valuables.

COVERAGE:

1. The policy covers loss or damage to subject matter insured by whatever cause except those specifically excluded.
2. It covers any locations within the geographical limit specified in the policy (normally within India and it can be worldwide also in exceptional cases)
3. The policy is subject to the usual condition of average.
4. Unless specified indemnity for individual items is limited to 5% of sum insured.
5. Pair and set clause is applicable.

EXCLUSIONS:

- Ware and nuclear perils
- Cracking, scratching or breakage of glasses unless caused by carrying vehicles.
- Depreciation, wear and tear, moth, vermin etc.
- Loss occasioned while cleaning, dyeing, repairing or restoration process.
- Electrical short circuit to electrical machines.
- Derangement or over winding of watches.
- Loss of money, securities, manuscripts or books of accounts and articles of consumable nature.

- Theft from unattended vehicles
- Articles carried under contract of afrieghtment
- Consequential losses are legal liabilities.

UNDERWRITING CONSIDERATIONS:

- Proposal from known and reputed clients with sound tract record can only be entertained.
- Care of property – custody in safe deposit lockers and other safety features.
- Items covered and their susceptibility to loss.
- Trade of proposer – proposals from dealers, money lenders and pawn brokers may attract special conditions and higher rate of premium. Therefore prior approval is required.
- Availability of list of articles and their approved valuation.
- Moral hazard of the proposer
- Geographical extensions.
- Past claims history.

B.MONEY INSURANCE

Subject matter for Insurance:

Cash, Demand draft, cheques, postal orders, money orders and current postal stamps.

SCOPE:

Section I: Transit risk

- a. Money drawn for payment wages, salary petty cash etc. from bank to premises until the same are paid out.
- b. Money describe above under custody from premises to bank or post office.
- c. Money collected and in the custody whilst in transit to premises, bank or post office for a period upto to 48 hours from the time of collection.

SECTION II: At the premises.

Money not described in Sec. I whilst in the locked safe or strong room in premises against burglary house breaking and hold up.

Risk covered: Sec I Accident and misfortune
 Sec II Burglary and house breaking

EXCLUSIONS:

- Shortage due to error or mission
- Loss of money entrusted to any other person other than the insured or his authorized employee
- Infidelity of employees carrying cash.
- Over night keeping unless in a locked safe or strong room.
- Loss occasioned by RSMTD.
- Money carried under contract of afrieghtment
- All exclusions applicable to burglary policy.

EXTENTIONS AVIALABLE AT ADDITIONAL PREMIUM:

- Infidelity of employees carrying cash.
- Strike and riot.
- Over night keeping of cash
- Occasional large carrying.

UNDERWRITING CONSIDERATION:

- Single carrying limit
- Total estimated annual carrying
- Character of the locality, neighborhood etc.
- Distances and routes
- Mode of transit
- Claims history
- All other as applicable to burglary policy.

C. BURGLARY INSURANCE

- Subject matter for Insurance :

Cash, Stock, FFF, Machinery and other contents of a business or residential premises

RISK COVERED:

1. Loss or damage by burglary or attempted burglary.
2. Damage caused to the premises by burglar is also covered.
3. Can be extended to cover theft at an additional premium with approval of RO/HO.

DEFINITION OF BURGLARY:

- A theft following a house breaking or a theft followed by a house breaking.
- House breaking means a criminal house trespass effected by forcible means to gain entry to into or exit from the premises – section 442 & 445 IPC may be referred.

EXCLUSIONS:

- War perils & nuclear perils
- By using authorized keys unless obtained by threat or assault.
- Caused or aggravated or assisted by the insured, his family, and his employees.
- Consequential loss
- Goods held in trust unless specifically declared.
- Recoverable under other policies.
- Loss after material alterations.

UNDERWRITING CONSIDERATIONS:

- Security measures
- Moral hazard
- Attractiveness, susceptibility and criticality and exposure
- Previous claims history
- Accounting system
- Place of storage.
- Terms of cover.

TYPES OF BURGLARY POLICIES:

- Specific policy
- Declaration policy
- Floater declaration policy
- First loss policy.

