

Definition & format of an Indemnity Bond in India

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Section 124 of the Indian Contract Act of 1872 outlines a contract of indemnification. The terms of *Section 10* of the Indian Contract Act of 1872, which apply to this contract, must be met just like those of other contracts. A contract of indemnity is a legal arrangement between two parties in which one commits to make compensation for losses suffered by the other party or by a third party.

What are the rights of the indemnity holder?

Section 125 of the Indian Contract talks about the following rights:

- Right to recover Damages
- Right of Recovering Costs
- Right of recovering Sums

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Prior until now, people felt much more comfortable with their obligations. Word of mouth was reliable enough to inspire confidence. However, as people's levels of confidence began to decline, they desired to have everything in writing. Additionally, many felt compelled to reduce risk exposure in return for something. As this idea gained popularity in society, it was thought that it should also have a place in the law. As a result, the notion of indemnity was explored in the law, and legislation was created to address the idea.

For instance, Mr A and Mr B agree that Mr A will be responsible for repaying the loan amount if Mr C is unable to make payments on it. The agreement between Mr A and Mr B is an indemnity agreement.

Mr A is the indemnifier in this situation, Mr B is the creditor, and Mr C is the indemnity holder since Mr A agrees to defend Mr B to pay the loan. This illustration clarifies the relationship between the principal debtor (the indemnity holder) and surety (the indemnifier) in the indemnity contract.

The author has thoroughly researched the Deed of Indemnity, its components, and the prerequisites for its legality, enforceability, and validity.

What is a Deed of Indemnity or Indemnification?

An indemnity clause in a contract between two parties specifies a type of insurance payout for losses and damages. In the Deed of Indemnity, one party will agree to assume legal responsibility for any losses or damages suffered and to provide financial recompense for any prospective losses or damages caused by the other party.

An insurance policy is the most prominent representation of indemnity in the financial sense. For instance, in the case of home insurance, homeowners pay an insurance company for coverage in exchange for being compensated in the event of the worst-case scenario. The homeowner is the indemnitee, and the insurance is the indemnifier who guarantees to pay out compensation. However, indemnity is most often employed legally as a defence against culpability for any damages.

- **How does it work?**

Indemnity is written into a contract using an ‘indemnity clause’. What is covered within this clause depends entirely on the specifics of each agreement.

Furthermore, some contracts may also include a letter of indemnity. This letter guarantees that both parties will meet the terms and conditions of the contract. If these terms and conditions aren’t satisfied, the repayment will need to be made to the indemnified party.

For instance, when indemnity must be paid, the repayment is made in the form of cash, repairs or replacements. The type of compensation depends entirely on the terms of the agreement.

English v. Indian Law on Deed of Indemnity

In the old English law, indemnity was described as "a promise to save a person harmless from the consequences of an act." Such a guarantee can be spoken or implied by the facts of the situation." This viewpoint was demonstrated in the case of *Adamson v. Jarvis*.¹

In this case, the plaintiff, an auctioneer, sold some things at the request of another person. The commodities did not belong to the person, and the rightful owner held the auctioneer accountable for them. In turn, the auctioneer sued the defendant for compensation for the loss he suffered as a result of acting on his instructions. It was decided that because the auctioneer relied on the defendant's orders, he was entitled to believe that if what he did was improper, the defendant would compensate him.

This broadened the definition of indemnity to include a promise of indemnity for loss caused by any cause whatsoever. Following this case, the law was further altered by the case of *Dugdale v. Lowering*.² In this case, the court determined that the plaintiff was entitled to recover indemnity because the plaintiff had no intention of sending the trucks without indemnity. So, in this situation, there is an implied commitment that the defendant consented to when he stated that he returned all of the trucks to him, and it is naturally assumed that he agreed to the indemnification.

Thus, save for life insurance, any sort of insurance was a contract of indemnity. The Indian Contract Act of 1872, on the other hand, limits the scope by defining the contract of indemnification.

¹ (1827) 4 Bing 66

² (1875) 32 LT 155

In general, a Deed of Indemnity is a broader concept in English law than in Indian law because, in English law, all items are considered that are related not only to the activities of some individual but also to some incident or disaster, such as a fire or an act of God.

