

*International journal of Maritime Policy*  
*Vol. 2, Issue. 5, Spring 2022, pp57-82*  
*DOI: 10.22034/IRLSMP.2022.316520.1044*  
*ISSN: 2717-4255*

## **The effect of Ship Deviation from the Route in Sea Carriage on the Validity of Insurance Contract: A Comparative Study Iranian and British Law**

Sara Aghaei<sup>1</sup>

Received: 10 November 2021 Accepted: 10 February 2022 Published: Winter 2022

---

### **Abstract**

The carrier in sea transportation is obligated to proceed with the voyage on the contractual route. The violation may exempt the insurer from supporting the loss and damage to cargo after deviation from the route. Regarding the importance of marine insurance contract validity in international commerce, this question arises whether the ship deviation invalidates the insurance contract and exonerates the insurer to compensate. In the English marine insurance act 1906, the insurer is exempted from compensating for damages and the courts consider the claim regarding the circumstances governing the case. The lack of a marine insurance act in Iranian legislation requires us to consider the matter of the general rules in the insurance act 1937 that analyze performance guarantees such as invalidity and right of termination on the contract. If the additional insurance premium is not agreed upon in the contract, the right to terminate the contractual relationship is an approach that protects the insurer in different cases. Nowadays, because the insurance companies do not fully compensate for the damage, part of that is compensated by the P&I clubs. In fact, there is a kind of supplementary compensation covered after deviation. The mentioned question is analyzed with the descriptive-analytical method and library sources in this article.

**Keywords:** Ship Deviation, Proper Route, Marine Insurance

---

<sup>1</sup> . PhD Candidate, Faculty of Law and Political Science, Tarbiat Modares University (TMU), Tehran, Iran, (Corresponding Author), Email: saraaghaeis.70@gmail.com

## **1. Introduction**

Due to Iran's geographical boundaries being limited to the sea from the North, South and Southwest, the maritime transport industry plays an important role in export and import (Najafi Asfad, 2018, p 7). In spite of the significant role of sea transportation and marine insurance, which have an important position in international commerce, marine insurance regulations in the Iranian legal system are not separated from general insurance rules and, apart from the guidelines and approvals issued on a case-by-case basis by institutions such as the Supreme Insurance Council; no independent legislation has been implemented in this field (Sadghi Neshat, 2012, p 21). In relation to general conditions on carriage insurance, the effect of changing the voyage has been considered but the result of deviation in the validity of marine insurance contracts has been neglected. Carrier violations to proceed contractual route and the marine insurance cover conditions are analyzed in light of general regulations in marine act 1937 and legal opinions.

Considering the impact of UK insurers' performance, including Lloyds, on the field of marine insurance and their significant role in setting up sample insurance forms as well as the adherence of many insurance companies in the world, including Iranian insurance companies, to the procedures established by these institutions; the impact of the ship's deviation from the route on the validity of the marine insurance contract in Iranian law is investigated according to the Marine Insurance Act of 1906 in England and the common procedures in this legal system.

Insurance companies do not fully compensate for the damages caused by deviation despite being justifiable, so alongside with insurance companies, P&I clubs also compensate for part of the damages under conditions and according to the club's statutes (Hudson and Madge and Sturges, 2012, p 125). According to article 85(1) act 1906 on P&I clubs, in these associations two or more persons mutually agree to insure each other against losses incurred during a voyage. The amount and the manner of participation are considered important issues and will be analyzed in this article.



In this article the question of whether the deviation invalidates the marine insurance contract is answered also the marine insurance contract conditions to obligate the insurer to compensate after deviation are considered.

## **2. Ship deviation**

Sea carriage contracts create obligations for carriers, one of which is to proceed on a proper contractual route that usually is agreed in a contract or bill of lading (Wilson, 2010, p 17). Deviation is defined as ‘an intentional and unreasonable change in the geographic route of the voyage. Determining whether such a deviation has occurred, it is necessary to define the precise route environment by the contract of affreightment. Sample charter forms make express provision for the route but, in the absence of such provision, the presumption is that the direct geographical route between the ports of loading and discharge is the proper route ( Wilson, 2010, p 16). If the carrier deviates from the mentioned route, it is necessary to analyze the status of the insurance contract and the insurer's obligation to compensate for possible losses after the deviation.

All the discussions that revolve around the impact of the deviation on the validity of the marine insurance contract are limited only to cases of unjustified deviation (Todd, 2016, p 73). If it is included in the category of justified deviations, it will not have any effect on the validity of the insurance contract. The England marine insurance act 1906 provides for justified deviation cases. It is clear that any deviation outside of the scope of the aforementioned act is considered as an unjustified deviation.

## **3. Validity of insurance contract**

In relation to the effect of the deviation on the validity of contracts, some opinions are discussed in common law where in this section the legal views and the judicial procedure will be analyzed.

Some experts have expressed the deviation as a factor to excuse the insurer from compensation if it occurred unreasonably because deviation would automatically override the contract of carriage together with all its conditions and terms (Billah, 2014, p 119). So the ship owners stood in the position of

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

insurers in deviation from the contractual routes. Ship owners were responsible for any damage after deviation, irrespective of any causal connection between the loss and deviation. Ship owners are not allowed to be exempted from responsibility for such a loss through the terms of the exemption as deviation would automatically override the contract of carriage and its terms and conditions (Hudson and Madge and Sturges, 2012, p 206).