D. FIDELITY GUARANTEE INSURANCE

SCOPE

- Intended to provide indemnity against pecuniary loss caused by infidelity of the employees.
- The fraud and dishonesty should have been in course of discharging specified duties and also in respect of money or goods of the employers.
- Policy ceases the moment the claim is settled for individual policies.

- The name of the employee stands deleted the moment any claim involving his infidelity is reported and settled.

TYPES OF POLICIES:

1. Individual policy
2. Collective policy.
3. Floating Policy
4. Positions policy
5. Blanket Policy.

EXCLUSIONS:

- Arising anywhere outside India.
- Arising after change of employment conditions without consent of insurers.
- Repeat losses involving same person
- Deviations from accepted internal check system.

UNDERWRITING CONSIDERATIONS:

- The relationship between annual emoluments and amount of guarantee sought.
- Financial status of the insured
- Method of accounting and well established internal check and control system.
- Recruitment policy – references obtained while offering employment.
- Amount of counter guarantee available.

VARIANT FORM OF FG INSURANCE:

- Court bonds :
 - a) Administrative Bond
 - b) Receivership Bond
 - c) Liquidators Bond
- Customs Bond
- Excise Bond.

E.LIABILITY INSURANCE

Meaning of the term “Liability”: Legal Obligation of the wrong doer to pay damages to the aggrieved person.

TORT:

Civil Wrong

Arises out of a breach of legal duty
 Leads to a civil cause of action
 Entails payment of damages or compensation

Law relating to Liability:

- Evolution of law
- Survival of the fittest and the strongest
- Code of conduct evolved by the civil society – Principle of Equity.
- Individual has the right to :
 - Liberty
 - Enjoy and be secure in his property and reputation
 - Privacy
- He also has a duty to
 - Respect others right and
 - Refrain from harming others by invading their rights.
- If, by his wrongful act, he causes harm to others, he is held responsible (compensation or punishment).

HOW LIABILITY ARISES?

- Common Law – passed legal decisions and legally recognized customs, conventions and usages.
- Law of Tort :

-part of common law
 Tort is a civil wrong
 Tort arises out of a breach of a duty
 Such a breach can be the basis of a civil cause of action.

- Statute law – Those enacted by legislature e.g., M.V. Act, PLI Act, WC Act etc.
- Law of contracts.

TORT vs. CRIME

TORT	CRIME
Breach of private rights of individual as individual.	Breach of public rights which affects the entire society as a society.
Action initiated by aggrieved party.	State prosecutes the culprit.
Remedy is in the form compensation.	Punishment in the form of imprisonment

	or fine.
Adjudicated by civil court.	Conviction by criminal court.
Civil Liability is insurable	Criminal liability is not insurable as it is against public policy – civil consequences of a criminal act can be covered.
Privity between parties not needed	Require privities between parties.
Duty imposed by law applicable to the entire society.	Duty arises out of agreement.
Opposing parties may not be connected.	Opposing parties are parties to the contract.

Meaning of “Negligence”

- Unintended wrong involving breach of legal duty of care.
- Blyth V. Birmingham waters company. (1856)
 - Breach of duty may occur due to either.
 - 1. Act of commission (negligent act) : Doing something a reasonably prudent man would not do under given circumstances or
 - 2. Act of omission (Negligent omission): Failure to do something a reasonably prudent man would do under given circumstances.
- Breach of duty of care means failure to exercise reasonable degree of care.
- Court should decide whether the standard of care required under the circumstances was observed.
- The complainant has to prove that such duty of care was owed by the other.

Instances of Tort:

- Libel
- Slander
- Assault
- Negligence
- Nuisance

Liability Insurance deals with only two of the instances of tort viz., Negligence and Nuisance.

When liability emerges under law of tort?

- It emerges when it is established that :
 1. The defendant owed a legal duty of care.
 2. The defendant breached that duty of care.
 3. The plaintiff suffered injury or damage and.
 4. There was a causal connection between (2) & (3).
- Mere carelessness where there is no duty to take care existed is not negligence.
- Party complaining has to establish the facts from (1) to (4) to sustain an action for negligence.
- Sometimes negligence may be presumed as per rule “res ipsa loquitur”.

