

THE EMERGENCY RISKS (GOODS) INSURANCE ACT, 1971

ARRANGEMENT OF SECTIONS

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THE EMERGENCY RISKS (GOODS) INSURANCE ACT, 1971

ACT No. 50 OF 1971

[10th December, 1971.]

An Act to make certain provisions for the insurance of goods in India against damage arising from emergency risks and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and duration.—(1) This Act may be called the Emergency Risks (Goods) Insurance Act, 1971.

(2) It extends to the whole of India.

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued by the President under clause (1) of article 352 of the Constitution of India on the 3rd day of December, 1971, and for such further period as the Central Government may, by notification in the Official Gazette, declare to be the period of emergency for the purposes of this Act, but its expiry shall not affect anything done or omitted to be done before such expiry and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon the expiry of this Act as if it had been repealed by a Central Act.

2. Definitions.— In this Act, unless the context otherwise requires,—

(a) “emergency risks” means such risks arising from,—

(i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy;

(ii) any explosion or fire which involves explosives or munitions or other dangerous things required for the purposes of defence against any action of an enemy and which happens or is caused by, through, or in connection with, the manufacture, storage or transportation of any such explosives, munitions or other dangerous things;

(iii) measures taken under proper authority to avoid the spreading of or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as a direct result of any such action as is described in sub-clause (i) or of any such explosion or fire as is described in sub-clause (ii);

(iv) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving a substantial degree of risk to property;

(v) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving a substantial degree of risk to property;

(vi) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving a substantial degree of damage to or diminution of value of property;

(b) “enemy” means—

(i) any person or country committing external aggression against India;

(ii) any person belonging to a country committing such aggression;

(iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression;

(iv) any person belonging to such other country;

(c) “Fund” means the Emergency Risks (Goods) Insurance Fund constituted under section 10;

(d) “goods” means any materials, commodities or articles and includes materials, commodities or articles used in or for the construction or repair of any ship up to the time at which the ship after completion of construction, or repair, is launched;

(e) “insurable value” means the value of goods as ascertained for the purposes of insurance under this Act;

(f) “policy” or “policy of insurance” means a contract of insurance issued under the Scheme and includes a policy of insurance and renewal endorsement;

(g) “quarter” means a period of three months commencing on the first day of January, April, July or October;

(h) “Scheme” means the Emergency Risks (Goods) Insurance Scheme made under this Act;

(i) “seller of goods” includes a seller of goods acting as an agent;

(j) “supplier of goods” means a person carrying on a business in the course of which he supplies goods for the purpose of, or in pursuance of, contracts made by him for work, labour or materials.

CHAPTER II

INSURABLE GOODS AND INSURANCE SCHEME

3. Goods insurable under this Act.—(1) Subject to the provisions of this section, the following goods shall, in relation to any person carrying on business in India as a seller or supplier of goods of any description, be deemed to be goods insurable under this Act, that is to say, all goods situated in India or, consigned from one place in India to another place in India and in transit, being either—

(i) goods of that description; or

(ii) goods used as material from which goods of that description are produced or as ingredients or component parts of goods of that description:

Provided that no goods shall be deemed to be insurable under this Act—

(a) in relation to any person, being the owner of the goods, who carries on business as a seller of goods, unless they are owned by him with a view to being sold, or to being used as material for the production of goods to be sold, or as ingredients or component parts of goods to be sold;

(b) in relation to any person, being the owner of the goods, who carries on business as a supplier of goods, unless they are owned by him with a view to being supplied for the purpose of, or in pursuance of, a contract made by him for work, labour and materials or to being used as material for the production of goods to be supplied as aforesaid, or as ingredients or component parts of goods to be supplied;

(c) in respect of a period in relation to any person carrying on business in India as a seller or supplier of goods of any description, if such goods are, before payment has been made of the premium under this Act for that period, in the custody, control or possession of the enemy.

