

# YORK-ANTWERP RULES 2016

## Rule of Interpretation

In the adjustment of general average the following Rules shall apply to the exclusion of any law and practice inconsistent therewith.

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

## Rule Paramount

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.

## Rule A

1. 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.
2. General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

## Rule B

1. There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

2. If the vessels are in common peril and one is disconnected either to increase the disconnecting vessel's safety alone, or the safety of all vessels in the common maritime adventure, the disconnection will be a general average act.
3. Where vessels involved in a common maritime adventure resort to a port or place of refuge, allowances under these Rules may be made in relation to each of the vessels. Subject to the provisions of paragraphs 3 and 4 of Rule G, allowances in general average shall cease at the time that the common maritime adventure comes to an end.

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**Rule C**

1. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.
2. In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.
3. Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be allowed as general average.

**Rule D**

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the common maritime adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

**Rule E**

1. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.
2. All parties to the common maritime adventure shall, as soon as possible, supply particulars of value in respect of their contributory interest and, if claiming in general average, shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution, and supply evidence in support thereof.
3. Failing notification, or if any party does not supply particulars in support of a notified claim, within 12 months of the termination of the common maritime adventure or payment of the expense, the average adjuster shall be at liberty to estimate the extent of the allowance on the basis of the information available to the adjuster. Particulars of value shall be provided within 12 months of the termination of the common maritime adventure, failing which the average adjuster shall be at liberty to estimate the contributory value on the same basis. Such estimates shall be communicated to the party in question in writing. Estimates may only be challenged within two months of receipt of the communication and only on the grounds that they are manifestly incorrect.
4. Any party to the common maritime adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the average adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within two months of receipt of the recovery.

**Rule F**

Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

**Rule G**

1. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the common maritime adventure ends.
2. This rule shall not affect the determination of the place at which the average adjustment is to be prepared.
3. When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the common maritime adventure had continued in the original ship for so long as justifiable under the contract of carriage and the applicable law.
4. The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall be limited to the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense. This limit shall not apply to any allowances made under Rule F.

**Rule I – Jettison of Cargo**

No jettison of cargo shall be allowed as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

**Rule II – Loss or Damage by Sacrifices for the Common Safety**

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be allowed as general average.

**Rule III – Extinguishing Fire on Shipboard**

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be allowed as general average; except that no allowance shall be made for damage by smoke however caused or by heat of the fire.

**Rule IV – Cutting Away Wreck**

Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be allowed as general average.

**Rule V – Voluntary Stranding**

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

**Rule VI – Salvage Remuneration**

- (a) Expenditure incurred by the parties to the common maritime adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure and subject to the provisions of paragraphs (b), (c) and (d)
- (b) Notwithstanding (a) above, where the parties to the common maritime adventure have separate contractual or legal liability to salvors, salvage shall only be allowed should any of the following arise:
  - (i) there is a subsequent accident or other circumstances resulting in loss or damage to property during the voyage that results in significant differences between salvaged and contributory values,
  - (ii) there are significant general average sacrifices,
  - (iii) salvaged values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses,
  - (iv) any of the parties to the salvage has paid a significant proportion of salvage due from another party,
  - (v) a significant proportion of the parties have satisfied the salvage claim on substantially different terms, no regard being had to interest, currency correction or legal costs of either the salvor or the contributing interest.
- (c) Salvage expenditures referred to in paragraph (a) above shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

- (d) Special compensation payable to a salvor by the shipowner under Article 14 of the International Convention on Salvage, 1989 to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as SCOPIC) shall not be allowed in general average and shall not be considered a salvage expenditure as referred to in paragraph (a) of this Rule.

**Rule VII – Damage to Machinery and Boilers**

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be allowed as general average.

**Rule VIII – Expenses Lightening a Ship when Ashore, and Consequent Damage**

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.