Degree of Care:

- Degree of care or skill may vary according to particular circumstances
 - Owner of a property to use it in such a way as not to cause injury or damage to other persons or their property.
 - Persons using dangerous things such as explosives, gases etc. are to exercise more than ordinary care in the control over such properties.
 - Towards children.
 - Much higher degree of care and skill to be exercised by the professionals in their professional work
- A professional need not possess the highest expert skill, it is sufficient to exercise the ordinary skill of an ordinary competent professional.

Strict and absolute liability:

- Shriram foods & fertilizers (1986) – Escape of Oleum Gas.
 - An enterprise engaged in hazardous and inherently dangerous activity should ensure highest standard of safety.
 - If any harm results on account of such activity, the enterprise must be strictly and absolutely liable to compensate all those who are affected by the accident.
 - Exercise of reasonable care or absence of negligence – no excuse.
 - Rylands V. Fletcher exceptions too would not be available.
 - The larger and more prosperous the enterprise, the greater must be the amount of the compensation payable.
 - The MD and Chairman of the company are personally responsible for what goes wrong in the company.

DEFENCES TO ACTION UNDER THE RULE OF STRICT LIABILITY:

- Act of god
- Consent/default of the plaintiff

- Act of stranger
- Statutory authority.

DAMAGES:

- Damages means pecuniary compensation recoverable by action for; breach of contract & tort.
 - Damages for personal injury claims
 - (a) Special damages :
 - (i) actual loss of earning due to injury
 - (j) medical, nursing or other expenses
 - (k) Funeral expenses.
 - (b) General Damages :
 - (a) pain & suffering
 - (b) Loss of enjoyment of life and loss of amenities.
 - (c) Loss of recreational ability and/or
 - (d) Loss of expectation of life.
 - Damages for property damage claims
 - (a) cost of repair/replacement of damaged property
 - (b) loss of use of damaged property
- The onus of proving the amount of damages rests on the claimant.

DEFENCES TO NEGLIGENCE ACTION:

1. Volenti Non fit injuria (to him who is willing there can be no injury)
2. Inevitable accident.
3. Act of god or Vis. Major
4. Emergency
5. contributory negligence
6. limitation
7. Accord and satisfaction.

TYPES OF LIABILITY POLICIES:

- Public liability (Industrial risk) Insurance.
- Public Liability (Non Industrial Risk) Insurance.
- Product liability insurance.
- Professional indemnity insurance.
- Public liability insurance act policy (Government by PLI Act, 1991)
- Workmen's Compensation Policy.
- Directors & Officers Liability Insurance (No. market agreement)

- Comprehensive General Liability/Contingent liability & various other reinsurance driven cover (no market agreement)

NEED FOR LIABILITY INSURANCE:

- Growing awareness among people about their rights
- Consumer protection law
- Evolution of strict & absolute liability
- Enactment of special laws.
- Huge cost of defense and large amounts of award.
- Inclination of judiciary to promote public cause.
- Public interest suits and class action.

LIABILITY INSURANCE POLICIES:

- Cover liability under – law of tort and Statute law
- Cover legal liability of the insured.
- Pay to third party – damages & legal costs and expenses.
- Provide compensation for
 - Death, bodily injury, illness or disease
 - Actual physical damage to tangible property
- Negligence is to be proved in court of law
- Claims made within jurisdiction of India as per Indian law except for liability arising out of exports in Product Liability.
- Claims first made in writing against insured during period of insurance are considered for payment.

COMMON FEATURES OF LIABILITY POLICIES:

- * Indemnity Limits – Any one Accident AND Any One Year.
- * AOA: AOY Ratios 1:1, 1:2, 1:3 and maximum upto 1:4 (No unlimited liability)
- * Notification Extension clause
- * Extended claims reporting clause
- * Indemnity to others (except professional indemnity)
- * Cross liability
- * Claims series clause (No coverage for claim from the same cause which are made later than 3 years after first claim of the series.
- * Compulsory and voluntary excess (applicable to both injury and damage).

