

THE EMERGENCY RISKS (UNDERTAKING) INSURANCE ACT, 1971

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THE EMERGENCY RISKS (UNDERTAKING) INSURANCE ACT, 1971

ACT NO. 51 OF 1971

[10th December, 1971.]

An Act to make certain provisions for the insurance of certain property in India against damage arising from emergency risks and for 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 (Undertakings) 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 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and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon the expiry of this Act as if it had been repealed by a Central Act.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) “building” includes foundations, plinths, floors, staircases’ tanks, engine and boiler beds, chimneys, flues and boundary walls;

(b) “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 any 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 the 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 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 risk to property;

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

(c) “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;

(d) “factory” means a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(e) “factory building” includes all buildings comprised in the factory, and such other buildings (including residential buildings for staff and workmen, hospitals and welfare centres) within a radius of three kilometers from the main factory building as are in the same ownership or occupation as the factory and are used for the purposes of the factory;

(f) “Fund” means the Emergency Risks (Undertakings) Insurance Fund constituted under section 7;

(g) “inland vessel” means a vessel not ordinarily plying outside the limits of the territorial waters surrounding India;

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

(i) “occupier” of a factory has the meaning assigned to it in clause (n) of section 2 of the Factories Act, 1948 (63 of 1948);

(j) “owner”, in relation to property insurable under this Act, means the owner of such property and includes, when parts of such property in relation to an undertaking to which this Act applies are owned by different persons, each such person in respect of the part owned by him;

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

(l) “property insurable under this Act” means—

(i) in relation to any factory, factory buildings, and, except where they are for the time being goods insurable under the Emergency Risks (Goods) Insurance Act, 1971 (50 of 1971), all plant and machinery in the factory, all materials in the factory for use in the production or transmission of motive power, or in the maintenance of plant and machinery (including lubricants) or in the maintenance of factory buildings;

(ii) in relation to Electric Supply Undertakings, the stations, sub-stations, switch houses and transformer houses, in addition to the insurable property referred to in sub-clause (i) of this clause;

(iii) in relation to hydro-electric supply undertakings, the whole of sluice houses, valve houses, water-pipe lines, penstocks and any other plant or machinery appertaining to the intake of hydraulic power;

(iv) in relation to mines as defined in the Mines Act, 1952 (35 of 1952), plant and machinery, whether above or below ground, buildings including inclines and situated within a radius of three kilometres from the mine excavation and in relation to such plant, machinery and buildings and materials above ground as would, if the mine were a factory, be included in property insurable under this Act under sub-clause (i) of this clause;

(v) in relation to gas supply undertakings, the whole of distribution systems, in addition to the insurable property referred to in sub-clause (i) of this clause;

(vi) in relation to any trading Corporation or any body of Port Trustees or Commissioners, or any other person specified in this behalf by the Central Government, owning inland vessels and all inland vessels (including the hull, machinery and fittings thereof), fuel carried thereon and stores carried therein for the use of the crew, owned by it or him, as the case may be, where such vessels, fuel and stores are not for the time being plant or materials insurable in relation to a factory under this Act and the (scheme) thereunder, or goods insurable under the Emergency Risks (Goods) Insurance Scheme made under the Emergency Risks (Goods) Insurance Act, 1971 (50 of 1971);

(vii) in relation to oil mines and oil refineries, in addition to properties referred to in sub-clause (i) or sub-clause (iv) of this clause, as the case may be, derricks drills and rigs and group gathering stations and storage tanks of oil mines, plant and machinery required for pumping, refining or processing any mineral oil, and pipe lines and all buildings of such installations within a radius of three kilometres thereof;

(viii) in relation to tea estates, in addition to the properties referred to in sub-clause (i) of this clause, standing tea crops in any garden belonging to the owner of any factory:

Provided that no property shall be deemed to be insurable under this Act in respect of a period if such property is, before payment has been made of the premium under this Act for that period, in the custody, control or possession of the enemy;

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

(n) “Scheme” means the Emergency Risks (Undertakings) Insurance Scheme made under this Act;

(o) “undertaking to which this Act applies” includes—

(i) factories,

(ii) electric supply undertakings, hydro-electric supply undertakings and State Electricity Boards constituted under the Electricity (Supply) Act, 1948 (54 of 1948),