**Rule IX – Cargo, Ship's Materials and Stores Used for Fuel**

Cargo, ship's materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be allowed as general average, but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

**Rule X – Expenses at Port of Refuge, etc.**

- (a) (i) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be allowed as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be allowed as general average.
- (ii) When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be allowed as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

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- (b) (i) The cost of handling on board or discharging cargo, fuel or stores, whether at a port or place of loading, call or refuge, shall be allowed as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.
- (ii) The cost of handling on board or discharging cargo, fuel or stores shall not be allowable as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.
- (c) Whenever the cost of handling or discharging cargo, fuel or stores is allowable as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be allowed as general average. The provisions of Rule XI shall apply to the extra period of detention occasioned by such reloading or restowing.
- (d) When the ship is condemned or does not proceed on her original voyage, storage expenses shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

**Rule XI – Wages and Maintenance of Crew and Other Expenses Putting in to and at a Port of Refuge, etc.**

- (a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be allowed as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).
- (b) (i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extra-ordinary circumstances which render that entry or detention necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be allowed in general average.

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- (ii) Fuel and stores consumed during the extra period of detention shall be allowed as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.
  - (iii) Port charges incurred during the extra period of detention shall likewise be allowed as general average except such charges as are incurred solely by reason of repairs not allowable in general average.
  - (iv) Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be allowable as general average, even if the repairs are necessary for the safe prosecution of the voyage.
  - (v) When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.
- (c) (i) For the purpose of these Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.
- (ii) For the purpose of these Rules, port charges shall include all customary or additional expenses incurred for the common safety or to enable a vessel to enter or remain at a port of refuge or call in the circumstances outlined in Rule XI(b)(i).
- (d) The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:
- (i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;
  - (ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);
  - (iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b), provided that when there is an actual escape or release of pollutant substances, the cost of any additional measures required on that account to

prevent or minimise pollution or environmental damage shall not be allowed as general average;

(iv) necessarily in connection with the handling on board, discharging, storing or reloading of cargo, fuel or stores whenever the cost of those operations is allowable as general average.

**Rule XII – Damage to Cargo in Discharging, etc.**

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be allowed as general average, when and only when the cost of those measures respectively is allowed as general average.

**Rule XIII – Deductions from Cost of Repairs**

- (a) Repairs to be allowed in general average shall not be subject to deductions in respect of “new for old” where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.
- (b) The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship. No deduction shall be made in respect of provisions, stores, anchors and chain cables. Drydock and slipway dues and costs of shifting the ship shall be allowed in full.
- (c) The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the 24 months preceding the date of the general average act in which case one half of such costs shall be allowed.

**Rule XIV – Temporary Repairs**

- (a) Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be allowed as general average.
- (b) Where temporary repairs of accidental damage are effected in order to enable the common maritime adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.



- (c) No deductions “new for old” shall be made from the cost of temporary repairs allowable as general average.

**Rule XV – Loss of Freight**

Loss of freight arising from damage to or loss of cargo shall be allowed as general average, either when caused by a general average act, or when the damage to or loss of cargo is so allowed.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

**Rule XVI – Amount to be Allowed for Cargo Lost or Damaged by Sacrifice**

- (a) (i) The amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final delivery under the contract of carriage.
- (ii) The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.
- (b) When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be allowed in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

**Rule XVII – Contributory Values**

- (a) (i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the common maritime adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final delivery under the contract of carriage.
- (ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. Any cargo may be excluded from contributing to general average should the average adjuster consider that the cost of including it in the adjustment would be likely to be disproportionate to its eventual contribution.

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- (iii) The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.
- (b) To these values shall be added the amount allowed as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average. Where payment for salvage services has not been allowed as general average by reason of paragraph (b) of Rule VI, deductions in respect of payment for salvage services shall be limited to the amount paid to the salvors including interest and salvors' costs.
- (c) In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.
- (d) Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount allowed as general average.
- (e) Mails, passengers' luggage and accompanied personal effects and accompanied private motor vehicles shall not contribute to general average.

**Rule XVIII – Damage to Ship**

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

- (a) When repaired or replaced,  
The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;
- (b) When not repaired or replaced,  
The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not

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general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

**Rule XIX – Undeclared or Wrongfully Declared Cargo**

- (a) Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at the time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.
- (b) Where goods have been wrongfully declared at the time of shipment at a value which is lower than their real value, any general average loss or damage shall be allowed on the basis of their declared value, but such goods shall contribute on the basis of their actual value.

**Rule XX – Provision of Funds**

- (a) The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.
- (b) The cost of insuring general average disbursements shall be allowed in general average.