(2) The Central Government may, by notification in the Official Gazette, direct that goods of any description specified in the notification shall, notwithstanding anything contained in this section, be deemed not to be goods insurable under this Act and a copy of such notification shall be laid after it is made, on the Table of each House of Parliament when such House is in session for a period of thirty days or for the duration of the session in which it is laid, whichever period is less.

(3) Nothing in sub-section (1) shall apply in relation to goods which are owned by Government or in respect of which the Government is the seller or supplier.

4. Ownership.—(1) Save in so far as is otherwise expressly provided in this Act, any goods shall, subject to the provisions of this section, be deemed, for the purposes of this Act, to be owned,—

(a) if the property in the goods is for the time being vested in a person in relation to whom they are insurable under this Act, by that person;

(b) if the property in the goods is not so vested, by any person in relation to whom the goods are insurable under this Act and who is for the time being entitled either unconditionally or conditionally, to have the property in the goods vested in him:

Provided that where—

(i) any goods would, under the foregoing provisions of this section, be deemed to be owned by a person in whom the property therein is vested otherwise than in the course of a business carried on by him in India, or who is entitled to have the property therein vested in him otherwise than in the course of such business, and

(ii) any person carrying on business in India is for the time being entitled to sell the goods as agent, the goods shall be deemed to be owned by the last mentioned person.

(2) Where in the course of any business a ship is being, or has been, constructed under contract, and the ship or any part thereof or any goods appropriated for the construction thereof—

(a) would, apart from the provisions of this sub-section, have been deemed for the purposes of this Act to be owned at any time by the person from time to time carrying on the business, or

(b) have at any time been accepted, in pursuance of a contract made with him, by the person from time to time carrying on the business,

then, notwithstanding that they would not, apart from the said provisions, be deemed for the said purposes to be owned by the person from time to time carrying on the business, the ship and any part thereof and any goods so appropriated as aforesaid shall, subject to the provisions of subsection (3), be deemed, in a case to which clause (a) of this sub-section applies, to continue to be owned by the person from time to time carrying on the business until the acceptance of the ship, in pursuance of the contract in question, by the person for whom it is being or has been, constructed, and in a case to which clause (b) of this sub-section applies, to be owned by the person from time to time carrying on the business at all times between the acceptance referred to in the said clause (b) and the acceptance of the ship as aforesaid by the person for whom it is being, or has been, constructed.

(3) The provisions of sub-section (2) shall apply in relation to the construction under contract in the course of a business of part of a ship, not being part of a ship which is being, or has been, constructed by the person from time to time carrying on the business, as they apply in relation to the construction of a ship—

(a) With the substitution for references to a ship of references to part of a ship;

(b) where the contract for the part of the ship is with the person for whom the ship is being constructed, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the ship under the contract for the construction thereof;

(c) where the contract for the part of the ship is with any other person, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the part of the ship under the contract for the construction of the part by the person for whom it is being, or has been, constructed.

(4) Where the person from time to time carrying on a business receives any money, under a policy issued in pursuance of the Scheme, in respect of the loss of or damage to a ship, part of a ship or goods which are deemed to be owned by him by virtue of sub-section (2) or sub-section (3), the money shall be held by him on trust for the person who, apart from the provisions of those sub-sections, would be deemed for the purposes of this Act to be the owner of the ship, part or goods, subject, however, to any lien or charge which would otherwise be enforceable against the ship, part or goods and subject also to the right

to retain out of the money the amount of any expenses reasonably incurred by the first mentioned person in making good any part of the loss or damage which he is liable to make good.

5. Emergency Risks (Goods) Insurance Scheme.—(1) The Central Government may, by notification in the Official Gazette, put into operation a scheme to be called the Emergency Risks (Goods) Insurance Scheme, whereby the Central Government undertakes in relation to persons carrying on business in India as sellers or suppliers of goods, the liability of insurance of such persons against emergency risks, to the extent provided by or under this Act, in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business.