(iii) mines, as defined in the Mines Act, 1952 (35 of 1952),

(iv) gas supply undertakings,

(v) oil mines and oil refineries,

(vi) tea estates,

(vii) any trading Corporation or any body of Port Trustees or Commissioners or any other person specified in this behalf by the Central Government, owning inland vessel,

but does not include any undertaking which is owned and departmentally run by Government or any undertaking which is exempted under section 15 from the provisions of this Act;

(p) “vessel” means a vessel the value of which including the hull, machinery and fittings but excluding cargo, fuel and stores carried for the use of the crew, as ascertained for the purpose of insurance under the Scheme, exceeds two thousand and five hundred rupees, propelled wholly or in part by steam, electrical or mechanical power, or adapted for towing by a vessel so propelled, and includes any such vessel while used as a place of habitation or for storage of goods but does not include a vessel of the type commonly called country craft.

CHAPTER II

EMERGENCY RISKS (UNDERTAKINGS) INSURANCE SCHEME

3. Emergency Risks (Undertakings) Insurance Scheme.—(1) The Central Government may, by notification in the Official Gazette, put into operation a scheme to be called the Emergency Risks (Undertakings) Insurance Scheme, whereby the Central Government undertakes the liability of insuring property insurable under this Act against emergency risks, to the extent provided by or under this Act.

(2) The Scheme may extend to the undertaking by the Central Government in relation to any person in India of the liability of insuring such person against emergency risks in respect of any property insurable under this Act which is not owned by him but in which he has an interest, up to the extent of such interest.

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

(a) that the liability of the Central Government 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:

Provided that nothing in this clause shall prevent the securing by the Scheme of different rates of premium in relation to properties of different descriptions insurable under this Act owned by any undertaking to which this Act applies;

(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) The Scheme may provide—

(a) for undertaking in relation to works in course of construction which, when completed, will become properties insurable under the Act and such plant and machinery appertaining to such works as may be specified in the Scheme, the same liabilities as are undertaken by the Scheme in relation to the undertakings;

(b) that the payments due under a policy of insurance issued under the Scheme, may at the option of the Central Government take either of the following forms, namely:—

(i) payment, within the limits of the liability assumed by the Central Government and in such manner and by such instalments as the Central Government may think fit, of the cost necessary to restore the property as far as practicable to the condition in which it existed before the occurrence of the damage, or

(ii) compensation, within the aforesaid limits, for the loss in value, ascertained on the basis of values and prices ruling at the time at which the policy of insurance was taken out, or at which the loss occurred, whichever is less, suffered by the property as a result of the damage, after due allowance has been made for depreciation during the period of insurance cover;

(c) that payments due under a policy of insurance under the Scheme may be postponed to any time before the expiry of one year from the date on which this Act ceases to be in force, or, subject to payment of interest at the rate of two per cent. per annum from the expiry of the said year, to any later date;

(d) for making it an express or implied condition of any policy of insurance issued under the Scheme—

(i) that the owner or occupier of a factory or owner of other undertakings mentioned in sub-section (1), as the case may be, shall comply with all regulations or instructions made or issued under the authority of Government for safeguarding the property against damage from emergency risks, or

(ii) that, where the Central Government exercises its option to pay the cost necessary to restore the property to its original condition the owner of the undertaking shall if so required by the Central Government, reconstruct the property or remove the property to and reconstruct it in another locality.

(5) Different forms of policies may be specified in the Scheme under sub-section (3) in relation to different classes of undertakings.

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

(7) 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.

4. Employment of agents by the 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.

5. Duty of owners of undertakings to insure against emergency risks.—(1) While the Scheme is in operation, every owner of an undertaking to which this Act applies, shall,—

(a) by such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, or

(b) in respect of property becoming property insurable under this Act after the date specified under clause (a), or in a case to which sub-section (2) refers, before the commencement of the quarter next following that in which,—

(i) the property becomes insurable under this Act, or

(ii) the reconstruction of the property is completed,

take out a policy of insurance against emergency risks issued in accordance with the Scheme whereby he is insured in respect of all property insurable under this Act which appertains to the undertaking for a sum which is not less than the insurable value of such property:

Provided that where the undertaking is a factory and the owner thereof is not himself the occupier of the factory, the occupier of the factory shall, unless the owner has already taken out a policy of insurance as required by this sub-section, himself take out the policy, and in such a case the occupier shall be deemed

to act as the agent of the owner and shall be entitled to receive from the owner all sums paid as premiums on the policy:

Provided further that in the case of a trading Corporation or body of Port Trustees or Commissioners or any other person whose inland vessels become insurable under this Act, the policy of insurance taken out shall be for a sum not less than the insurable value of such vessels, fuel and stores; and this obligation shall in the case of a trading Corporation incorporated outside India rest upon the manager of the principal place of business in India of the Corporation.

