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The specificity of the marine insurance contract in Algerian legislation

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Abstract :

In this research paper, we aim to highlight the concept of the marine insurance contract by knowing its definition and comparing it with some other legislations such as English and French law, as well as addressing its origins as one of the oldest types of insurance practiced by man, in addition to highlighting its most important characteristics and clarifying its specificity that distinguishes it from other contracts. We also shed light on its elements of contract and types.

Through this study, we have reached several results, including that the marine insurance contract is distinguished from other types of contracts as well as from other types of insurance, due to the important and vital role it plays in the marine transportation process in Algeria, as it is considered the backbone of marine commercial transactions, their prosperity and growth, and an inevitable necessity in modern life. Due to the movement of various goods of different sizes, as well as people, through maritime transport, this is due to the diversity of insurance services provided in the field of maritime transport.

Keywords: maritime commercial transactions; maritime transport; Marine insurance contract.

Introduction :

Maritime transport is one of the most important sectors in countries around the world, as it currently accounts for the majority of trade due to the dominance of the market economy in the global economy. Since maritime transport in the world is carried out by sea and ships are the main means of transport in this field, and in order to ensure the achievement of international trade, it was necessary to protect these ships and their cargoes due to the many and varied risks they face during their voyages, which expose them to danger and threaten them with destruction, damage, or loss. Therefore, marine insurance was created and became one of the most prominent types of insurance and an integral part of the maritime process, as well as the fundamental pillar and necessary requirement for maritime transport, which carries three-quarters of international trade.

Given that Algeria is a Mediterranean country, it enjoys significant economic activity, as most of the world's maritime traffic passes through it. This makes it a prime candidate for exploiting its strategic position in maritime transport and the necessary services it requires, including marine insurance.

We can therefore pose the following question: **To what extent is marine insurance contracts different from other insurance contracts in Algerian legislation?**

To resolve this issue, we followed a descriptive and analytical approach by describing marine insurance contracts, listing their characteristics, defining their concept, comparing them with some comparative laws, and explaining and simplifying the legal texts relating to marine insurance contracts. by dividing the study into two main themes: the first theme is the concept of marine insurance contracts, and the second theme is the composition and types of marine insurance contracts.

1-The concept of a marine insurance contract

1-1-Definition of marine insurance contract

1-1-1-Jurisprudential definition¹

Georges Ripert defines a marine insurance contract as: « A contract whereby one person (the insurer) accepts to compensate another person (the insured) for damage he bears through his marine message gains, which is the value of the thing, in exchange for a premium and within the limits of a certain amount that cannot exceed the value of the lost things ».

Mahmoud Samir Al-Sharqawi defines it in turn because: « A contract whereby one of the parties, who is the insurer, prepares the other party, who is the insured, to provide him with a performance consideration called an insurance premium as financial compensation for him or a third party when it is realized in relation to certain funds or persons agreed upon as a danger for which maritime navigation or maritime transport operations are considered a cause, occasion or place»².

As the jurist Shufu defined it, it is: « A contract according to which the insurer undertakes to confront the insured in exchange for paying a premium to compensate for the damage that befalls him in certain funds or interests as a result of the occurrence of a marine hazard »³.

It is also defined as: « The system and means that aims to protect individuals as well as establishments from potential losses arising from the occurrence of the insured's maritime hazards, by compensating the insured financially in the event of the hazard occurring, in accordance with what was agreed upon between the two parties, namely the insurer and the insured»⁴.

1-1-2-legislative definition

Definition of marine insurance contract in English legislation

The concept of marine insurance in England went through different stages, and developed with the progress and prosperity of maritime navigation, and England's occupation of an important position in insurance and reinsurance operations at the international level, which was a motivation for issuing the first law to become a

source of modern laws in this field, issued in 1906, which defined the marine insurance contract in its first article with the following text: « A marine insurance contract is a contract whereby the insurer undertakes to compensate the insured in accordance with the method and to the extent agreed upon for marine losses, which are losses that arise from marine risks.»⁵.