(2) The Scheme may also extend—

(a) to the undertaking by the Central Government, in relation to any person carrying on business in India as seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods insurable under this Act which are not owned by him but in which he has an interest arising in the course of that business;

(b) without prejudice to the provisions of clause (a) of this sub-section, to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such a person against emergency risks in respect of—

(i) any goods situated in India which are in his possession, otherwise than under a hire purchase agreement, for the purposes of that business,

(ii) any goods situated in India which are subject to a mortgage, pledge or charge in his favour held by him in the course of that business, being in either case goods which are not owned by him but which are insurable under this Act in relation to the person by whom they are owned;

(c) to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such person against emergency risks in respect of any goods situated in India, which having been sold in India, for export from India, are in his possession for the purpose of such export and are goods which were prior to such sale insurable under this Act in relation to the person by whom they were then owned;

(d) to the undertaking by the Central Government, in relation to any person carrying on any business in India as a seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods imported into India through any port of India, while such goods are situated at such port or are in transit to a place in India.

(3) The Scheme shall be such as to secure—

(a) that the liability of the Central Government as insurer shall not extend to more than eighty per cent. of the insurable value of the property insurable;

(b) that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued, in the form and in respect of a period not exceeding the period specified in the Scheme, by a person acting on behalf of the Central Government:

Provided that the form of policy may be such as to limit the extent and nature of the indemnity provided by the Central Government and to impose conditions subject to which the indemnity is provided:

Provided further that the form of policy shall be such as to provide that no liability shall arise thereunder unless the premium in relation to the period in which any loss or damage occurs has been paid before the occurrence of such loss or damage;

(c) that any premium under a policy so issued is payable at a rate not exceeding three per cent. per annum of the sum insured as may be specified in the Scheme; and

(d) that the amount of any one premium payable under a policy so issued is not less than such sum as may be specified in the Scheme.

(4) Different forms of policies may be specified under sub-section (3) in relation to different descriptions of goods.

(5) The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme made under this Act.

(6) Every Scheme shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Scheme.

6. Employment of agents by Central Government.—The Central Government may, by notification in the Official Gazette, employ or authorise the employment of any person to act as its agent for the issue of policies, and making recommendations for the settlement of claims, under the Scheme, and may pay to the person so employed such remuneration as it may think fit.

CHAPTER III

COMPULSORY INSURANCE

7. Power to make insurance compulsory.—(1) While the Scheme is in operation, no person shall, after such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, carry on any business in India as a seller or supplier of goods, unless, in respect of any goods insurable under this Act which are for the time being owned by him in the course of that business, there is in force a policy of insurance against emergency risks issued in accordance with the Scheme, whereby he is insured in respect of such goods for a sum not less than the value thereof for the time being:

Provided that the Scheme shall not restrict the carrying on of business as aforesaid by any person, if and so long as the value of all goods insurable under this Act which are for the time being owned by him within one and the same Presidency town or district in the course of that business does not exceed fifty thousand rupees.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to one thousand rupees and with further fine which may extend to five hundred rupees for every day after the first on which the contravention continues.

8. Omission to insure or to insure up to the full amount.—(1) Where any person has failed to insure as, or to the full amount, required by this Act, and has thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, an officer authorised in this behalf by the Central Government may determine the amount of payment of which has been so evaded, and thereupon such person shall be liable, without prejudice to any other action that may be taken against him under this Act, to pay to the Central Government, as penalty, an amount equal to the amount so determined, and if no such payment is made on demand by the authorised officer, the amount of the penalty shall be recoverable from such person as an arrear of land revenue.

(2) A person against whom a determination is made under sub-section (1) may, within the period specified in the Scheme, appeal against such determination to the Central Government whose decision thereon shall be final.

9. Restrictions on carrying on of certain insurance business.—(1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on any business of insuring persons carrying on business in India as sellers or suppliers of goods against emergency risks in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business as is last mentioned.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

10. Emergency Risks (Goods) Insurance Fund.—(1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year to a fund to be called the Emergency Risks (Goods) Insurance Fund such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payment made on composition of offences under section 15 or by way of expenses or compensation awarded by a court, under section 545 of the Code of Criminal Procedure, 1898 (5 of 1898), out of any fine imposed in any prosecution under this Act.