**Rule XXI – Interest on Losses Allowed in General Average**

- (a) Interest shall be allowed on expenditure, sacrifices and allowances in general average until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.
- (b) The rate for calculating interest accruing during each calendar year shall be the 12-month ICE LIBOR for the currency in which the adjustment is prepared, as announced on the first banking day of that calendar year, increased by four percentage points. If the adjustment is prepared in a currency for which no ICE LIBOR is announced, the rate shall be the 12-month US Dollar ICE LIBOR, increased by four percentage points.

**Rule XXII – Treatment of Cash Deposits**

- (a) Where cash deposits have been collected in respect of general average, salvage or special charges, such sums shall be remitted forthwith to the average adjuster who shall deposit the sums into a special account, earning interest where possible, in the name of the average adjuster.
- (b) The special account shall be constituted in accordance with the law regarding client or third party funds applicable in the domicile of the average adjuster. The account shall be held separately from the average adjuster's own funds, in trust or in compliance with similar rules of law providing for the administration of the funds of third parties.

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- (c) The sums so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto, of the general average, salvage or special charges in respect of which the deposits have been collected. Payments on account or refunds of deposits may only be made when such payments are certified in writing by the average adjuster and notified to the depositor requesting their approval. Upon the receipt of the depositor's approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit.
- (d) All deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

**Rule XXIII – Time Bar for Contributing to General Average**

- (a) Subject always to any mandatory rule on time limitation contained in any applicable law:
  - (i) Any rights to general average contribution including any rights to claim under general average bonds and guarantees, shall be extinguished unless an action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment is issued. However, in no case shall such an action be brought after six years from the date of termination of the common maritime adventure.
  - (ii) These periods may be extended if the parties so agree after the termination of the common maritime adventure.
- (b) This rule shall not apply as between the parties to the general average and their respective insurers.



(FINAL TEXT APPROVED BY CMI ASSEMBLY 6 MAY 2016)

**CMI GUIDELINES RELATING TO GENERAL AVERAGE**

**A) INTRODUCTION**

1. Objective

These guidelines are intended to assist in dealing with general average cases and to provide:

- general background information
- guidance as to recognised best practice
- an outline of procedures

2. Effect of guidelines

These guidelines do not form part of the York-Antwerp Rules; they are not binding and are not intended to over-ride or alter in any way the provisions of the York-Antwerp Rules, the contracts of carriage or any governing jurisdictions.

3. Review and amendment

The first edition of the CMI Guidelines has been adopted by the plenary session of the 42nd International Conference of CMI in New York, May 2016, and ultimately approved by the Assembly of CMI.

In order to monitor the working and effectiveness of the CMI Guidelines, a Standing Committee shall be constituted to consist of:

- A chairman nominated by the Assembly of CMI
- A representative nominated by the International Chamber of Shipping
- A representative nominated by the International Union of Marine Insurance
- Five additional members nominated by the Assembly of CMI

The Standing Committee may recommend changes to the Guidelines as circumstances dictate, which shall be submitted to the Assembly of CMI for approval.

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**CMI GUIDELINES RELATING TO GENERAL AVERAGE**

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**B) BASIC PRINCIPLES**

1. Background

The principle of general average has its origin in the earliest days of maritime trade, and is based on simple equity; 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. The word "average" is a medieval term meaning a "loss". Thus a "general" average involved all the interests on a voyage, whereas a "particular" average affects only one interest. As the doctrine developed various types of losses were added to that of jettison; perhaps the most important step was the recognition that expenditure of money was in principle no different from the sacrifice of property, if it was incurred in similar circumstances and for the same purpose.

General average varied in its development in the different leading maritime countries, so that by the latter part of the 19th century 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 the series of attempts to obtain international uniformity. An International Conference held in York in 1864 produced the York Rules, which were revised at Antwerp in 1877 to become the first set of York-Antwerp Rules.

In a modern context, as well as continuing to provide an equitable remedy when property is sacrificed for the common good, the principles of general average, as now embodied in the York-Antwerp Rules, also continue to perform a useful function in helping to define important borders that lie between:

- Matters that form part of the shipowners' reasonable obligations to carry out the contracted voyage and those losses and expenses that arise in exceptional circumstances.
- Property and liability insurers as their differing responsibilities meet and sometimes merge, in the context of a serious casualty.

Both of these difficult areas benefit from the reservoir of established law and practice that general average provides, helping to secure a degree of certainty that is always the objective of commercial interests.

It is important to appreciate that the York-Antwerp Rules do not have the status of an international convention. They take effect only by being incorporated into contracts of affreightment. The Rules are updated periodically under the auspices of Comité Maritime International, which is made up of national Maritime Law Associations.