By observing this legal text, we see that the English legislator moved towards internationalization by requiring the availability of the conditions required to be met in any contract as a description, and the type of insurance was defined as a contract subject to the general theory of the contract, and although the definition mentioned the two parties to the contract, the insurer and the insured, it focused on the obligations of the insurer, which it explained precisely, which is compensation for the insured. The subject of this compensation shall be marine losses arising from marine risk, which means risk in terms of cause⁶.

Definition of marine insurance contract in French law

The French judiciary played an important role in developing the idea of marine insurance based on marine risks, and adopted the principle of extending marine insurance to land and marine risks. This definition came in Article 1 of Law No. 3 of July 1967, which after amendment became Article 171-1 of the French Insurance Code, stating that: « Each insurance contract is subject to a guarantee of risks related to a marine operation », The French legislator based his definition on a new criterion for distinguishing between marine insurance and other insurance, namely "maritime operation" instead of "trip" previously, and thus defined it by its subject .

Definition of insurance contract in Algerian legislation

The Algerian legislator defined the marine insurance contract in the first paragraph of Article 92 of Order No 95/07 relating to amended and supplemented insurance⁷, as stated in the text: « The provisions of this chapter apply to any insurance contract aimed at ensuring risks related to any marine transport operation».

By observing this paragraph, we see that the Algerian legislator has expanded the scope of marine insurance by mentioning the insurance process, similar to other comparative legislation. Marine insurance documents, whether related to goods or ships, also contain its general provisions, which are mainly represented in determining The thing insured item, the risks against which the insured is insured, and the obligations of the parties.

1-2-The emergence and development of marine insurance

Marine insurance is considered one of the oldest types of insurance, but the exact date of its appearance and emergence is not known. The origin of marine insurance is still unknown, but some studies have proven that ancient civilizations dealt with this type of insurance, such as the Assyrian and Phoenician civilizations. Some of these studies have also proven that Rhodes' law on nakedness (general partial loss) dates back to 2500 BC, which means that marine insurance has been known to nations since ancient times.

The idea of marine insurance developed over four centuries, from 1779 to the end of 2010⁸. The fact that marine insurance preceded the emergence of all other types of insurance does not mean that marine trade preceded the emergence of land trade, but rather because the group noticed that the degree of probability of marine risks occurring is much greater than other types of risks. In addition to how great it was, it felt the need to create a system that would secure its trade against the tyranny of the sea and the risks it posed that could not be known or anticipated⁹.

In its contemporary form, the idea that gave rise to the current idea of marine insurance is the idea of a marine loan or a high-risk loan that appeared in the Port of London on the River Thames in a café called Lloyd's Café. The patrons of this café were shipowners, captains, and people interested in maritime navigation and trade, as they circulated news of the risks to which their ships were exposed during their voyages on the high seas until someone came and proposed the idea of a marine loan. Which results in giving the owner of the ship and the owner of the goods transported on it a loan of money equal to the value of the ship and the goods in exchange for a high interest, in addition to recovering the loan amount on the condition that the ship and the goods it carries arrive at their places safely¹⁰.

A sea loan or a high-risk loan is very similar to insurance. The lender actually acts as the insurer, paying the insurance compensation in advance in the form of a loan and then collecting it with high interest to replace the premiums if the sea voyage is successful and the risk does not materialize. However, if the risk is materialized, the provider or shipper keeps the loaned amount (and does not have to pay interest on it). The same applies to the insured who receives compensation from the insurer for the loss he suffered¹¹.

This café became a center for selling ships and goods and marine insurance operations. Then the (Lobds) group appeared and the Legal Personality Law was issued. The (Lloyd's) group includes several unions. The Lloyd's enjoys an excellent position in the field of international marine insurance, which made it an international market for this type of insurance. In the year 1230, Pope George IX issued a decision prohibiting the contract of loans on ships, based on the fact that the interest paid on these loans is usurious. From here, the idea of guaranteeing the

results of maritime transport risks from damage began to separate from the idea of lending an amount of money, and the insurance premium was paid¹².

