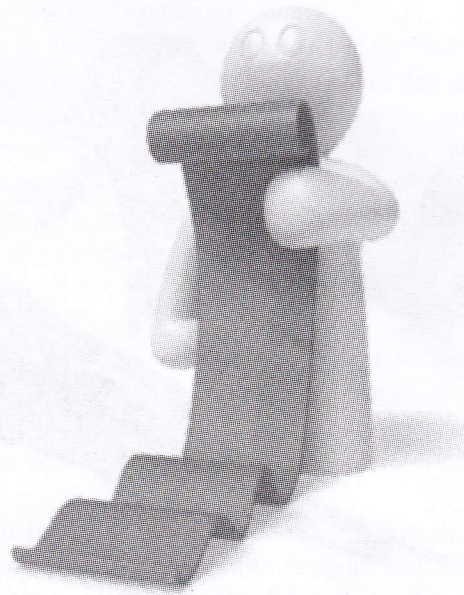


# Conditions apply



**K. Govindan**

*CEO & Director*

Insutech Insurance Broking Services Pvt Ltd,  
Ahmedabad

**C**ondition is an essential feature of a contract whether written or unwritten, unilateral, bilateral or multilateral. A condition signifies that situation or event, the occurrence or nonoccurrence of which triggers deprivation of or empowerment with rights to parties to the contract.

A condition stipulates that existence or nonexistence of a situation would determine the nature and extent of performance of the contract. An insurance contract is often referred to as a contract of adhesion in as much as all terms and conditions of an insurance contract are set by one party, the insurer, leaving the other party, insured, with only a Hobson's choice.

All the same, this would seem in consequential when we realize that an insurance contract is virtually an anthology of mandated conditions rather than an agreement to which reference if found any would only be formalin nature. Normally, condition in an insurance contract connotes situation; a situation leading to conclusion of a contract (condition precedent) and the situation that would cause performance or declinature of the contract (condition subsequent). A condition also signifies stipulation which

may be an assertion of certain material facts. There are inimical conditions which have the potential of spoiling or diluting the core intent and efficacy of a contract.

A condition may be either implied or express. Express conditions are specifically stated in the contract whereas implied conditions are unwritten conditions and therefore are to be read into a contract. Implied conditions are necessarily presumed by law taking into consideration certain pertinent facts and circumstances of a contract.

Thus, conditions implied and express, invariably apply in the case of an insurance contract. But implied conditions in an insurance contract have a special significance because they are based on the fundamental principles of insurance. Therefore, it is all the more imperative that one should know what the implied conditions are.

As discussed above, the implied conditions though unwritten are essentially legal presumptions based on reasonable understanding of the circumstances of a contract and it does not therefore behave any one to construe that whatever is not expressly stated in a contract can be brought into it by implication. The important implied conditions in an





insurance contract are derived from the basic principles of insurance namely, Utmost Good Faith, Insurable Interest, legality of subject matter of insurance, etc.. The doctrine of Utmost Good Faith casts on the insured the sublime duty to disclose all material facts relating to subject matter of insurance.

The principle obligates the insurer also to observe Utmost Good Faith during the entire period of contract. The principle of insurable interest presumes that the subject matter of insurance exists and that insured has insurable interest in the subject matter. Breach of these implied conditions will render the contract voidable or void as from inception depending upon the severity of the breach.

The conditions expressly stated in a contract of insurance are express conditions. Often it can be observed from an insurance contract that the insuring clause itself is obfuscated by restricting conditions that precede, follow or interpolate. Then there are specific exclusion conditions and a list of excepted perils.

What is more, the limiting conditions in an insurance contract also appear as Provisos, Exclusions, Exceptions, Warranties, Stipulations, or with prefixes such as "subject to", "provided that", etc. While some standard conditions that generally appear in an insurance contract are time-tested and legally recognized and therefore are considered unalterable, one should however be wary of certain stipulations and conditions incorporated in specific insurance contracts, maybe as per Company's underwriting policy or as dictated by individual underwriter's wisdom.