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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2. York-Antwerp Rules

The York-Antwerp Rules consist of lettered rules (A-G) and 23 numbered rules . The lettered rules set out various broad principles as to what constitutes general average; the numbered rules deal with specific instances of sacrifice and expenditure and set out detailed guidelines concerning allowances etc.

Broadly speaking, the York-Antwerp Rules have recognised two main types of allowance:

“Common safety” allowances: sacrifice of property (such as flooding a cargo hold to fight a fire) or expenditure (such as salvage or lightening a vessel) that is made or incurred while the ship and cargo were actually in the grip of peril.

“Common benefit” allowances: once a vessel is at a port of refuge, expenses necessary to enable the ship to resume the voyage safely (but not the cost of repairing accidental damage to the ship) for example, the cost of discharging, storing and reloading cargo as necessary to carry out repairs, port charges, and wages etc. during detention for repairs and outward port charges.

The York-Antwerp Rules are prefaced by a Rule of Interpretation which gives priority to the numbered rules when there is a conflict with the lettered rules. For example, Rule C excludes losses due to delay but Rule XI says that certain detention expenses at a port of refuge (e.g. port charges, wages and maintenance) can be allowed; Rule XI takes priority over the lettered Rule C and such expenses can therefore be allowed.

The York-Antwerp Rules also include a Rule Paramount after the Rule of Interpretation, which states as follows:

*"Rule Paramount*

*In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred."*

The burden of proof lies on the party claiming in general average to prove that both the general average act and the amount of any allowance are reasonable. It is suggested that in applying this rule there can be no absolute standard of "reasonableness" and that a situation must be judged on the particular facts prevailing at the time and place of the incident.

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3. General Average events

The following are simple examples of potential general average situations:-

<u>Casualty</u>	<u>Type of sacrifice or expenditure</u>
<i>Grounding:</i>	Damage to vessel and machinery through efforts to refloat. Loss of or damage to cargo through jettison or lightening of the vessel. Cost of storing and reloading any cargo so discharged. Port of refuge expenses.
<i>Fire:</i>	Damage to ship or cargo due to efforts to extinguish the fire. Port of refuge expenses.
<i>Shifting of cargo in heavy weather:</i>	Jettison of cargo. Port of refuge expenses.
<i>Heavy weather, collision, machinery breakdown, or other accident involving damage to ship and resort to or detention at a port:</i>	Port of refuge expenses.  Towage
<i>General:</i>	Payments relating to salvage may also be allowed as general average in any of the above circumstances.

4. Adjustment of general average

The basic principles are:

1. Property at risk

Generally, all the property that is involved in the voyage (or "common maritime adventure") and is at risk at the time of the occurrence giving rise to the general average act is required to contribute to the general average losses and expenses. The contribution is based on a pro rata division according to the value of that property at the end of the voyage.

2. Contributory values

The sharing of general average sacrifices and expenses is achieved by a pro rata division over what the York-Antwerp Rules refer to as "Contributory Values".

The basis for calculation of contributory values and general average losses is the value of the property to its owner at the termination of the adventure. Expenses incurred in respect of the property after the general average act (other than those which are allowed in general average) must be deducted in arriving at the contributory value. This ensures that property contributes according to the actual net benefit it has received, by deducting the expenses it has had to bear to realise the benefit of getting the property at destination.

Since values are assessed as at the end of the voyage, it also follows that the amount of contribution may be varied by further loss or damage to the property

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between the time of the general average act and the arrival at destination. For example, if the property is totally lost due to a subsequent accident it will have no contributory value and will not contribute to the general average.

3. Termination of the voyage

Normally, the "common maritime adventure" is considered to be terminated on completion of discharge of cargo at the port of destination. If there is an abandonment of the voyage at an intermediate port then the adventure terminates at that port. If, because of a casualty, the whole cargo is forwarded from an intermediate port by another vessel the cost of forwarding may be allowable as general average, subject to criteria set out in Rules F and G of the York-Antwerp Rules.