The first known marine insurance document is the Italian document dated October 23, 1348, in which the ship Santa Clara (Santa Clara) was insured on a voyage from Genoa, Italy, to Mallorca, Spain, stipulating that the ship's deviation from its voyage invalidates the insurance¹³, but in England, which is considered a marine insurance center, whose legal system differed from what is known in other countries because it relies on precedents decided by courts. This is the judicial law. The first written law related to marine insurance was the law issued in 1601, which established a special court to hear marine insurance cases. From the law of 1601 until the law of 1906, only the law of 1745 was issued with regard to marine insurance, which prohibited marine insurance if the insurer (the insured) did not have an interest protected by this insurance. This law prohibited insurance, which was considered a form of gambling, and the 1906 law repealed this law. The 1906 law required that the insured's interest be present. Thus, since the 16th century, we find marine insurance in Britain constantly developing, and for the last 250 years, London has been considered the global market for marine insurance¹⁴.

In 1584, the first marine insurance policy was issued in France for the transport of goods from Marseille to Tripoli. In 1681, legislation was issued regulating the provisions of this type of insurance. The Underwriters Institute was also established in the United States of America, similar to the London Institute of Insurance Underwriters, and it set its own conditions, which did not differ much from the English conditions.

As for the Arab countries, they did not know about marine insurance until the middle of the 19th century. It entered the Ottoman Empire in 1883 with the legislation of what is known as the Ottoman Maritime Trade Law. Chapter 11 includes special provisions for marine insurance. The Arab countries continued to work with it for a long time even after their separation from the Ottoman Empire. Then all countries began to abolish it and issue national legislation in its place, with the exception of Iraq, which is still working with it to this day¹⁵.

In Algeria, the first maritime law was issued in 1976 by virtue of Order 76/80 dated October 23, 1976, as amended and supplemented. The legal system for the exploitation of maritime transport services, which was previously the preserve of the state, was also developed and turned into open activities for the benefit of some people through the privilege of exploiting maritime transport services. This was after the amendment of the maritime law in 1998 and the issuance of some regulatory texts related to the exploitation of maritime transport services. However, the Algerian state retained public ownership of maritime transport

services, considering it public property. As for insurance in the maritime sector, it regulated Order No. 95/07 relating to the aforementioned insurance, which dealt with the provisions of maritime insurance in Chapter Two, Maritime Insurance from Book One of the Insurance Contract.

1-3-Characteristics of a marine insurance contract

The marine insurance contract has several characteristics that distinguish it from other contracts, which we will mention below:

the marine insurance contract by mutual assent

The marine insurance contract is concluded as soon as the offer and acceptance are identical between the two parties, based on the principle of mutual consent of both parties and agreement of the two wills. Therefore, it is concluded as soon as the insurer and the insured exchange the expression of two identical wills. The conclusion of this contract does not require a specific form other than writing for proof. As a result, the marine insurance document is issued, which includes all the essential data included in Article 97 of the Insurance Law. However, the insurance company often sets marine insurance rules and conditions in pre-prepared and printed model insurance policies.

A marine insurance contract may be a contract of a national nature or it may have an international character if it includes a foreign element such as the nationality of the parties or a situation that guarantees agreement on the applicable law.

The Marine insurance contract from Adhesion contract

The Adhesion contract is a contract in which the balance is tilted in favor of the strong party, making it more likely that one party will determine the general and special terms of the contract, which is the strong party. Insurance contracts are generally considered compliance contracts before the law because they are not concluded after a free discussion by both parties of their terms, as it is not permitted to discuss the insurance policy. The other party, which is the weak party, i.e. the insured, has no choice but to accept these terms as they are or reject them completely and refrain from contracting¹⁶.

The Marine insurance contract is a contract that continues to be implemented

The insurance contract is considered a continuous contract, i.e. one of the time contracts in which time is an essential element. The implementation of the insurance contract is linked to a specific time and the insurer's obligation is limited to a specific period of time during which he bears the consequences of the risk. The insured is also obligated to pay the premiums within the terms specified in

the contract, and they appear in the marine insurance contract through the obligations of both parties. The insured is obligated to pay the installments at regular intervals during the contract period, in return for the insured's obligation to guarantee the insured risk throughout the insurance period. It follows that if the marine insurance contract is terminated, this is not retroactive. It is one of the continuous contracts in which it is not possible to restore the situation to what it was before the contract. When the marine insurance contract is terminated, it is not possible to restore the situation to what it was before the contract, so the insurer must return the premiums and recover the liability for the risks for the previous period¹⁷.