CONDITIONS:

- Notice of claim.
- No admission, offer, promise, payment without consent of insurer.
- Right to defend.
- Give information and assistance
- Notification of material alteration in risk.
- Payment upto limit of indemnity
- Interpretation condition.
- Keeping accurate records and declaration of turnover at the time of renewal
- Contribution
- Cancellation
- Reduction of Limit of Indemnity (AOY) on payment of claim.
- Excluding losses in case of Fraud
- Policy disputes clause.

COMMON RATING FACTORS:

- Risk group
- Limit of Indemnity (Ratio)
- Limit of Indemnity (AOA) opted
- Output or Turnover
- Receipts
- Attendance/seating capacity (e.g. : no. of visitors to the premises)
- Wages.

F.PUBLIC LIABILITY (INDUSTRIAL RISK)

- Cover for industrial and manufacturing risks.
- Cover depots, warehouses, go downs or any premises connected with insured business, addl. Premium depending on no. of premises covered.
- Claims arising out of accidents occurring in insured premises.
- Excludes claims arising out of Pollution (unless specifically covered) and Product Liability.
- Risk inspection to be done for new policy and at every fourth renewal where AOY exceeds Rs. 2.5 crores for Risk Group 1 and 2 and Rs. 1 crore and above for Risk Group 3 and 4.

EXCLUSIONS:

- Contractual liability.
- Act of God perils (can be covered as extension)
- Deliberate/willful/intentional non compliance of statutory requirements.

- Loss of pure financial nature like loss of goodwill/market etc.
- Personal injuries like libel, slander etc.
- Infringement of plans, copy right etc.
- Fines, penalties, punitive and exemplary damages.
- War and nuclear perils
- Ownership, possession, use of Motor vehicles.
- Liability arising out of transportation of hazardous substance (can be covered as extension)
 - Use of aircraft, watercraft or hovercraft
 - Damage to property owned, leased or hired or in custody of insured.
 - Injury or damage prior to retroactive date.
 - Deliberate, conscious or intentional disregard of insured's technical or administrative management to take reasonable steps to prevent claims
 - Liability which may be specifically covered elsewhere e.g. PLI Act or No Fault Liability (Non IR only).

EXTENTION POLLUTION:

- Cover legal liability towards injury and damage to property due to accidental (occurred at specific time and place) seepage, pollution or contamination.
- Also covers cost for removing, nullifying or cleaning up, seeping, polluting and contaminating substance.
- Excludes fines, penalties, punitive and exemplary damage.
- Subject to additional questionnaire certificate/consent letter from Pollution Control Board and additional premium.
- Extension of Act of god perils (AOG) with additional premium as per Earthquake zones stated in AIFT.

EXTENSION – Technical Collaborators

- Covers legal liability of collaborator (named in schedule) in respect of technical collaboration agreement between insured and collaborator.
- No claim payable unless cause of action arises in India and liability to pay claim is established against the insured in an Indian contract.
- Only Indian Law shall be applicable to actions brought in India.
- Subject o additional premium
- Need to scrutinize collaboration agreement and any other information depending on need of each case.

EXTENSIONS: Transportation cover

- Covers legal liability towards injury and damage to property due to accident caused by material/hazardous or dangerous substance whilst in transit by rail/road or pipelines (Pollution control Board Certificate).
- Pollution risk excluded unless specifically covered.
- Subject to compliance of statutory provisions
- Separate limit of indemnity i.e. AOA/AOY.
- Additional premium on indemnity, turnover, pollution and AOG perils (Pollution and AOG perils if requested).
- 50% premium charged if taken with premises cover.
- Separate policy may be issued with 100% premium and joint name of insured and transporter (if AOG perils taken, zone should be 1).

EXTENTION - Carriage of Treated effluents:

- Covers legal liability towards injury and damage to property due to accident whilst treated effluents are carried by pipelines outside insured premises to discharge point.
- Pollution risk excluded unless specifically covered.
- Excludes fines, penalties, punitive and exemplary damages
- Subject to compliance of statutory provisions
- Additional premium (on indemnity premium) if distance exceeds 1 km. If distance exceeds 20 KM to be referred to Market Agreement commit.