This strict liability was justified as such cargo owners would lose their cargo insurance if they are deviation from the contracted or customary course (Howard, 2007, p 383). Thus, under the common law ship owners are deemed to stand in the position of cargo insurers after deviation. So, the liability of ship owners is not excused even when the loss after deviation was caused by an act of the public enemy, an act of God or due to inherent vice of the goods (Billah, 2014, p 26).

The ship owner's liability for a loss not caused by their act (i.e., deviation) does not have any inhibitory effect to prevent probable future damages. If there is any damage due to an act of God after deviation, responsibility should not be imposed on ship owners for the loss. The only performance of such responsibility was the provision of insurance by ship owners for the benefit of the cargo owners who automatically lost their cargo insurance after deviation. With the goal of deterrence in mind, it does not really matter who bears such losses, as these losses could not be prevented by optimal care. On the other hand, it can be argued that leaving such losses to cargo owners would save the costs of unnecessary litigation. This is exactly the current procedure (Billah, 2014, p 119).

Under another approach which is posed on the basis of section 46 1906 act, deviation cannot cancel the contract. Section 46 states that the insurer is discharged from liability as from the time of deviation. The contract is not void and the insurer is liable for all damages incurred before deviation. That provision exempts the insurer from the liability for loss without reference to cancelling the contract because proceeding with the proper route is a term. The latter applies as a prominent approach to common law (Hodges, 1996, p 76).



In accordance with conventions on cargo liability law, The Hague-Visby Rules and other cargo liability regimes, the ship owners are exempted from responsibility in the case of reasonable deviation. The insurance market, by incorporating a ‘held-cover’ clause in the contract of marine insurance, responded to this change which extends the insurance coverage to cargo when ships deviate from the contractual routes (Billah, 2014, p 119).

In sample marine insurance contracts, the right to terminate the contract is included by the insurer in case of violation of the clause of the insurance policy in relation to following the contractual route. But in common law, the right to cancel the insurance contract is not taken into account by the parties. The mechanisms of common law in order to secure the rights of the parties to the contract should be addressed in the following discussions.

In relation to the effect of deviation on the validity of the insurance contract and the insurer's liability, several decisions have been issued by the commercial courts in England and, in the majority of the votes, the invalidity of the insurance contract as soon as deviation is not accepted (Nausea, 2007, p 44). Rather, the court exonerates the insurer from compensation only in the cases where the carrier doesn't notify the insurer immediately after the deviation from the route.

In relation to the effect of deviation on the validity of the insurance contract and the insurer's liability, several decisions have been issued by the commercial courts in England and, in the majority of the votes, the invalidity of the insurance contract as soon as deviation is not accepted (Nausea, 2007, p 44). Rather, the court exonerates the insurer from compensation only in the cases where the carrier doesn't notify the insurer immediately after the deviation from the route.

For example, in a case (Fraser Shipping Ltd v Colton, 1997, 1 Lloyd's Rep 586) one of the Shanghai ports, being a carrier, decided to move to another port. The policy holder delayed notification to the insurer until the ship ran aground on the way to the alternative port. This violation caused the commercial court to exonerate the insurer to compensate because of failure of the contractual obligation by the policyholder without invalidating the



*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

contract. It should be noted that in 1987, the International Maritime Organization prepared an instruction in which the carrier is required to submit a report regarding deviation from the route and incidents that led to the loss of goods at sea. Although the submission of the said report is not legally required, it has been accepted by the maritime community as a general rule.

Also, in some cases where the ship has not found a long distance from the contractual route in terms of geographical coordinates, because the violation is not important, the court requires the insurer to compensate for the damage. For example, in *Hewitt v. In the Branson Insurance Company* case, the carrier was required to take a shipment of nitrates from Tokopila through the Panama Canal to France. During the voyage, the ship changed course to Newarlin, where the cargo was lost due to an accident. The London insurance company, which was informed of the ship's deviation exempted itself from paying the damage, but based on the contents of the case, the judge concluded that the policyholder was not required to conclude a reinsurance contract to pay additional premium insurance because the new agreement practically did not benefit the parties and the London insurance company must compensate for the losses because the voyage route was 5000 miles and the deviation from the 500 mile route did not have much impact on the risk of damage (*Hewitt v London, General Insurance Co Ltd, 1925, 23 Ll L Rep 243, 246*).

In Iranian legislation, due to lack of a marine insurance act, the effect of deviation on marine insurance contracts is considered in light of general rules of insurance (Sadghi Neshat, 2012, p 21). What should be analyzed in Iranian law is whether the violation of a proceeding contractual route as a condition can result in the termination of the insurance contract automatically or creates the right to terminate the contract for the insurer or an effect other than the mentioned should be submitted.

Nullification of the contract is one of the guarantees that the Iranian legal system has accepted in contractual relations where the essential conditions of the contract have been violated. In addition to the general rules of contracts, also in insurance law, some cases have been stated as reasons for



invalidating a contract. Some authors have limited the invalidity of the marine insurance contract to a few cases, including extinction of risk, extinction of the subject of insurance and lack of insurable interest. So what should be considered is that deviation can be included in the category of nullity of marine insurance contract (Sadghi Neshat, 2012, p 128-129).