The marine insurance contract is a binding contract for two parties

The marine insurance contract imposes corresponding obligations on both the insurer and the insured, as indicated by Article 619 of the Algerian Civil Code, which means that both parties bear obligations and have rights. Articles 108 and 120 of Order No. 95/07 relating to amended and supplemented insurance stipulate the obligations borne by both the insurer and the insured in the marine insurance contract. The insured is obligated to pay the premium and exercise reasonable care to preserve the insured item, as well as to give the insured the correct information related to the entire contract or to the risk and any new developments that occur during the implementation of the contract, in exchange for placing the risks on the latter, who is obligated to cover the agreed-upon risks by paying the insurance amount or compensating for the damages resulting from the accident or insured accidents¹⁸.

The Marine insurance contract is the exchange contract.

The contract is the exchange contract when each party to the contract receives compensation for what the other party provides. Therefore, the marine insurance contract is considered a compensation contract, as each of the contracting parties takes compensation for what he provided. The insured takes the insurance premiums paid by the insured, who in turn takes compensation for what he paid, which is the insured's bearing of the insured risk, whether the risk materializes or not. The marine insurance contract aims to compensate for the damage after it occurs and is equal to the amount of this damage. Otherwise, it is considered enrichment without reason. It should not put the insured in a better financial condition than the one he was in before the insured risk materialized¹⁹.

The Marine insurance contract is a good faith contract

The principle of good faith is one of the general principles that prevails in all contracts. The characteristic of good faith appears in the marine insurance contract

when the insured provides all the data related to the risk insured against to the insurer. Therefore, the insurer must answer correctly all written or oral questions posed to him and provide him with an accurate statement in the event that the risk insured against changes or worsens. Any secrecy in this regard invalidates the contract, meaning that the insured must avoid false statements or fraud that would result in the invalidity of the contract and the forfeiture of his right to compensation. The insured still has the right to keep the installments paid and claim the installments due along with the compensation. Accordingly, the mutual good faith between the two parties is the essence of the insurance process. Therefore, it should not be interpreted narrowly as some have argued. Like other contracts, it should be interpreted according to the common intention of the two parties without stopping at the literal meaning of the words, citing the nature of the transaction and the trust and honesty that should be available between the two parties to the contract in accordance with the current custom in transactions.

2-Composition and types of marine insurance contracts

2-1- Composition of marine insurance contracts

Since the marine insurance contract is like other contracts in terms of composition and therefore has the same pillars as other contracts according to the general theory of the contract.

2-1-1-Mutual agreement

According to the text of Article 59 of the Civil Code, a contract is an agreement of two or more wills to produce a legal effect, and therefore consent is the basis for forming the contract. According to what was mentioned, a marine insurance contract is concluded by the agreement of the wills of the two parties to the contract, i.e. by the agreement of acceptance and acceptance of the risks, on the basis of which the obligations of both the insured contracting parties and the insured are determined. It is also required that the will be issued by parties who have the capacity to act and be free from any defects of consent represented by error, fraud, coercion and exploitation.

2-1-2-The subject matter

The marine insurance contract is distinguished from other contracts in the corner of the place where the risk is considered the main place, as it is inconceivable that a marine insurance contract would arise without the presence of the corner of the risk, as there must be a risk to which the insured item is exposed, because the risk is considered the main element in the insurance process in general, because insurance is in reality nothing more than a guarantee of the realization of a specific

risk or dangers Because it revolves around danger in existence and non-existence, where if the danger persists, the entire insurance process persists, and therefore there is no danger, so there is no insurance.

The marine hazard insurance system is based on the risks to which the insured items are exposed (collision, sinking, and stranding) in order to distinguish them from land and air hazards.

It is also often used to indicate the responsibility borne by the insurer in a marine insurance contract. When it is said, for example, when the goods are lost «that the risk has not yet taken effect», this means that the goods at the time of their loss were not covered by the insurance policy²⁰.

Risk in marine insurance has been defined as: « The accident that usually accompanies marine activity and leads to the destruction or damage of money, or it means the accident that the insured items may be exposed to during the sea voyage », and the two previous definitions include marine accidents as all that a ship or its cargo may be exposed to²¹.