PUBLIC LIABILITY INSURANCE ACT, 1991

- Applicable for those handling hazardous goods and defined in the act.
- Limit of indemnity to be not less than paid up capital but within a maximum of Rs. 15 crore AOY and Rs. 5 Crore AOA
- Basis of rating :
 - Limit of Indemnity and turnover
 - Equal amount of premium to be collected towards environment relief fund (no discount in lieu of commission & no service tax on ERF).
- Claims (Deciding authority – Dist. Collector)
 - Reimbursement of medical expenses upto maximum Rs. 12,500
 - Fatal accident: Rs. 25,000 per person.
 - PTD;/PPD medical expenses upto Rs. 12,500 plus disablement compensation upto Rs. 25,000
 - Loss of wages due to TTD: Fixed monthly relief not exceeding Rs. 1,000 per month upto maximum of three months for hospitalization exceeding 3 days & age > 16.
 - Private property : Upto Rs. 6,000

G.PRODUCT LIABILITY

- Legal Liability for injury, damage or pollution arising out of use of the product except any liability under PLI Act or no fault liability.
- For claims arising out of accidents due to defects in products specified in schedule.
- Except for any liability arising out of awards, judgments made under laws of USA or Canada or any orders for enforcing such awards/judgments (unless policy includes North American jurisdiction clause).
- Risk Assessment at every fourth renewal. For all policies covering exports to USA & Canada; for policies involving exports to other than USA & Canada with AOY over Rs. 50 lacs and for policies not involving exports with AOY over Rs. 2.5 crores.
- Excess of ½ % of AOA with minimum of Rs. 2,000 but for USA & Canada 1% of AOA subject to minimum of Rs. 4,000
- Policy to be issued in Indian Currency and claim settled in Indian currency. If exports are involved and insured requests, policy can be expressed or claim can be settled in foreign currency, as per blanket approval by RBI.
- Claim series means claims arising out of one specific common cause eg.
 - Same fault in design, manufacture, instructions for use or labeling of products or
 - Supply of same products and/or services or
 - Products and/or service showing same defect.

PRODUCT LIABILITY COVER - EXCLUSIONS:

- Contractual Liability
- Deliberate non compliance of any statutory provision.
- Pure financial loss i.e. loss of market.
- Fines, penalties etc.
- War and Nuclear perils
- Injury/damage occurred before retroactive date.
- Deliberate disregard of insured's technical and administrative management to take reasonable steps to prevent claims.
- Injury to employees.
- Costs incurred for repair, reconditioning, modification replacement of any part or product alleged to be defective.
- Cost of recall of product or part thereof.
- Arising out of products which with insured's knowledge in intended for incorporation into structure, machinery or control of any aircraft.
- Damage to property belonging to insured or held in trust or in custody or control of insured or a person in service of insured.
- Products failure to fulfill purpose for which they are intended.
- Arising out of products that left the custody or control of insured prior to retroactive date stated in schedule.

PRODUCT LIABILITY COVER - Vendor's Clause

- For products not manufactured by insured – but by contractors, sub-contractors etc. In their brand name may be covered subject to additional information on contract between insured and such manufacturers.
- TECHNICAL COLLABORATORS INCLUSION CLAUSE.

H.DIRECTORS & OFFICERS LIABILITY INSURANCE

Indemnifies Directors & officers in respect of their legal liability to third party claimants for a wrongful act whilst managing the business

Insured: Directors and Officers

Insured event: Legal Liability to Third party claimants for a wrongful act.

DIRECTOR - Member of the Board of directors.

OFFICER: Not defined usually but typically a person with authority to commit the company.

WRONGFUL ACT:

- Breach of duty.
- Breach of trust.
- Neglect, Error.
- Misstatement, misleading statement.
- Omission.
- Other similar acts.

LEGAL LIABILITY TO THIRD PARTIES:

- Employees.
- Former employees (DIRECTORS).
- Shareholders.
- Competitors.
- Government Bodies.

POLICY: (1) Is on claims made basis (2) continuity if important.

TWO INSURING CLAUSES:

CLAUSE A: Covers D& O where they cannot be reimbursed.

CLAUSE B: Covers D & O where their company can reimburse.

OUTSIDE DIRECTORSHIP

Associated companies

Not for profit trusts.