In relation to the nullity opinion, article 12 in insurance act 1937 is analyzed. According to this article: (( If the insured intentionally refuses to disclose information or intentionally makes false statements, and they change the subject of the risk or reduce its importance in the eyes of the insurer, the insurance contract will be void, even if the aforementioned circumstances had no effect on the occurrence of the accident. In this situation, not only the funds paid by the insured cannot be returned, but the insurer has the right to demand the insurance installments that are overdue by that time)).

Undeclared contents or false statements, if change the subject of the risk or cause the insurer to make a mistake regarding the subject risk and affect his calculation in determining the insurance premium or other conditions of the contract, the insurance contract will be void from the beginning of the conclusion, even if the failure to submit a report should not be intentionally or maliciously (Babaei, 2017, p 74).

Invalidation of the insurance contract due to unjustified deviation with reference to the mentioned article is incompatible with the importance of the continuation of the insurance contract for sea transportation. Due to conflict with the interests of individuals in maritime transport, it has been given less attention. It seems accepting the invalidity of the marine insurance contract is legally correct, but in practice it does not match the needs of businessmen. Also, the principle of interpretation in favor of the insurance holder and to the detriment of the insurer requires the continuation of the insurance contract (Khodabakhshe, 2005, p 38).

Also, the latter article deals with the assumption that the insured refrained from mentioning any information at the time of concluding the contract, but in situations where the policyholder refuses to submit a report to the insurer after the contract, Article 12 does not provide a legal rule. Therefore, to

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

check the effect of deviation on the validity of the marine insurance contract based on the general rules of insurance, it is necessary to consider the other opinions.

Some articles like the general rules in the mentioned act and insurance companies practice provide the right of termination of the contract under, certain conditions. It should be noted that deviation can cause that right. Marine insurance companies in Iran, under the influence of prevailing practice in the UK marine insurance market, these cases cause the right of termination for insurers:

1. Change in ship classification association
2. Disqualification, suspension or expiration of the ship's class certificate
3. Voluntary or forced change in the ownership of the ship, flag or transfer to a new charterer or close charterer (Hasani, 2011, p 19).

It is necessary to consider whether the right of termination to contract is limited to the mentioned cases or referring to general rules of marine insurance can include the carrier violation in the category of revocation cases. One of the articles in the insurance law of 1937 dealing with contract termination is Article 13 According to the article, if unsaid content or false statement is found out before the incident, the insurer has the right to receive an additional premium from the policyholder upon his consent and decide to confirm or cancel the insurance contract (Izanloo and Lotfe, 2009, p 69). If unsaid content or false statement is found out after the incident, the damage will be reduced in proportion to the insurance amount paid and the amount that must be paid in full if the risk is declared.

The article distinguishes between the two modes of notifying the insurer before and after the event. Refusal to state the information mentioned in the first part of the article also includes the failure to submit a report regarding the ship's deviation from the course, and according to this clause, if after deviation and before the incident, the insurer is not informed of the policyholder's violation, he is allowed to receive an additional insurance premium with the consent of the policyholder or cancel the insurance contract considering the possible risks that threaten the ship and cargo on the





new route. On the assumption of premiums to receive additional insurance premiums, the following conditions must be present:

1. Having a complete and valid insurance policy
2. The insurer has the right to accept or reject offers
3. The changes in the insurance policy must be clear, accurate and complete.
4. Request for changes must be notified to the insurer by registered letter (hasani, 2011, p 10).

What is inferred from the second part of article 13 is that if the ship changes its course and an incident occurs before the insurer is informed, the Damage will be in proportion to the insurance amount paid and the amount that can be paid in case of a declaration of risk. Meaning that there will be no disturbance in the legal status of the insurance contract, and the insurer as one of the parties in a valid contract must fulfill its obligations in the same manner as stipulated in the article.

The legislator's approach to considering the insurance contract as valid, the right to cancel the contract for the insurer and obligate him to compensate for the specified amounts, shows the legislator's understanding of the importance of the issue. However, since Article 13 refers to a case where the failure to submit a report by the insurance holder was not intentional, the provisions cannot be used for a situation where the insurance holder has deliberately refused to submit a report.

Any violation has an effect on the validity of a contract depending on the degree of importance and the extent of its impact on disturbing the contractual balance. So, in the opinion that the insurer has the right to cancel the contract, the obligations up to the termination of contract remains in effect. Any damage must be compensated because the effect of the termination is looking at the future. Perhaps for this reason, the insurance holder refuses to announce the deviation from the route in time, so that the insurer's obligations to compensate for the losses do not disappear.

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

Therefore, a solution should be adopted that, in addition to maintaining the validity of the insurance contract, can neutralize the effect of the policy holder's violation. It seems that the aforementioned goal will be achieved by creating the right to cancel the contract for the insurer, but not the right of cancellation that cancel the contract from the time the right is exercised, but the right suspends the insurance contract from the time the deviation occurs. The insurer terminates the contractual relationship or waives the policy holder's violation after examining the conditions and the proportion of the additional insurance premium with the risks related to the new route (Yazdanian, 2010, p 217). In fact, the contract was suspended because of deviation and the insurer re-evaluated the conditions and took into account the benefit and loss to make a decision.