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under the Scheme or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme.

(3) If at any time when a payment is to be made out of the Fund, the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India.

(4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be disposed of in such manner as the Central Government may think fit.

(5) The Central Government shall prepare, in such form and manner as may be specified in the Scheme and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund.

CHAPTER IV

MISCELLANEOUS

11. Power of Central Government to obtain information.—(1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with,—

(a) require any person carrying on in India the business of fire insurance or of a seller or supplier of goods to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time, enter any premises occupied by any person carrying on in India the business of a seller or supplier of goods for the purposes of that business and may inspect the premises and require any person found therein who is for the time being in charge thereof, or in control of the business carried on therein, to produce to him and allow him to examine such accounts books or other documents as may relate to the business carried on in the premises and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not and, if so, to what extent, the person carrying on the business is insured under the Scheme in respect of goods owned by him in the course of that business, and of ascertaining the value of any goods insurable under the Scheme which are, or were at any relevant time, owned by him in the course of that business and the maximum amount which would be recoverable in respect of any such goods under a policy issued under this Act.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without any reasonable excuse to comply with a demand made thereunder, shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to five hundred rupees.

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement which is false in a material particular, shall be punishable with fine which may extend to one thousand rupees.

(4) Where in any proceedings in respect of a contravention of section 7 in relation to any business, it is proved, in relation to that business,—

(a) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the person carrying on the business was duly made under this section and was not complied with, and

(b) that the person making the demand was not satisfied that there was such a policy in existence, it shall be presumed, except in so far as the contrary is proved, that the said section 7 was being contravened in relation to that business at the time when the demand was made and continued to be contravened in relation to that business at all times thereafter.

12. Punishment for giving false information.—If any person, for the purpose of obtaining for himself or any other person any payment in respect of any damage due to the action of the enemy or under a policy issued in pursuance of the Scheme,—

(a) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular, or

(b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any book, account or other document which is false in a material particular, or

(c) with intent to deceive, withholds any material information, he shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term not exceeding three months, or with both.

13. Refund of premiums in certain cases.—(1) Where goods of any description have been insured by a seller or supplier of goods for any period, and before that period has elapsed the goods of that description have ceased, by virtue of a notification under sub-section (2) of section 3 to be goods insurable under this Act, the person who has insured such goods shall be entitled to a proportionate refund of the premium.

(2) Where a policy of insurance has been taken out in relation to goods which are not insurable under this Act and premium has been paid in relation to such policy, or where any premium has been paid in respect of goods which have ceased to be insurable under this Act, or where, in relation to goods insurable under this Act, premium has been made in excess of the amount due under the policy, the person making such payment or excess payment, as the case may be, shall be entitled to a refund of the whole of the amount so paid or paid in excess, as the case may be.

(3) If it is established to the satisfaction of the Central Government that a policy of insurance under the Scheme has been taken out separately by two or more persons in respect of the same goods, the policy taken out by any one such person may, on an application made by him and after such inquiry as the Central Government may think fit, be cancelled and thereupon the premium paid on such policy shall be refunded to the person by whom it was paid unless such person has recovered the premium from any other person, in which case, the refund shall be made to that other person:

Provided that no refund shall be made under this section unless the application for the refund is made before the expiry of six months from the date when the premium was paid.

(4) No suit shall be maintainable in any civil court against the Central Government or any person acting as the agent of the Central Government under section 6 for the refund of money paid or purporting to have been paid as premium in respect of any policy issued or purporting to have been issued under this Act.

14. Limitation on prosecution.—No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Central Government or an authority authorised in this behalf by the Central Government.

15. Composition of offences.—Any offence punishable under sub-section (2) of section 7, or sub-section (2) of section 9 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government, on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

16. Bar of legal proceedings.—No suit, prosecution or other legal proceeding shall lie against the Central Government or against any person for anything which is in good faith done or intended to be done under this Act.

17. Removal of doubts.—If any doubt arises as to whether a person is insurable in respect of any goods under this Act, the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of such doubt.