Non related companies

Nominee companies, trusts etc.

OUTSIDE DIRECTORSHIPS - TWO CATEGORIES:

1. Appointed by the company.
2. Elected not at the request of the company.

OUTSIDE DIRECTORSHIPS

THREE DIFFERENT STRUCTURES - Single excess, Double excess & Treble excess.

OUTSIDE DIRECTORSHIPS:

Single Excess cover

Applies after any D & O

Liability insurance arranged.

By the outside company

Doubled excess cover applies after.

Any D & O liability insurance

Arranged by the outside company

And any indemnification provided by the outside company.

TREBLE EXCESS cover applies after any D & O liability insurance arranged by the outside company and any indemnification provided by the outside company and any indemnification provided by the employing company.

PRINCIPAL EXCLUSIONS:

- Dishonesty, fraud, criminal or malicious acts.
- Personal guarantees or warranties (unless specifically covered).
- Libel, slander and damage to property.
- Seepage & Pollution (unless specifically covered).
- Liability of D & O on remuneration to which they are not entitled.

- Insured Vs. Insured.

REQUIREMENT FROM INSUREDS:

- Completed proposal form.
- Copies of memorandum & articles.
- Copies of last three years audited accounts.
- Coy latest half yearly audited/UN audited accounts adopted by board.
- Pattern of shareholdings.
- List of shareholders with more than 5% of total paid capital.
- Name & addresses of directors with % of shares held.
- List of holding/subsidiary companies.
- Copies of circulars sent to members/debenture holders.

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EXTENTION POLLUTION :

PRODUCT LIABILITY

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 - Supply of same products and/or services or
 - Products and/or service showing same defect.

PRODUCT LIABILITY COVER - EXCLUSIONS :

- Contractual Liability
- Deliberate non compliance of any statutory provision.
- Pure financial loss i.e. loss of market.
- Fines, penalties etc.
- War and Nuclear perils
- Injury/damage occurred before retroactive date.
- Deliberate disregard of insured's technical and administrative management to take reasonable steps to prevent claims.
- Injury to employees.

I. JEWELLERS BLOCK INSURANCE

Section	Property cover	Perils covered.
I – Premises risk	1. Stock in trade and cash in the premises in safe 2. Stock displayed on premises. 3. Property in bank lockers.	* Fire, lightning, * Explosion. * Burglary/Housing Breaking/ Holdup/theft. * Riot and strike
II – Custody risk outside premises	1. Stock in trade whilst in custody of director's partners/employees of the insured. 2. Stock whilst in custody of person not in regular employment.	On all risk basis whilst carried or conveyed outside the specified premise with named exclusions.
III Transit risks	Stock in trade whilst being only carried by : 1. Insured Post Parcel 2. Air Freight 3. Angadia	All risk basis within India with named exclusion.
IV	FFF and Safes	<ul style="list-style-type: none"> • Fire, lightning, • Explosion • Burglary/House Breaking/holdup/theft • Riot & Strike.

LIMIT OF SUM INSURED AND SPECIAL CONDITIONS

- Stock under custody in excess of Rs. 2 lac should be secured in locked safe after business hours – Section II.
- Sum insured for Sec II should not exceed Sec I sum insured.
- Valuation for Sec. I, II, III shall be cost plus 10%.
- Pair set clause is applicable.
- Condition of average is applicable for Sec I & IV
- Reinstatement facility is available for Sec. I
- Loss should be reported within 60 days from the occurrence date.

EXCLUSIONS:

- Inventory losses, losses occurring cleaning and repairing process.
- Articles under use by the insured, his employees and family members
- Articles whilst on public exhibition.
- Theft from unattended vehicles
- Infidelity of all persons involved in the trade.
- Loss occurred outside specified locations
- Theft by use of authorized keys
- Window display after business hours.
- AOG perils
- Transit risk for export/import.
- Loss after passage ownership unless by operation of law
- Confiscation by local authority.

UNDERWRITING CONSIDERATIONS:

- Extend watch and ward facility, round the clock armed guard closes circuit TV.
- Special security built vaults, strong room
- Moral Hazards
- Past claims.