

CMI BRIEF GUIDELINES RELATING TO GENERAL AVERAGE

(approved by Comité Maritime International, International Union of Marine Insurance & International Chamber of Shipping)

What is General Average?

(A brief explanation prepared for the assistance of cargo owners/receivers)

INTRODUCTION

If during a maritime voyage a ship experiences an accident which results in both the ship and her cargo being at risk of being lost, measures will be taken to save the ship and cargo. The losses suffered as a result of these measures are dealt with as general average.

General average is an internationally recognised system for sharing losses from which both the ship and her cargo have directly benefitted. What losses are to be considered as general average is established by the terms of the bill of lading (or other transport document) under which the goods have been shipped; most bills of lading provide for a set of rules called the York-Antwerp Rules to apply in relation to general average.

The assessment of allowable expenses is carried out by an independent professional called an average adjuster, who also divides the total general average amount in proportion to the value of all property that has been saved and reaches its destination.

The preparation of the final adjustment usually takes some time after the voyage is completed. Therefore, it is necessary for the concerned in cargo to provide written security in which they undertake to ultimately pay whatever contribution is legally and properly due from them. If the cargo is not insured, the cargo owner might additionally be asked to provide a cash deposit.

BACKGROUND INFORMATION

The principle of general average has its origin in the earliest days of maritime trade, and is based on simple equity. For example, if one merchant's cargo is jettisoned to save the ship and the rest of the cargo, the shipowner and other cargo interests would all contribute to make good the value of the jettisoned cargo to its owner. The word "average" is an ancient term meaning "loss", thus a "general" average involves all the interests in a maritime voyage.

General average varied in its development in different countries, so that substantial differences existed in law and practice throughout the world. In view of the international character of shipping the disadvantages of this were obvious, and there began a series of attempts to obtain international uniformity. This ultimately led to the acceptance of a set of rules, called the York-Antwerp Rules, governing the losses which can be allowed as general average and how they are to be apportioned between the owners of the property saved. These rules are updated from time to time.

Rule A of the York-Antwerp Rules defines a general average act as follows:

"There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure."

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The losses suffered may be either sacrifices of property for the safety of all the remaining property or costs incurred to save all of the property involved; both termed for the common safety. The York-Antwerp Rules have extended these principles to include certain expenses at a port of refuge while repairs to the ship, which are necessary for the safe continuance of the voyage to destination, are carried out.

GENERAL AVERAGE SECURITY

As already noted, because the general average losses cannot be immediately calculated and apportioned, maritime law in most countries gives the shipowner a possessory lien over the cargo. This means that the shipowner may withhold delivery of the cargo until satisfactory security is provided in respect of the contribution to general average ultimately determined as legally and properly due in respect of the cargo.

The usual security requirements are as follows:

- (a) Signature by the owner or receiver of the cargo to a General Average Bond (an undertaking that they will pay the contribution legally and properly due in respect of their cargo) and
- (b) either:
 - (1) A cash deposit for an amount estimated by the average adjuster to cover the likely general average contribution (usually expressed as a percentage of the cargo's invoice value). This deposit will be held in a special account pending the finalisation of the general average when any excess will be refunded to the depositor.

or

- (2) If the cargo is insured, a General Average Guarantee signed by a reputable insurer will be accepted by the shipowner in place of the cash deposit. The insurer will then take over the handling of the general average aspects of the case through their normal claims procedures.

These formalities are usually overseen by the average adjuster who will advise that the cargo may be released, so far as general average is concerned, once they are completed. On completion of these steps the cargo should be released in respect of general average for delivery in the usual way. Any remedies and defences from the contracts of carriage remain unaffected by the provision of security under the CMI approved forms.

Recommended standard forms of the General Average Bond and General Average Guarantee have been developed by the Comité Maritime International (CMI) and approved by the International Union of Marine Insurance and the International Chamber of Shipping. They can be found on the CMI website (www.comitemaritime.org), but forms with relevant case specific information already inserted should be provided by the appointed average adjuster.

It should be noted that where salvors have been engaged to place a ship and her cargo in safety, the salvors may request additional security in relation to the value of their services.

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REQUIRED ACTIONS

In the event of a general average act the shipowners will declare general average and appoint an average adjuster to collect security. Cargo interests will receive a general average notice from the average adjuster describing the security requirements in a particular case. Generally, cargo interests will need to take the following steps:

- a) Complete, sign and return the General Average Bond to the average adjuster.
- b) Attach the invoice for the goods to the signed bond.
- c) If the cargo is insured, pass the notice to the insurers who will complete the General Average Guarantee and take over further handling of the matter.
- d) If the cargo is not insured, advise the average adjuster and follow their instructions to provide a cash deposit as security.

On completion of these steps the cargo should be released in respect of general average for delivery in the usual way.

It is important that the general average notice is read carefully as in some cases a General Average Bond may not be necessary; but as already mentioned separate security to salvors may be required.

Details of any loss or damage to the cargo should be sent to the insurer and the average adjuster as soon as possible; this may reduce the amount to be paid towards general average.

Further and more detailed information concerning general average, its procedures and the roles of the parties involved may be obtained from the “CMI Guidelines relating to General Average” which can be downloaded at www.comitemaritime.org.