In fact, it can be observed that a sizeable number of customer grievances emanates from such conditions or stipulations or riders of which the customers perhaps have no knowledge or significance thereof not sufficiently understood. Few examples of such stipulations found in insurance policies are given below:

- a) Exclusion condition in a Health Insurance policy stipulate that any ailment/disease/injuries that the person is suffering from, (treated/ untreated, declared or not declared in the proposal form) while taking policy for the first time are excluded. Further any complications arising from pre-existing ailment/disease/injuries will be considered as a part of that pre-existing health condition. Thus the pre-existing disease exclusion condition assumes a wider connotation in as much as even a disease remotely connected to the preexisting disease being liable to be interpreted as complication or sequela of such pre-existing disease, will be excluded. A number of diseases such as heart ailments, kidney diseases, etc. are conveniently interpreted as complications of diabetes or Hypertension though such view is contradicted by medical experts, thus causing avoidable customer disputes.
- b) Some Health Insurance Policies contain a clause that cost of surgical/medical treatment that is reasonable and necessary will be reimbursed. Relying on this clause, deductions are effected from the claim amount on the pretext that the charges are not reasonable. In absence of any definition in the policy as to what constitutes reasonableness, a contrary interpretation of the term can easily be made on the basis of subjective presumption. In the peculiar circumstance of a Medical Practitioner or Medical Institution charging for the services rendered to a patient, it is only hypothetical for any one in absence of any notified regulations, even to presume the reasonableness or otherwise of charges levied.
- c) There is stipulation in some Health Insurance Policies that the claims will be paid as per PPN agreement with the Hospitals. Under PPN (Preferred Provider Network) cashless facility for Hospitalization would be provided at those hospitals which have agreed to a preferential pricing for customers. In number of cases, the so-called PPN Hospitals refuse compliance of the provisions of agreement and charge expenses excessively. Insurers find themselves in a predicament as they are neither able to enforce the agreement with the Hospitals nor are they in a position to satisfy the customers settling their claim in full. Quite a number of customer grievances in this connection continue to be reported to the insurance



offices or various Offices of Ombudsman.

- d) Marine Insurance policies issued by some insurers exclude loss or damage to cargo if the carrying vehicle happens to be overloaded. Obviously, this is an unreasonable and irrelevant condition in so far as it excludes any loss if the vehicle is overloaded, irrespective whether the loss is caused by overloading or by any other cause independent of overloading in spite of the fact that the insured normally does not have knowledge of or control over such overloading by carriers.
- e) Some Personal Accident Policies contain an exclusion condition to the effect that Insurer shall not be liable in respect of accidental injuries if at the material time, the insured was driving a vehicle without valid driving licence.
- f) Overseas Medical Policy of some insurers lays down that the limit of liability shall be restricted to say, USD 100000 per sickness, disease or accident sustained or contracted during the period of insurance whilst on a trip abroad, even though the sum insured under the policy may be USD 500000. The policy further states that this limit would apply even if there is more than one hospitalization or medical expenses in connection with the same disease, illness or accident. Apparently, by this condition, the effective sum insured under the policy is reduced to USD 100000 as there is only a very remote possibility of the insured person having to undergo treatment for more than one disease or accident during period of one overseas trip.
- g) Then there are contrary conditions, ambiguous

conditions and also some "come along" conditions. The position with regard to ambiguous or contrary conditions is very clear in that as per the doctrine of "Contra Proferentem" which applies in the case of insurance contract, the ambiguous term shall be interpreted in favour of the insured. The "Come along" conditions are called so because they are caused to appear in a policy along with other important conditions simply as a matter of practice although they have no relevance whatsoever to the particular contract.

Nonetheless, conditions are essential elements of a contract more so of insurance contract. As discussed above, conditions in an insurance policy illustrate the scope and effectiveness of insurance protection afforded.

Therefore, it is all the more important that one should be aware of conditions incorporated in the policy of insurance he holds because **CONDITIONS NECESSARILY APPLY** throughout the currency of policy and ignorance thereof will only cause avoidable frustration and embarrassment in the event of loss.

While it is certainly desirable that insured should be by and large insurance savvy, insurers and other service providers in the field should also dutifully strive to enlighten the insuring public about nitty gritty of insurance cover before sale is effected.

The Insurance Regulatory & Development Authority (IRDA) has taken many initiatives with a view to improving insurance literacy in the country. IRDA has recently started a separate website for providing information to the public as regards various insurance covers and other related issues.

If an insured finds that the policy issued to him contains ambiguous conditions or terms which are contrary to that proposed for, as per the provision of "Free Look Period" the policy can be returned to the insurer for amendment or cancellation in which case full refund of premium will be allowed.

The opening up of the insurance industry has led to cut throat competition between the players with the result that the insuring public is endowed with enough opportunities to select suitable cost-effective insurance products and choose their service providers. Ultimately, informed buying of insurance products by customers alone will guarantee optimum customer satisfaction and enhanced customer confidence in tandem with accelerated growth of the industry.