4. Equality of contribution

Equality of contribution must be maintained between the owner of the property sacrificed and the owner of the property saved. In practice this is achieved by the device of adding to the contributory values of property lost or damaged by general average sacrifice the amount allowed (or "made good") in general average in respect of that sacrifice. If this were not done the owner of jettisoned cargo would receive benefit in the form of money from the general average for loss of his goods without participating in or contributing to the general average losses, as can be seen from the following example:

Assume that cargo B worth 1,000 is sacrificed for the common safety. A general average of 1,000 is apportioned over the values of ship and arrived cargo (which are all 1,000). If this were between only those parties arrived, the figures would be:

Ship on	1,000	pays	334
Cargo A on	1,000	"	333
Cargo B on	-	"	-
Cargo C on	1,000	"	333
	<u>3,000</u>	pays	<u>1,000</u>

The result of this apportionment is that after paying their contributions to B the shipowner and merchants A and C would have property with an effective value of 667, whereas merchant B would receive cash amounting to 1,000. This is clearly inequitable, so merchant B also makes a notional contribution to the general average on the amount of the loss made good to him in general average, that is:

Ship on	1,000	pays	250
Cargo A on	1,000	pays	250
Cargo B on	1,000	is liable for	250
Cargo C on	1,000	pays	250
	<u>4,000</u>	pays	<u>1,000</u>

By making Cargo B "contribute" on the basis of the amount made good he will receive 1,000 less 250 = 750, and everyone is now in the same position.

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5. Example adjustment

		<b>General Average</b>	
<b>Shipowners' losses and expenses</b>			
Cost of repairs of damage to vessel's machinery sustained in refloating operations.			US\$ 250,000
Cost of discharging, storing in lighters, and reloading cargo discharged to lighten vessel.			100,000
Salvage paid to tugs for refloating vessel.			1,150,000
<b>Cargo owner's losses</b>			
Value of cargo jettisoned in efforts to refloat.	US\$ 500,000		
Damage to cargo caused by forced discharge, storage and reloading.	100,000		
			<u>600,000</u>
			<u>US\$2,100,000</u>
<b>Apportioned</b>			
<b>Ship</b>			
Arrived value at destination in damaged condition.	US\$6,750,000		
Add allowance in general average for refloating damage.	250,000		
			<u>US\$7,000,000</u>
		pays in ppn.	US\$ 700,000
<b>Cargo</b>			
Invoice value after deduction of loss and damage.	US\$13,400,000		
Add allowance in general average in respect of jettison and damage due to forced discharge.	600,000		
			<u>14,000,000</u>
		" pays in ppn.	<u>1,400,000</u>
			<u>US\$21,000,000</u>

(General Average equals 10% of the contributory values.)

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**Balance under the adjustment**

**The Shipowner:**

Receives credit for general average losses and expenses.	US\$	1,500,000
Pays general average contribution.		700,000
		<hr/>
	<i>Balance to receive</i>	US\$ 800,000
		<hr/>

**The cargo owner:**

Pays general average contribution.	US\$	1,400,000
Receives credit for general average losses.		600,000
		<hr/>
	<i>Balance to pay</i>	US\$ 800,000
		<hr/>

6. Contract of carriage

The parties to the adventure usually make special provision in the contract of carriage regarding general average, the most common being a clause to the effect that general average is to be adjusted in accordance with the York-Antwerp Rules. Such stipulations may be contained in the charter party, if any, or the bills of lading, or in both documents, thereby giving contractual effect to the Rules.

Rule D of the York-Antwerp Rules gives explicit recognition to the fact that general average exists irrespective of fault or breach of contract by any of the parties. It follows that normally the procedures for protecting the rights of the parties in general average must be observed even when it is suspected that such a fault or breach has taken place. Equally, the existence of a general average situation does not prejudice any rights or defences that are open to parties, for example with regard to cargo damage or alleging a breach of contract as grounds for not paying a general average contribution.

The giving of general average security in the customary terms is a promise to pay any general average contribution that is found to be properly and legally due. Generally, if there has been a causative breach of contract the contribution cannot be so described, and cargo interests may have grounds for declining to pay their contribution to general average.

