Law relating to Insurance

Governing laws for Insurance in Sri Lanka

- English law - Governs life, fire and marine insurance.
- Roman-Dutch law - Governs all other types of insurance

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Concept of Insurance

- Contract of Insurance is one whereby a person or company (the insurer) agrees in consideration of a single or periodical payment (called the premium) to pay a sum of money to another person or company (the insured) on the happening of a certain event or to indemnify against loss caused by the risk insured against. I. e. the owner of a property such as a car or a house is never certain that his property is free from loss or damage; he thus enters into a contract for a sum of money to be paid to him when either such loss or damage occurs to his car or house.
- This is the nature of a contract of insurance and it is fairly known today and it shows the importance of Insurance both in the commercial and personal spheres.

Advantages of insurance

- Sharing of risk -Insurance is a co-operative device to share the burden of risk, which may fall on happening of some unforeseen events, such as the death of head of family or on happening of marine perils or loss through fire.
- Large number of insured persons -The success of insurance business depends on the large number of persons insured against similar risk. This will enable the insurer to spread the losses of risk among large number of persons, thus keeping the premium rate at the minimum.

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- Evaluation of risk For the purpose of ascertaining the insurance premium, the volume of risk is evaluated, which forms the basis of insurance contract.
- Payment of happening of specified event- On happening of specified event, the insurance company is bound to make payment to the insurance.
- Transfer of risk- Insurance is a plan in which the insured transfers his risk on the insurer.

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- Insurance is a device to transfer some economic losses that would have been borne by the insured
- Spreading of risk Insurance is a plan which spread the risk & losses of few people among a large number of people.
- Protection against risks Insurance provides protection against risk involved in life, materials and property. It is a device to avoid or reduce risks

Indemnity

Indemnity means an assurance/ guarantee to put the insured in the same position (before the loss) by the insurer in which he was immediately prior to the incident which cause the loss. Insurer undertakes and agrees to pay the actual loss suffered.

I.e. under general insurance marine, fire, motor insurance

Subrogation

- This term means substituting one creditor for another which applies for all contracts of insurance.
- When the insured is compensated for the loss due to damage to his insured property, then the ownership right of such property shifts to the insurer.
- The insurer can benefit only up to the extent of the amount he paid to the insured as compensation.

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Subrogation

I.e. Silva insured his house for Rs 10M , the house was totally destroyed by fire due to the negligence of his neighbor Mr. Pereira. The insurance Company may settle the actual loss of Mr. Silva 10M , and at the same time file action against Mr. Pereira for Rs 12 M which is the market value. Insurance Company will retain the 10 M and the legal fee and the balance to be given to Mr Silva, hence the insurer can benefit only up to the extent of the amount he paid to the insured as compensation

For a contract to be classified as a 'Contract of Insurance' there should be 3 main elements present in the contract.

1 Premium

2 Uncertainties

3 Insurable Interests

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1. Premium

- For the regular payment of a consideration by the assured, he gets a right to receive money or money's worth, upon the happening of an event. This consideration is referred to as a premium.
- To pay a sum of money to another person or company (the insured) on the happening of a certain event or to indemnify against loss caused by the risk insured against.

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2. Uncertainty

- There must be uncertainty about the event happening or the time at which the event happens. (Life insurance is an exception)

3. Insurable Interest

It is a requirement in a contract of insurance that the insured has insurable interest

i.e. the happening of the event must adversely affect the interests of the assured.

Examples

- A creditor has an insurable interest in the life of his debtor to the extent of the debt and the policy money is recovered even though the debt is paid before the maturity of the policy. However he, generally, has no insurable interest in the property of his debtor.
- A surety has an insurable interest in the principal debtor's life.
- An employee engaged for a term of years has an insurable interest in his employer's life.
- A creditor has an insurable interest on the life of his debtor, up to the extent of the debt.
- An individual has an insurable interest in his own life.

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- **Insurance can be broadly divided into two main categories;**

1. Indemnity Insurance
2. Contingency Insurance

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1. Indemnity Insurance

This type of insurance provides for indemnity against loss such as;

- Fire Insurance,
- Burglary Insurance
- Accident Insurance
- Marine Insurance.

The payment against this type of insurance is measured against the loss.

2. Contingency Insurance

- This type of insurance provides for payment on the happening of a contingent event such as;

- Life Insurance. The payment against this type of insurance is not measured against the loss but is clearly stated in the policy.

Principle of Uberrimae Fidei or Utmost Good Faith: Utmost good faith is a common law principle (sometimes called Uberimae Fidei). The principle means that every person who enters into a contract of insurance has a legal obligation to act with utmost good faith towards the company offering the insurance based on Uberimae fidei or utmost good faith of the parties

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This is a common principle in any form of Insurance.

- The assured must make a full disclosure to the insured of all material facts that are likely to influence the judgment of an insurer in deciding whether to accept the risk or not.
- Failure to disclose any such fact makes the policy void.

Examples of facts that need to be disclosed are;

1. If another insurance company has declined to accept a previous proposal for insurance of the assured.

[Note: This fact does not apply to Marine Insurance.]

2. Previous accidents, if it is insurance is with regard to a motor vehicle.

3. Deliberate overvaluing of the property insured.

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