So, the later the insurance holder reports the deviation, he acts at his own disadvantage because the incident after deviation may not be covered due to the suspension of the contract. This is a proper approach in sea transportation contracts, which usually take a long time for delivery of goods to the destination and the economic conditions may have changed in this period.

In Iran's legal system, it seems that according to the provisions of Articles 13 and 15 of the Insurance act 1937, it is possible to grant the right to terminate the contract to the insurer in cases of unjustified deviation. Failure to report the deviation, without distorting the validity of an insurance contract exempts the insurer from the compensate for the damages after deviation. According to Article 15, the policy holder must inform the insurer within five days from the date he notifies about the incident. Otherwise, should that due to the incident he was not able to inform the insurer.

The content of the last article is important because the insurer bears the final burden of compensation and payment. Therefore, he should be informed as soon as possible before erasing the signs to assess the damage. Maintaining the validity of the marine insurance contract is a conscious approach that the legislator has taken in recent articles, and its content can be extended to the issue of the validity of the marine insurance contract in the event that the ship deviates from the course.

### **1. Marine insurance cover**



Usually, in deviation cases, the insurer in order to be exempted from compensation tries to prove that the deviation is unjustified because according to Article 46 the Marine Insurance Act 1906 if deviation is justified, the insurer will be obligated to compensate for the losses according to the insurance policy (Baatz, 2018, p 268). In the following, the conditions under which deviation from the route is covered by marine insurance and the cases of exemption of the insurer from compensation will be examined. Departure from the proper route is permissible under common law in the following circumstances:

Deviation is covered by marine insurance if it occurs in a justified manner. Article 49 is considered a deviation from the contractual or customary route justified in the following cases:

1. To save human life or to help a vessel in distress in case lives may be in danger. Deviation with the aim of saving life is protected and involves neither loss of insurance nor liability to the goods' owner in relation to loss which would otherwise be an exception to the "perils of the seas". And deviation for the purposes of assisting a ship in distress is justified, as far as the situation of the vessel in distress may involve danger to life (Spanjaart, 2018, p 238 and Cooke, Young, Ashcroft, Taylor, Kimball, Martowski, Lambert, Sturley, 2014, p 279). Indeed, deviation for the sole purpose of saving property is not justified, but embraces all the consequences of deviation (Cockburn CJ in *Scaramanga v Stamp*, 1880, 5 CPD 295, p 304).
2. To avoid danger to the ship or cargo. The master is under an obligation to exert reasonable care in warranting the success of the joint enterprise and is entitled to deviate from the proper course with the aim of ensuring the safety of the vessel and its cargo (*Notara v Henderson*, 1870, LR 5 QB 346). The risks may originate from natural causes such as storms or they may get in trouble because of political factors such as the outbreak of war (*The Teutonia*, 1872, LR 4 PC 171). However, the danger must be of a reasonably permanent nature, since a master should not substitute a substantially different voyage to avoid a risk arising from an impermanent problem such

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

as a shortage of tugs or a neaptide (*Phelps, James & Co v Hill*, 1891, 1 QB 605).

3. Where the deviation is necessary by some default on the part of the charterer. It is justifiable to put into port to discharge when dangerous cargo is loaded by the charterer without the knowledge of the shipowner. So, a master may be permitted to deviate to load cargo where the charterer has breached his contractual obligation to load a full cargo (*Wallems v Muller*, 1927, 2 KB 99).

4. One of the examples of justifiable deviation is the initial unseaworthiness of the vessel. In the *Kish v Taylor* case in 1912, a vessel was chartered to load and complete a cargo of timber at two ports in the Gulf of Mexico for carriage to Western Europe. Heavy storms were met during the voyage which endangered the safety of the vessel. The master put into Halifax to repair the ship before proceeding to Liverpool. When the shipowner sought to exercise the contractual lien for dead freight and demurrage, the cargo owner contended that the right to rely on the lien had been forfeited. The House of Lords refused this reasoning and confirmed the deviation to be justified.

5. In cases the deviation has occurred due to the criminal behavior of the captain or the ship's staff, provided that the said behavior is covered by insurance as one of the risks (*Bundock*, 2014, p 333).

6. It may be the ship owner specifies the route, but during the voyage, according to the type of goods and the possible damage, the carrier deviates from the route. Once the reason is removed, the captain must resume his previous course (*Bundock*, 2014, p 333).

In order to hold ship owners liable for deviation today, it is not enough to prove that the deviation is unreasonable but it has to be the cause of the cargo loss or damage. Requiring the causal connection is also in agreement with the main function of liability rules, i.e., the creation of incentives to take care. For example, if a sudden storm causes damage to cargo after deviation, imposing liability on ship owners for the damage would not change the



behavior of ship owners in terms of taking care, because such a peril may happen on a contracted route as well (Billah, 2014, p 119).