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C) **GENERAL AVERAGE PROCEDURES**

1. General Average security

Most jurisdictions recognise that the shipowner can exercise a lien (i.e. refuse to allow delivery) on cargo at destination in respect of general average losses sustained by any of the parties to the adventure. The preparation of an adjustment will usually take some time, so that the shipowner will relinquish his lien in return for satisfactory security. Generally, the shipowner or appointed average adjuster will send notices to cargo interests setting out what is required by way of security (the exact procedure may vary slightly according to the jurisdiction(s) involved). The usual security requirements will be as follows:

- (a) Signature to an Average Bond by the owner or receiver of the cargo.
- (b) A cash deposit for an amount estimated by the adjuster to cover likely general average liabilities, usually expressed as a percentage of the invoice value of cargo. It is usual for an Average Guarantee signed by a reputable insurer to be accepted by the shipowner in place of the cash deposit, and the insurer will then take over the handling of the general average aspects of the case through their normal claims procedures.

Variations in the wordings of such forms have arisen largely as a result of market practices and CMI have a working party looking at providing recommended standard wordings, which may form part a future edition of these Guidelines.

The objectives of the security forms currently in use include:

- Providing an acceptable level of security to the shipowner and other parties to the adventure that may be GA creditors.
- Preserving the position under Rule D in respect of defences.
- Encouraging the timely provision of information and evidence to ensure the adjustment process is not delayed.

Both the Average Bond and Guarantee are distinct contracts in their own right, and may, like any contract, be altered by agreement between the parties.

2. Salvage security

In some circumstances and jurisdictions, and under salvage contracts such as Lloyd's Open Form, the salvor will have a separate right of action against each individual piece of property that is salvaged, once that property is brought into a place of safety. The salvor may therefore exercise a lien on all the cargo at that place and the cargo interests will have to provide two sets of security:

- a) salvage security to salvors at the place where the salvage services end
- b) general average security to the shipowner, at destination.

If there are numerous cargo interests, as on a container ship, interim security may be provided to salvors by the shipowner or charterer to enable the vessel to continue from the place where salvage services ended to destination, where both types of security will then have to be provided.

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3. Claim Documentation

The burden of proof lies with any party wishing to claim general average sacrifices and expenses, and York-Antwerp Rule E includes time limits for submitting claims.

After collecting security the average adjuster will need information from cargo interests in order to:

- calculate the contributory value of the cargo.
- make any allowances in general average that are due to cargo.

Cargo interests will generally need to submit the following information to the adjuster:

- a) A copy of the commercial (CIF) invoice. If cargo has been sold on terms other than CIF the freight invoice and insurance premium details may be required.
- b) Details of any damage that has occurred to cargo during the voyage, including:
  - survey reports stating the cause and extent of damage.
  - the cargo insurers' settlement. (If applicable)

The damage to cargo will be deducted from the sound value to reach the contributory value; this will determine how much the cargo's general average contribution will be. If any of the damage is allowable as general average (e.g. water damage during fire-fighting operations) credit will be given in the adjustment.

**D) ROLE OF THE AVERAGE ADJUSTER REGARDING GENERAL AVERAGE**

1. The effect of the adjustment

In the majority of jurisdictions the findings of an average adjuster regarding amounts payable by the parties to a maritime adventure are not legally binding, unlike with an arbitration award. The majority of adjustments are accepted by the parties (subject to any Rule D defences) on the basis of the professional standing and expertise of the adjuster.

2. Best practice of average adjusters

Average adjusters work under different regulatory and professional regimes, however the following elements of best practice appear to be universal and are endorsed by the leading professional associations.

2.1 Irrespective of the identity of the instructing party, the average adjuster is expected to act in an impartial and independent manner in order to act fairly to all parties involved in a common maritime adventure.

2.2 In all cases the average adjuster should:

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- (a) Give particulars in a prominent position in the adjustment of the clause or clauses contained in the charter party and/or bills of lading that relate to the adjustment of general average or, if no such clause or clauses exist, the law and practice obtaining at the place where the adventure ends. Where conflicting provisions exist, the adjuster should explain in appropriate detail the reason for the basis of adjustment chosen.
  - (b) Set out the facts that give rise to the general average.
  - (c) Where the York-Antwerp Rules apply, identify the lettered and/or numbered Rules that are relied upon in making the allowances in the adjustment.
  - (d) Explain in appropriate detail the choice of currency in which the adjustment is based.
  - (e) Make appropriate enquiries as to whether any recovery relating to the casualty is being undertaken, and set out the results of those enquiries in the adjustment.
- 2.3 On request, and when practicable, the adjuster should make available copies of reports and invoices relied upon in the preparation of the adjustment.