The Algerian legislator has clarified, through the text of Article 92 of the amended and supplemented Insurance Law, the maritime risk in everything related to the maritime operation, and has specified the risks to which insurance extends despite the fact that they are not maritime, which is what we infer from the same law with regard to cargo insurance. It has also clarified the risks that are not insured through Articles 102 and 103 of the same law.

2-1-3-The cause

The reason is defined as the motive or incentive for concluding the contract and the interest sought by both parties. Therefore, the reason for the marine insurance contract is the economic and legitimate interest that both the insurer and the insured want to obtain. The Algerian legislator has stipulated this interest in Article 621 of the Civil Code, stating that insurance has every economic and legitimate interest. This is confirmed by Article 29 of the Insurance Law, which states that: « Anyone who has a direct or indirect interest in preserving money or in preventing risk can secure it.

2-2-Types of marine insurance contracts

2-2-1-Marine insurance on objects

Insurance of things may relate to the ship itself as well as to goods transported by sea.

Ship insurance

The ship comes on top of the funds that may be insured. Insurance is not limited to the ship's hull only, but also includes its accessories, i.e. the machinery and tools necessary for its navigation, as well as equipment expenses such as crew food, fuel, passengers, and crew members' wages. The insured facility does not have to have legal status, but any floating object may be subject to marine insurance.

This type of insurance is considered one of the most important types of marine insurance due to the importance of the latter in the field of air transport, and also due to the severity of the damage it is exposed to, whether during its sea voyage, when it docks in a specific port, or when it is in the event of construction²². The Algerian legislator has stipulated this type of insurance under the title of ship hull insurance Article 122 of the Insurance Law stipulates that a ship may be insured for a single voyage, for several consecutive voyages, or for a specific period of time.

Insurance for one trip or for several consecutive trips:

Under it, the insurer guarantees the risks that occur to the insured during the insured voyage. The guarantee is valid from the beginning of loading the goods on the ship until the end of unloading them at the port of arrival for one voyage, or insured voyages that the insurer guarantees within fifteen (15) days at most from the ship's arrival at the port of shipment. However, if the voyage does not carry goods, the insurer guarantees the voyage until the ship arrives This is what Article 123 stipulates.

Insurance for a specific period of time:

In this case, the ship's insurance is valid for a period of time specified in the contract, which is often a full year, so the insurance contract covers all trips made by the ship during this period. Referring to the text of Article 124 of the Insurance Law, if the validity of this contract begins from the first day specified in the insurance contract and ends with the end of the last day specified in it, it is clear that this perception of deadlines may encounter special practical cases For example, if the ship is at sea at the end of the marine insurance contract, or is anchored in a relief port or is in an intermediate port of the ports it passes through during its voyage, an additional condition called the continuation condition is often included in the insurance contract for a specific period²³ or attached to a document attached to the original insurance contract that guarantees the continuation of the insurance contract until the ship arrives at the destination port Provided that the insurer is notified of this in writing and that the marine insurance contract continues under the same conditions, and in return for an additional

insurance premium paid by the insurer to him, calculated proportionately for the additional period, During this period specified in the contract, if ownership of the ship is transferred to another person who was not a party to the insurance contract, its effects will remain in effect against the new owner, provided that the insurer is informed of this within 10 days, and the new insurer will be responsible for fulfilling all the obligations contained in the insurance contract.

Goods insurance

Cargo insurance is considered a type of damage insurance, whereby the insurer guarantees compensation for all damages that befall the insured, in addition to compensation for losses resulting from the occurrence of the risk and the profit that the insured missed due to the maritime accident. In this case, the risks remain covered even if a change occurs in the route, voyage or ship, provided that this change is beyond the insurer's control and supervision The goods are covered by two documents stipulated in the provisions of Article 139 of the Insurance Law, which are an insurance document valid for one trip and an open insurance document. Article 140 of the same law requires the insured to declare to the insured every dispatch on his own account or in implementation of the insurance obligation, which is the case in which the shipper insures on behalf of a third party or the person to whom the goods belong The shipper is usually a seller, as delivery takes place at the port of arrival, and the value of the goods is the proceeds of their price, transportation, and insurance. He also carries out this insurance in accordance with his professional activity, as a commission agent, depositor, or other person who has a position and interest in the insurance. It is worth noting that, according to the last paragraph of this article, the insurer is obligated to accept the declarations made in accordance with the texts of the document.