The courts' requirement of causal connection in deviation cases may sometimes be narrower than what is necessary under economic analysis. For example, in the case of *Tai Shan* there was an incident of damage after deviation. If there were no deviation, the ship owner would be excused for this terrible damage due to the absence of any fault on his part. The question before the court was whether there was a causal connection between the deviation and the fire damage. The court held that the connection could be established by proving that the incidence of fire occurred after the original scheduled delivery date. This is a very narrow test to determine causation. Under economic analysis, any non-negligent damage would be excused whether the day of the incident happened to be before or after the scheduled day of delivery. An accidental fire is a mere happenstance and imposing liability in such a case cannot create any incentives towards care (Billah, 2014, 119 and Mandaraka, 2013, p 469).

In Iranian law, justified deviation under sea act 2012 is considered. Article 55(4) provides the definition of justified deviation: (( Any change in route at sea for the purpose of saving human life and property or any reasonable deviation is not a violation of the provisions in this chapter (sea freight) and the carrier is not responsible for the loss or damages incurred)).

According to the mentioned article, saving human life and property justifies deviation, but it doesn't ascertain whether saving human life just includes the people inside the ship or the other people who have had an accident at sea is considered also. The same question is raised about saving property. According to the prevailing opinion compatible with maritime transport regulations, deviation is justified to save the life of any person who has an accident at sea, but saving property is limited to a situation where the property is inside the ship. This means that the captain should not deviate from the route to save the cargo belonging to another ship. Of course, saving another ship is justified if saving people's lives depends on it (Izanloo, 2017, p 113).



*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

The mentioned article is a derivation of Article 4 of the Hague-Visby Rules, so the reasonable deviation should be interpreted according to those rules. Reasonable deviation means that the carrier's behavior is considered reasonable according to the circumstances governing the case.

The importance of reasonableness deviation will be determined by taking into account article 54, paragraph 8 of the revised maritime act 2013 provides any condition or agreement in the freight contract in order to exclude the responsibility of the carrier or ship owner or limit the liability in the case of loss or damage caused due to negligence and fault or tolerance in performing duties or obligations specified in this chapter will be null and void. It can be understood that freedom to deviate from the contractual or customs route if it is absolutely foreseen in the contract is invalid. Therefore, the reasonableness can exclude the deviation from the scope of the last sentence in article 54 and justifies change of the route (Izanloo, 2017, p 132-133).

## **2. Marine insurance cover conditions**

To compensate for the damage that occurred after the. Otherwise, the following conditions should be established, otherwise the insurer hasn't any responsibility:

1. To hold ship owners liable for deviation, it is not enough to demonstrate that the deviation is unreasonable but it has to be the cause of the cargo loss or damages (General Electric v. Nancy Lykes, 706 F.2d 80, 1983). Requiring the causal connection is also aligned with the basic function of liability rules, i.e. the creation of motives to take care. For example, if a sudden hurricane cause's detriment to cargo after deviation, constraining liability on ship owners for the damage would not alter the behavior of ship owners in terms of taking care, because such a danger may happen on a contracted route as well (Shavell, 2004, p 249–256).

The courts' opinion on causal connection in deviation cases may be narrower than what is necessary under economic analysis. In the case of *Tai Shan* in 1955, there was an event of, fire damage after deviation. If there were no deviation, the ship owner would be exonerated for damage due to lack of any fault on his part. The question was whether there was a causal connection



between the deviation and the fire damage. The court voted that the connection could be established by proving that the event of fire occurred after the original scheduled delivery date (Billah, 2014, p119).

2. The carrier proceedings to prevent the incident or minimize the damages after the deviation obligates the insurer to compensate for damages. In the other words, if the carrier is faced with maritime accidents after deviation and timely response to eliminate the risk and reduce the detriment of using the facilities on the ship, the insurer has liability for compensation. Because even if the carrier was traveling on the contractual route, this incident would have happened (Billah, 2014, p120).

In the Iranian legal system, according to Article 10 of the regulations regarding the general conditions of cargo insurance approved by the Supreme Insurance Council 2013, whenever the destination is changed by the insured the validity of insurer is dependent on notifying the insurer and the premium should be regarded. If the damage occurs before the agreement, the insurance contract is valid provided that the premium is based on the normal market rates and conditions.

2 Conditions are considered on marine insurance cover and compensation after deviation: 1) reporting the deviation to insurer 2) renegotiation on additional premiums. Both of them are based on the general terms of compensation in the Insurance act 1937. According to Article 15, the policyholder must notify the insurer as soon as possible and within 5 days from the date of knowledge of the incident, otherwise the insurer will not be responsible. The second condition on the insurance premium is considered in accordance with Article 16, which stipulates if the policyholder aggravates the risk or changes one of the qualities or the conditions after the contract in such a way if the insurer had knew, she would not have entered into the contract the insurer can set additional insurance premium.

### **3. Items not covered by marine insurance**

The deviation is outside the scope of the mentioned cases in the previous discussion; it means that deviation is unjustified, so insurance cover would

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

be cancelled without the need to check things like the seaworthiness of the ship and marine risks.

Deviation is unjustified when accompanied by the ship captain's misconduct or negligence. For example, in the case of *Finn and Royal*, the ship deviated from the course due to the negligence of the captain and the strong flow of water. Subsequently, the ship was impounded and the court considered the act an unjustified deviation, so exempted the insurer from compensation due to the lack of proof of criminal intent on the part of the captain at the time of deviation and human negligence being next to marine accidents. Also, to lose marine insurance cover, it is not necessary for the captain to violate without the knowledge of the ship owner, but if he's deviated in order to secure the owner's interests, the insurer would be exempted from damages (Gurses, 2015, p121).