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E) **ROLE OF THE GENERAL INTEREST SURVEYOR**

The "General Interest" or "G.A. Surveyor" may be appointed by the Shipowners on behalf of all parties involved in the common maritime adventure, usually only in the larger casualties or where cargo sacrifices are likely to be involved. The Shipowner is responsible for settlement of the G.A. Surveyor's charges, which are allowed as General Average, but the G.A. surveyor is expected to act in an independent and impartial manner when recording the facts and making recommendations.

The G.A. Surveyor's role is not to investigate the circumstances leading up to a general average situation (e.g. the cause of a fire) but once the situation exists, his role is generally as follows:

- 1) To advise all parties on the steps necessary to ensure the common safety of ship and cargo.
  - 2) To monitor the steps actually taken by the parties to ensure that proper regard is taken of the General Interest.
  - 3) To review General Average expenditure incurred and advise the Adjusters as to whether the costs are fair and reasonable.
  - 4) To identify and quantify any General Average sacrifice of ship or cargo.
  - 5) To ensure that General Average damage is minimized wherever possible i.e. by reconditioning or sale of damaged cargo. Except in cases of extreme urgency or where communications are difficult, any significant action with regard to cargo (e.g. arranging for its sale at a Port of Refuge) must be taken in consultation with the concerned in cargo.
2. The authority and funds to make disbursements will generally come from the Shipowner, usually via the Master or the Local Agents. The G.A. Surveyor therefore has no authority to order any particular course of action and his role is an advisory one. However, the G.A. Surveyor's impartial position and his influence on the eventual treatment of the expenditure will give his advice considerable weight with the other parties involved.
3. The G.A. Surveyor should also be aware that several other Surveyors may be in attendance on behalf of particular interests and that, for reasons of economy, duplication of reporting should be avoided. In the event of any doubt arising as to the depth of investigation required from the G.A. Surveyor, the Adjuster should be contacted for guidance. The G.A. Surveyor is effectively appointed to act on behalf of the whole General Average community, any of whom are generally entitled to view all his exchanges of correspondence and reports.

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F) YORK-ANTWERP RULES 2016

1. Rule VI - Salvage

The wording of Rule VI paragraph (b) is new to the York Antwerp Rules 2016. It arises from concerns that, if the ship and cargo have already paid salvage separately (for example under Lloyd's Open Form) based on salvaged values (at termination of the salvors' services), allowing salvage as general average and re-apportioning it over contributory values (at destination) may give rise to additional cost and delays, while making no significant difference to the proportion payable by each party.

A variety of measures to meet these concerns have been considered, ranging from complete exclusion of salvage to using a fixed percentage mechanism. Such measures were found, during extensive CMI discussions to produce inequitable results or were impossible to apply across the range of cases encountered in practice.

It was pointed out that many leading adjusters will, when appropriate, propose to the parties that if re-apportionment of salvage as general average will not produce a meaningful change in the figures or will be disproportionately costly, the salvage should be omitted from the adjustment; it is then up to the parties to decide whether it should be included or not. However, it was considered that a means should be found to make this practice more universal and to set out express criteria that would help to ensure that the allowance and re-apportionment of salvage as general average (where already paid separately by ship and cargo etc.) would only occur in cases where there was a sound equitable or financial basis for doing so.

The average adjusters will still be required to exercise their professional judgement in applying paragraph (b) because several of the criteria (i-v) that are listed require a view to be taken as to what should be deemed to be "significant" in the context of a particular case. Because of the wide range of cases that the York-Antwerp Rules apply to, it was not considered desirable to offer a fixed definition of how "significant" should be construed, other than to note that the objective of the new clause was to reduce the time and cost of the adjustment process where it is possible to do so.

When assessing whether there is a significant difference between settlements and awards for the purposes of Rule VI(b)(v) the adjuster should have regard only to the basic award or settlement against all salvaged interests before currency adjustment, interest, cost of collecting security and all parties' legal costs.

2. Rule XXII – Treatment of Cash Deposits

Under Rule XXII(b) the adjuster is required to hold deposits in a special account constituted in accordance with the law regarding holding client or third party funds that applies in the domicile of the appointed average adjuster.

Unless otherwise provided for by the applicable law, CMI recommends that any special account should have the following features:

- Funds should be held separately from the normal operating accounts of the adjuster.
- Funds should be protected in the event of liquidation or the cessation of the average adjuster's business.
- The holding bank should provide regular statements that show all transactions clearly.