Deed of Indemnity under the Indian Contract Act

Indemnity law is a branch of Indian contract law that is principally regulated in *Section 124* of the Indian Contract Act of 1872. Thus, when two parties engage into a Deed of Indemnity in accordance with the provisions of this Section, they are obligated to indemnify the other party if and when they suffer any loss or harm, whether caused by the promisor himself or by the behaviour of any third party. The indemnity holder is entitled to this compensation and to have the indemnity deed legally enforced. The indemnity holder's entitlement to reclaim from the indemnifier the indemnity sum, attached interests and costs, and recurrent expenses. *Section 125* of the Indian Contract Act of 1872 grants the indemnity holder some powers.

For example, X may agree to act as a guarantor for his student son Y, which would require X to make payments on Y's behalf if Y was unable to pay his rent and monthly charges to Z (a PG), compensating Z for the damages Z suffered.

A. Historical background of Deed of Indemnity

The birth of the indemnity contract occurred in India in the case of *Osman Jamal & Sons Ltd v. Gopal Purshotam*³.

- Facts of the case: In this instance, the plaintiff company entered into a contract in July 1925, and the contract stipulated, among other things, that the plaintiff company would function as a commission agent for the defendant firm for the purchase and sale of hessian and gunnies. It was also agreed that the plaintiff firm would be compensated for all losses incurred as a result of these transactions. The plaintiff firm

³ AIR 1929 Cal 208.

purchased some hessian cloth from Maliram Ramjets on December 2, 1925, but the defendant firm was unable to take delivery of the hessian cloth because the price of the hessian cloth had not been paid on time. As a result, the seller resold the goods for a very low price, less than the agreed price. As a result, the plaintiff corporation was sued for the remaining funds. Under the indemnity contract, the plaintiff company claimed this money from the defendant firm. However, the defendant firm refused to pay the money and claimed that because of the plaintiff, the payment could not be made by the defendant firm.

- Held: The court decided that because the defendant promised to pay for the lost price, it was the defendant's responsibility to make the payment to the plaintiff.

Secretary of State v. Bank of India Ltd⁴

- Fact of the case: In this case, an agent had a counterfeit endorsement on a government promissory note. The agent supplied the promissory note to the bank with malafide intent, but the bank, in good faith, used that promissory note for a redeveloped and issued from" the public debt office. Meanwhile, the true owner of the promissory note sued the secretary of state for the conversion of the promissory note. Following that, the secretary of state sued the bank on the grounds of implicit indemnity.
- Held: The court ruled that when a person performs an act at the request of a third party, and that act breaches the right of the third party, the person who performs the act is allowed to seek restitution from the person who requested the act.

In this situation, we saw an implicit contract of indemnity. The legislation was further altered, where the original rule under English law was that if the indemnity holder suffered any type of damage, he might seek indemnification from the indemnifier. However, this premise was altered in England, as stated above, with reference to specific cases. Specifically in India, Justice Chagla detailed the transition process in the landmark case of *Gajanan Moreshwar v. Moreshwar Madan Mantri*.

Gajanan Moreshwar v. Moreshwar Madan Mantri⁵

⁴ LD AIR (1938) PC 191

⁵ , AIR 1942Bom 302

- **Facts of the case:** In this case, Gajanan Mores owned land in Bombay but leased it for a long time. Gajanan Moreshwar was temporarily assigned to Moreshwar Madan Mantri. M Madan began building on the property and ordered some material from K D Mohandass; however, when K D Mohandass demanded payment for the goods, M Madan refused and got G Moreshwar to write a mortgage document in favour of K D Mohandass. The interest rate was set, and G Moreshwar placed a lien on his property. The deed specified a date for the principal amount's return. However, M Madan decides to pay the principal amount as well as the interest in order to be released from a mortgage deed, and sets a specific deadline for doing so. M Madan did not pay anything to K D Mohandas on a predetermined day, and G Mores had to pay some interest to K D Mohandas. M Madan did not pay despite numerous requests. Hence G Moreshwar decided to prosecute M Madan for the same.
- **Held:** In this case, the court ruled that if the indemnity holder has asserted any obligation and the nature of that responsibility is absolute, the indemnity holder may request that the indemnifier satisfy that responsibility or pay the amount. It is not required that a promise cover the loss caused.