Another case of unjustified deviation is related to stopping at ports which are not specified in the insurance policy. With the explanation that if, in the insurance policy, the ports where the ship is allowed to stop during the voyage referred to refers refer and the ship stops refers contrary to the prescribed order, the insurer will not be responsible for compensation unless the carrier proves that stopping at the port is a common practice for shipping lines or refers to the liberty clause for deviation. If the ports are not specified, the ship can only stop at the ports that are located along the route (Institute of Chartered Shipbrokers, 2017, p 46).

The mentioned cases are considered to be the most common examples of unjustified deviation in English law, but in practice, insurance companies protect their customers, who are the owners of the goods, with additional insurance premiums under the held cover clause in insurance contracts (Billah, 2014, p119). Including the held cover clause in insurance contracts may lead to lawsuits because this clause has been common since the end of the 19th century and proper legal analysis has not been done regarding that in legal literature. The hold cover clause is not only limited to deviation but also can be efficient on the other violations (Soyer, 2001, p191-192).

It is worth noting that the intention to deviate from the contractual route is not enough to forgive the marine insurance. Rather, deviation must occur in



practice. Also, returning to the route after deviation does not revalidate the insurance contract. Because according to the accepted rule, when deviation occurs, the ship is always in deviation status (Dunt, 2009, p 379).

#### 6. Protection and indemnity clubs

Insurance companies do not fully compensate for the damage caused by damage despite it being justifiable. Stephen's case presents a new solution to cover damages in deviation cases. In this case, the ship was sunk after a deviation. The ship owners started a fight against the insurer to receive damages. The court exempted the defendant from liability due to the lack of insurance cover for deviation risk in insurance policy (Billah, 2014, p 26).

Such a decision makes the ship owners investigate solutions in cases where the deviation has caused damage and the insurer does not fully compensate. The result of their efforts was the establishment of the Society for Mutual Protection and Compensation in 1874. These associations named P&I clubs have continued their activities until today and ship owners become members of P&I clubs to cover this part of the damage (Billah, 2014, p 27). According to P&I clubs rules 2022 UK, the insurance contract will be valid if an additional insurance premium is agreed after the deviation. The association will not compensate for the damages if the ship deviates without its consent, unless it accepts the responsibility, so the ship owner obligates to notify about the deviation.

According to article 85(1) act 1906 on P&I clubs in these associations, two or more persons mutually agree to insure each other against losses incurred during a voyage and article 85(2) provides that P&I clubs don't follow the provisions on balancing the premium when the ship changes the route. Rather, they are allowed to be treated under their rules in club statute. In practice, the remaining one-fourth is invariably covered by P&I clubs and often fully four-fourths, with the collision liability risks being excluded absolutely from the hull policies, so the ship owners enjoy a type of supplementary insurance cover (Hudson, 2012, p 125).

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

In the Iranian legal system, P&I clubs are active to cover ship owners' liability for all types of marine damage. The members of these clubs are usually the National Oil Tanker Company of Iran, the Islamic Republic of Iran Shipping Company and the Iranian Ship Owners Union. They often follow rules developed by the IGA group, which consists of 13 European and American insurance companies that develops marine insurance law.

If the ship deviates to treat an injured or sick person or when intends to disembark refugees, the related expenses will be paid by P&I clubs including the cost of fuel, sailors' wages and port costs, but do not include delay and freight losses. In general, P&I clubs do not compensate for the delay in reaching the destination port (Asgary and Hoseini, 2014, p 150 ). Compared to foreign institutions, they cover less damage and their protection is limited to domestic vessels.

### **7. Deviation and fraud in the marine insurance contract**

One of the most important issues on deviation is whether the violation of one of the clauses in the insurance contract named moving the ship on the contracted route means fraud in the contract or that only the principle of good faith has been violated. The subtle difference between these two concepts in some cases makes difficulties to recognize the violation and, as a result, the legal status of the contract (Hodges, 1996, p 76).

In England's legal system, by distinguishing between the two latter concepts, good faith has been placed at a lower level than fraud, meaning that if a party violates the good faith principle, the other party has the right to terminate the contract. But if it constitutes fraud, the contract is invalid (Hodges, 1996, p 76). So it should be analyzed that the deviation is treated as a fraud or violation of good faith principles.

According to article 17 in Marine Insurance act 1906, a marine insurance contract is based on good faith that if violated by the party, the other party can terminate the contractual relationship. According to some experts, the provision in article 17 also governs the relations after the contract, i.e. the violation of a good faith principle after the insurance contract is covered by this article. Therefore, continuation or termination of the contract depends





on the other party's decision (Hodges, 1996, p 250). The deviation due to the insurer's responsibility is considered as a presumption in lack of good faith and subsequently creates rights for the insurer to terminate the insurance contract or receive an additional insurance premium to continue the relationship. Insurance companies usually prefer the latter one (Soyer, 2014, p 118).