(2) The obligation imposed by sub-section (1) includes, when the owner of the undertaking is required by the Central Government to reconstruct the property which has suffered damage, an obligation to take out an additional policy of insurance as required by the sub-section in respect of the reconstructed property.

(3) When an undertaking in respect of which a policy of insurance against emergency risks has been taken out as required by this section is transferred from one owner to another or there is a change of occupier of an undertaking which is a factory, the policy may be transferred to the new owner or occupier and such new owner or occupier shall succeed to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him.

(4) Whoever contravenes the provisions of sub-section (1) or the proviso thereto, or, having taken out a policy of insurance as required by that sub-section, fails to pay any premium which is due thereon, shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues, and such punishment shall be without prejudice to any other penalty or liability incurred in consequence of such contravention or failure.

(5) Where any offence under sub-section (4) is tried by a Presidency Magistrate or a magistrate of the first class, then, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), the magistrate trying the offence may pass any sentence authorised by that sub-section.

6. Restrictions on carrying on 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 the business of insuring undertakings to which this Act applies in India against emergency risks in respect of property insurable under this Act.

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

7. Emergency Risks (Undertakings) 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 (Undertakings) 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 payments made on composition of offences under section 13 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 payments by the Central Government under section 10, 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 III

MISCELLANEOUS

8. 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 owner or occupier of any property required to be insured under this Act has taken out a policy of insurance as required by this Act in respect of such property, or for the purpose of investigating the insurable value of any property insured, or required to be insured, or proposed for insurance under this Act, or for the purpose of estimating the damage suffered by any property insured under this Act,—

(a) require the owner or occupier of the property, or any person carrying on in India the business of fire insurance in respect of the property, 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 comprising or containing the property, inspect such premises or property, and require any person found on such premises, who is for the time being in charge thereof, or in control thereof, or whom he believes to be in possession of information relevant to his investigation, to produce to him and allow him to examine such accounts, books or other documents as he may think necessary, or to furnish to him such other information as he may reasonably think necessary.

(2) Whoever willfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any 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 one thousand rupees.

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement 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 5 in relation to any undertaking, it is proved, in relation to that undertaking—

(a) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the owner or occupier of the insurable property 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 5 was being contravened in relation to that undertaking at the time when the demand was made and continued to be contravened in relation to that undertaking at all times thereafter.

9. 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 any 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.

10. Payment towards cost of removal and reconstruction of insurable property.—Where the Central Government requires the owner of an undertaking to remove the insurable property and to reconstruct it in another locality, the Central Government shall make to such owner, out of the Fund, such payments, in addition to any sum payable under policy of insurance, as it considers sufficient to defray the cost of the removal and, if necessary, the replacement of any part of the property in respect of which no compensation is payable.

11. Determination of premiums unpaid.—(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, 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.

12. Limitation on prosecutions.—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.

13. Composition of offences.—Any offence punishable under sub-section (4) of section 5 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.

14. Bar of legal proceedings.—(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil court against the Central Government, or a person acting as its agent under section 4, for the refund of any money paid or purporting to have been paid as premium on a policy of insurance taken out or purporting to have been taken out under this Act.

15. Power to exempt undertakings.—(1) The Central Government may, by notification in the Official Gazette, exempt any class or description of undertakings from the provisions of this Act requiring properties insurable in relation to such undertakings to be insured or to continue to be insured under this Act; but such exemption shall not prejudice the infliction of any penalty or the accrual of any liability incurred before the date on which the exemption takes effect.

(2) In granting any exemption under this section the Central Government may direct that the exemption shall take effect or be deemed to have taken effect on a specified date after or before the date of the notification.

16. Refund of premiums in certain cases.—(1) Where any property has been insured by any owner or occupier thereof for any period, and before that period has elapsed the property or the property of that description has ceased, by virtue of a notification under sub-section (1) of section 15, to be insurable under this Act, the person who has insured the property shall be entitled to a proportionate refund of the premium.

(2) Where a policy of insurance has been taken out in relation to a property which is 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 a property which has ceased to be insurable under this Act, or where, in relation to a property insurable under this Act, premium has been paid 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 property, 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.

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

18. Notification under section 15 to be laid before Parliament.—A copy of every notification made by the Central Government under section 15, shall be laid after it has been 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 so laid, whichever period is less.