B. Validity of Deed of Indemnity

A Deed of Indemnity is valid if it is a valid contract under *Section 10* of the Indian Contract Act, 1872. The following are the components of a legal contract:

- **Offer and acceptance of a proposal:** According to *Section 10* of the Indian Contract Act of 1872, the first step towards forming a valid contract is to submit a proposition (offer) to another party and have their acceptance of this offer approved.
- **Consensus ad idem or meeting of minds:** The legal maxim '*consensus ad idem*' literally translates as “meeting of minds.” It refers to the mutual consent of both contract parties in the context of a contract.
- **Competency of parties:** *Section 11* of the Indian Contract Act of 1872 addresses the competency of contract parties.

What to include in a Deed of Indemnity

It is critical to include the following in a Deed of Indemnity in order for it to be complete and serve its intended purpose effectively:

1. **Clear definitions:** Precise definitions are required for a better understanding and interpretation of an indemnification deed. It is extremely necessary to include specific conditions in an indemnity agreement in the most straightforward way possible. Provisions such as indemnity deed liability, indemnity holder claims, the establishment of definite legal relationships, and other collateral provisions.
2. **Parties to the deed:** To ensure clarity and easy of understanding, it is critical to include a language describing the parties to an indemnification deed. Thus, when two parties execute a deed of indemnification, a phrase is placed in the document to explain the proper names and basic details of the two parties, as well as to identify which party they are. This clause explicitly establishes both parties' indemnity holder-indemnifier relationship.
3. **Interpretation clause:** Any contract must have an interpretation provision. It aids in comprehending the contract in its entirety. A contract is formed when the parties reach an ad idem consensus (shared comprehension of the clauses and phrases in the same sense). The interpretation provision ensures that the parties' mutual motive is not lost owing to judicial involvement. Whenever a dispute occurs between the parties and the contents of the indemnity deed are contested in a court of law with opposing arguments, the interpretation clause aids in construing the indemnity deed and comprehending it in the real sense in which it was executed at the time of execution.
4. **Indemnity clause:** The indemnity clause is, as previously stated, the most important clause in any indemnity document. It establishes the essence of the indemnity deed by specifying the circumstances under which the deed will be signed and the performance that the parties will be expected to provide.
5. **Sunset clause:** A sunset clause, as the name implies, specifies the maximum time limit for which the agreement is valid. After a certain point, the parties may opt to annul the contract or terminate its terms and bindingness on the parties.
6. **Dispute resolution clause:** One of the most successful clauses in any contract is a dispute resolution clause. This is also true for an indemnity deed. A dispute resolution clause reduces the likelihood of litigation by requiring parties to first attempt alternative dispute resolution methods to resolve problems.

Format of the Deed of Indemnity

Here are a few sample formats for the Deed of Indemnity.

Conclusion

The author discusses indemnity under both English and Indian law in this article. Essentially, the indemnification contract is built on the concept of common law principles. Everyone is busy and hustling to make money in today's fast-paced environment. A deed of indemnity is required in both business and private transactions to save time and protect an individual's hard-earned money. A deed of indemnification made on predetermined terms secures a transaction and prevents one party from incurring unnecessary damages. As a result, it is prudent to obtain an indemnification agreement when engaging in transactions that carry a risk of loss or damage.

The legal provisions governing an indemnity deed have been established in the Indian Contract Act of 1872, particularly *Section 124*. Aside from that, a deed of indemnity must be a legitimate contract under Section 10 of the Indian Contract Act of 1872. An indemnity agreement can be expressed or implied. Its enforceability, however, will be determined by the facts and circumstances of the case and will be subject to judicial interpretation.

Frequently asked questions (FAQs)

1. Is there an example indemnity bond format for standard procedures?

There is no common indemnity bond sample format. The format of a property indemnity bond differs from that of a death claim. As a result, it is critical to obtain the proper indemnification bond.

2. Is an indemnification agreement legally binding?

Yes, a deed of indemnification is legally binding on both parties if written and executed in accordance with the terms of the Indian Contract Act of 1872. When a deed of indemnification is made in accordance with Indian contract laws and in

accordance with Section 124 of the Indian Contract Act of 1872, it becomes legally binding.

3. Does an Indemnity Bond require stamp paper?

Ans. Yes, stamp paper is required for the indemnity bond, and the cost is determined by state regulations.

4. Does an indemnity deed expire?

Yes, an indemnification deed is normally made for a set amount of time. The sunset clause, which regulates the expiry dates of these indemnification deeds, is usually included in the deeds.