Of course, jurists do not propose a specific guarantee regarding the good faith violation in the insurance contract. Rather, the violation effect and the method of compensation should be determined according to the circumstances in each case and article 17 content is applied when the violation necessitates termination of the contract (Soyer, 2014, p 118- 119). In other words, terminating the contract is not considered a suitable tool for compensation and the parties in the marine insurance contract can agree against the provisions of the mentioned article. It should be noted that in the 2014 government insurance policy of England, there is no specific performance guarantee for breach the good faith principle (Gurses, 2015, p 250).

According to this approach, non-disclosure of information at this stage by the insured is a violation that in most cases leads to the violation of the principle of good faith, but does not necessarily raise the issue of fraud in the insurance contract (Hodges, 1996, p 86). Because the insured may violate the principle due to mistake or negligence and without the intention of fraud. Under the other approach, if the carrier deviates to gain benefits or to secure the ship owner's interests, the fraud in the insurance contract is demonstrated (Gurses, 2015, p 245).

In England, marine insurance law, despite varied opinions on the issue of fraud and breach of good faith in the contract, the dominant approach considers deviation as a violation of a good faith principle. However, experts who deem deviation as a fraudulent act don't consider the contract invalid, but they deem the insurer is to decide on the continuation or termination of the contract (Soyer, 2014, p 73-74).

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

In Iran's legal system, the necessity to observe good faith in contracts is considered as an important principle in the direction of goals such as setting the terms of contracts, establishing balance and equilibrium in the behavior of the parties (Alizadeh, 2005, p. 95). Good faith at the stage of concluding the contract means that the parties should not act in good faith (Shabani, 2009, p 52 ). That is, its negative meaning has been taken into consideration and, in the stage of execution, means that if one of the parties has a right, for example, to terminate the contract, the other party should not prevent it with bad motives. The good faith principle should be observed in all stages of the contract, from pre-contractual negotiations to its conclusion, execution and its interpretation (Hajipour, 2011, p 39 and Izanloo, 2011, p 67). Whenever the discussion of good faith is raised in insurance contracts, it is inevitable to examine the concept of fraud, because fraud and good faith are two concepts. Fraud in insurance is a fraudulent or negligent act that takes place with the aim of gaining benefits for one of the parties and creates a serious risk for the financial parts of the contract, and the loss caused by fraudulent activities affects the insurer's profit. So dealing with fraud is considered as one of the main concerns in insurance contracts, which leads insurers to find solutions to minimize fraud. Reporting accidents to the insurer is one of the ways to reduce the vulnerability of the insurer in the face of fraud (Ranjbar, 2018, p 76-77).

A number of jurists believe that fraud is accompanied by illegitimate intent and bad faith, but there is no provision that clearly specifies the verdict of fraud in contracts. Due to the prohibition of fraud under articles 12 and 18 in insurance act 1937 and article 40 in the Constitution 1979, some lawyers deem the guarantee of fraud to be a nullity of the contractual relationship and, under the other approach, referring to article 438 in the Civil Code 1928, which defines fraud in contract, the fraud creates the right to terminate the contract (Sabri, 2021, p 157).

Despite the difference in the verdict regarding the violation of good faith and fraud in the contract in most legal writings, the violation of good faith has been confused with fraud. In other words, if not informing the insurer is accompanied by bad faith, her act is considered fraud in the marine insurance



contract, because fraud is realized when one of the parties knows the facts more than the other party (Baradaran, 2006, p 70). In fact, if good faith is intentionally violated by the insurance holder, the insurance contract is void and this is a result that contradicts the necessity of continuing marine insurance contracts to secure maritime trade.

Regarding the above issues, most of the discussions on the violations of the insurance contract parties are raised under the title of breach of good faith, because the legal mechanisms to deal with the violation of good faith maintain the validity of the insurance contract, unlike fraud, which causes the contract to be invalid (Gholami and Shahbazinia, 2016, p 132 ).

Therefore, the violation of the obligation to proceed with a contractual route should be considered a violation of good faith and its effects should be arranged on the marine insurance contract. Failure to report deviation to the insurer, if it is accompanied by bad faith, the fraud in an insurance contract is mentioned, but its severe effect, i.e. invalidation of the contract, makes it difficult to consider deviation as a fraudulent act.

### **Conclusion**

The discussion on the effect of unjustified deviation from the contractual or customs route in relation to the validity of the marine insurance contract is analyzed on the basis of marine insurance act 1906 and the legal approaches. The insurer exemption to compensate for the damages after deviation is a mechanism which is accepted in English law with the purpose of continuing the validity of marine insurance.

In sample marine insurance contracts, the right to terminate the contract is included by the insurer in case of violation of the clause of the insurance policy in relation to following the contractual route. But in common law, the right to cancel the insurance contract is not taken into account by the parties. But rather, decisions that have been issued by the commercial courts show that in the English legal system, the invalidity of an insurance contract as soon as deviation is not accepted and the court exonerates the insurer from

*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

compensation only in the cases where the carrier doesn't notify the insurer immediately after the deviation from the route.

In practice, insurance companies protect their customers, who are the owners of the goods, by additional insurance premiums under the held cover clause in insurance contracts. However, they do not fully compensate for the damages and a part is compensated by the P&I clubs. The remaining one-fourth is invariably covered by P&I clubs and sometimes fully four-fourths. With the collision liability risks being excluded absolutely from the hull policies, so the ship owners enjoy a type of supplementary insurance cover.