Insurance policy for a specific shipment for one trip:

It includes all goods of any type. The value of the goods is estimated according to their price at the port of shipment, in addition to all expenses paid until they are transported to the ship and the desired profit or benefit until they arrive at the port of discharge.

Open insurance policy:

An open document is an insurance document under which the insured guarantees all damages resulting from marine risks arising from goods shipped on navigable ships, which will be imported or exported in the name of the insured or for his order, for a specific period of time agreed upon between the two parties, or without specifying that period, and according to which the insured is entitled to obtain automatic coverage within the framework of the conditions specified in the

document For all successive shipments that are shipped via ships, either for the import or export of goods during the validity period of the open document without the need to conclude an insurance contract or issue an insurance document for each shipment of goods shipped²⁴.

This document may be for the benefit of an unspecified person, as work has been done in this area to insure the seller on the goods for the benefit of the person who will buy them. This method is also used by the carrier and shipping companies, as they insure all the goods that they will transport for the benefit of others, with the beneficiary adding an amount to the transport fee It is also not possible to specify the time for concluding the contract, the type of goods, and their estimate. Thus, the insured is obligated to send the insured a declaration for each goods shipped during the specified time period so that the insured can identify the location of the contract and the extent of the risks he will bear, indicating the name of the ship, the voyage it will undertake, the amount of the goods, and their value, whether for his own account or for the account of others. On the basis of that, the value is determined²⁵.

2-2-2-Marine risk insurance

Marine risk includes all risks and material damages in which the insured bears all expenses and costs that he pays in favor of the insured in order to avoid damage or limit its effects, for example, the expenses of unloading and storage in a port other than the port of arrival. Among the marine risks that the insured is also obligated to cover is a marine collision between ships or a collision of the insured ship with any other object, whether fixed or floating As well as the expenses of extinguishing fires that may affect the insured ship or the goods.

Here we must distinguish between two types of non-guaranteed risks: there are risks that are definitely non-guaranteed, and others that are not guaranteed unless there is a special agreement to the contrary.

Risks that are not absolutely safeguarded:

In this type of risk, Article 102 of the Insurance Law excludes the following risks from the guarantee:

Deliberate or serious errors of the insured

Material damages and losses resulting from: violations of import, export, transit, transport and security regulations, fines, substantive confiscations under guard and seizure, and sanitary or disinfection measures.

Damage caused by the direct and indirect effects of explosion, the release of heat and radiation generated by the nuclear transformation of an atom or radiation, as well as damage resulting from the effects of radiation caused by the artificial acceleration of particles.

Risks that cannot be guaranteed except under a contrary (special) agreement:

The Algerian legislator has enumerated these risks in accordance with Article 103 of the Insurance Law, which are:

The subjective defect in the insured item

Civil or foreign war, mines and all war equipment, acts of sabotage and terrorism

Piracy, seizure, seizure or arrest by all governments or authorities of any kind

Seditions, popular unrest, factory closures, and strikes

Breaking the siege

Damage caused by insured goods to other funds or to other persons

All expenses, compensation based on seizure, or guarantees paid to clear seized items unless they result from a guaranteed risk

Any damage does not fall within the scope of damages and material losses that directly affect the insured money.

Conclusion

Marine insurance is considered the backbone of maritime trade and is of great importance due to the security and protection provided by marine insurance contracts, which contribute to the growth and prosperity of maritime trade. Marine insurance contracts are unique in nature, with their own distinctive characteristics, independent nature, and specific legal rules that set them apart from other insurance contracts. which makes it occupy an important position in maritime law, It is characterized as a consensual and binding contract for both parties, as well as a contract of good faith. Its scope covers maritime risks, which are considered to be broader than other risks covered by other insurance contracts. However, despite its importance, Algerian lawmakers have not addressed it with specific rules within maritime law, but have included it in the second section of the amended and supplemented Insurance Law.

Therefore, we believe that Algerian lawmakers should give greater importance to marine insurance contracts due to their significant and direct impact on the national economy, and that all matters related to them should be addressed in the provisions of maritime law.

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