In Iranian law, due to the lack of a marine insurance act and a separate branch to deal with marine insurance claims, no special procedure has been formed in this field. The parties in marine insurance contracts mostly refer their disputes to arbitration and the dispute would be settled on the basis of the English law system. Also, the topic of deviation effect on marine insurance contracts is considered in light of general insurance rules. After analyzing different views in Iran's legal system, it seems that according to the provisions of Articles 13 and 15 of the Insurance act 1937, it is possible to grant the right to terminate the contract to the insurer in cases of unjustified deviation. Failure to report the deviation, without distorting the validity of an insurance contract exempts the insurer from compensation for the damages after deviation. According to Article 15, the policy holder must inform the insurer within five days from the date he notifies about the incident that otherwise proves that due to the incident he was not able to inform the insurer.

Failure to submit a deviation report to the insurer is an action that is recognized in English law as a violation of the good faith principle and creates the right of termination for the insurer. In Iranian law according to the regulations provided in various provisions, failure to report to the insurer is considered a breach of good faith and gives the insurer the right to terminate the contract. Even in cases where one of the parties violates his contractual obligations with bad faith, lawyers focus the discussion on the violation of good faith because if it deems as fraudulent will result in the



nullity of the contract, and this is a result that is not accepted in marine insurance law.

### **References**

- Bennett, Howard (2007), the law of marine insurance, Oxford University Press.
- Bundock , Micheal (2014),Shipping law handbook, informa law from Routledge.
- Khodabakhshe, Abdollah ( 2005), interpretation of insurance contracts, journal of new insurance world, No.86.
- Shavell, Steven (2004) Foundations of economic analysis of law, Harvard University Press.
- Soyer,Baris (2014),Marine insurance fraud, Informa law.
- Alizadeh, Mahdi (2005), The basics of the principle of good faith and fair treatment in contracts, Journal of theology and law, No. 15&16.
- Asgary, Alireza, Hoseini, Hadi (2014), responsibility of the ship owner and insurance conditions, Iranian and International Comparative Legal Research Journal, No. 23.
- Baatz, Yvonne (2018), matitime law, Informa law.
- Babaei, Iraj (2017), insurance law, Samt press.
- Baradaran, Leila (2006), Insurance contract liquidation cases, insurance research Journal, No 81.
- Cooke Julian, Young Tim, Ashcroft Michael, Taylor Andrew, Kimball John, Martowski David, Lambert LeRoy, Sturley Michael (2014), voyage charters, informa law from Routledge.
- Dunt, John (2009),marine cargo insurance,Informa law.
- Gholami, Mahdi, Shahbazinia, Morteza (2016), The position of the impact of fraud in relation to legal principles and rules, Journal of Iranian and International legal research, No 34.
- Gurses, Ozlem (2015), marine insurance law, routledge.
- Hajipour, Morteza (2011), The role of good faith in the contract, Private Law Studies Journal ,Vol. 41, No.4.



*The effect of ship deviation from the route in sea*  
*Sara Aghaei*

---

- Hasani, Alireza (2011), Legal dimensions of marine cargo insurance and a comparative comparison with English law, Bar association journal, No. 213.
- Hodges, Susan (1996), Law of marine insurance, routledge.
- Hudson, Geoffrey, Sturges, Madge, Tim, Kith (2012), marine insurance clauses, informa law.
- Izanloo, Mohsen (2017), The doctrine of deviation in maritime law: a comparative study in Iranian, British and American laws and international conventions, international legal journal, No. 56.
- Izanloo, Mohsen, Lotfi, Ehsan (2011), on the policyholder's obligation to inform, Journal of Private Law Studies, Vol. 41, No. 3.
- Mandaraka, Aleka (2013), modern maritime law, Routledge-Cavendish.
- Marine insurance (2017), Institute of Chartered Shipbrokers, London, <https://shippingbooks.com/product/marine-insurance>
- Masum billah, Muhammad (2014), effects of insurance on maritime liability law, springer.
- Najafi asfad, Morteza (2018), Maritime law based on Iran's maritime law and international maritime regulations, Samt press.
- Noussia, Kyriaki (2007), the principle of indemnity in marine insurance contracts, Springer.
- Ranjbary, Meisam (2018), Dealing with insurance fraud, Case report publication, No. 46.
- Sabri, Shahram, Vakilzadeh, Rahim (2021), Violation of the principles governing contracts in relation to fraud with analyzing the Iranian and England legal system, journal of fiqh and basics of Islamic law, No. 3.
- Sadghi Neshat, Amir (2012), marine insurance law, Mizan press.
- Shabani, Hasan (2009), The scope of the policyholder's obligation to disclose the facts in the insurance contract, justice journal, No. 11 & 12.
- Soyer, Baris (2001), warranties in marine insurance, routledge.
- Spanjaart, Michiel (2018), multimodal transport law, routledge.



Todd, Paul (2016), principles of the carriage of goods by sea, Routledge.

Wilson, John (2010), carriage of goods by sea, British Library Cataloguing.

Yazdanian, Alireza (2010), Basis of carrier civil liability in goods transportation contracts in Iranian and French law, Legal Journal of Justice, No. 73.

