

ADVISER

THE NEW 2016 YORK-ANTWERP RULES AND GENERAL AVERAGE

The York-Antwerp Rules are widely used around the world in maritime agreements, such as bills of lading and charter parties to clarify what constitutes a general average event, how such events are to be contributed to, and by whom. Any changes to the rules need to be understood, as there may be insurance implications.

For nearly 140 years, the York-Antwerp Rules have been the benchmark set of terms that, by contractual agreement, seek to clarify what would constitute an allowable general average event, what can be included, and how it is to be apportioned between the parties.

Although the concept of general average (born upon the ancient Greek maxim of *"That which has been sacrificed for the benefit of all, shall be made good by the contributions of all"*) has existed for thousands of years, this uniquely maritime concept has evolved as the marine shipping world has developed. The Comité Maritime International (CMI) regularly reviews and updates the York-Antwerp Rules with an aim to keep them relevant and equitable. It recently announced the latest version and has now published the 2016 York-Antwerp Rules.

WHO ARE AFFECTED BY CHANGES TO THE YORK-ANTWERP RULES?

General Average can affect all parties who have *"...property involved in a common maritime adventure"* (as reflected in Rule A of York-Antwerp Rules 1950, 1974, 1994, 2004, and 2016) indicating that maritime carriers, cargo owners, and vessel charterers are the most likely to be affected. However, the rules do not apply automatically to a general average act, unlike an international convention would, which, once ratified and enacted into national legislation, applies as a matter of law. The York-Antwerp Rules only apply where they have been specifically incorporated into the contract, for example into a bill of lading or charterparty. Therefore, any new, revised version of the York-Antwerp Rules (such as the recently announced 2016 version) will only apply where the parties so decide and mutually agree to use them instead of a previous version.

WHY HAVE THE RULES BEEN UPDATED?

As with all previous versions of the York-Antwerp Rules, the 1994 rules were widely accepted by the shipping community and have been commonly included within contractual terms. However, for the first time in over a 100 years, the 2004 amended version of the rules did not receive the support of many within the ship operating community and failed to be widely incorporated into contracts. To return to common consensus, the CMI began a revision process in 2012, culminating in the publication of the new 2016 rules. The 2004 rules had sought to amend the previous inclusion of salvage as an allowable general average expense, along with a number of other changes that were generally disliked by ship owners, many of which have been addressed in the new 2016 rules.

WHAT ARE THE KEY CHANGES UNDER THE 2016 RULES?

This adviser does not cover all the changes to the York-Antwerp Rules, however, we have outlined a few notable changes the industry will need to be aware of moving forward.

SALVAGE

Arguably the most contentious aspect of the 2004 York-Antwerp Rules was the removal of salvage costs from general average in Rule VI, by stating: “...such payments, shall lie where they fall and shall not be allowed in general average....”.

Although there were exceptions to this noted in the 2004 York-Antwerp Rules, ship owners preferred the previous, 1994 position, which was considered simpler by stating: “Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average....”

A revised version of this wording has been returned to under the 2016 York-Antwerp Rules, with the word “allowed” replacing “admitted” throughout.

POWERS OF A GENERAL AVERAGE ADJUSTER

The 2016 York-Antwerp Rules address previous criticisms of the general average adjusting process. A common criticism of the general average process under previous versions of the rules has increasingly been that it is a lengthy, cumbersome, and expensive process in the current age of mega container ships where there may be hundreds, if not thousands, of possible contributors to a general average event. Several measures designed to speed up the adjusting process have been introduced in the new 2016 York-Antwerp Rules. These include Rule XVII (a) (ii), which allows the general average adjuster to exclude low-value cargo from contributing to the general average if the cost of including it would likely be disproportionate to its eventual contribution. In order to assist in speeding up the process, Rule E now allows the adjuster to estimate general average allowances and/or cargo contributory values in the absence of information being supplied by cargo owners within a stated time frame.

EXPENSES AT A PORT OF REFUGE

Rule XI of the 2004 York-Antwerp Rules either limited or excluded certain port of refuge expenses during a period of detention (by way of temporary repairs and/or additional crew wages) that are often incurred by ship operators trying to expedite the voyage to the final destination. The 2016 rules revert to the position under the 1994 rules, allowing wages while at a port of refuge when detained for common safety or to allow for repairs necessary for the safe prosecution of the voyage.

INTEREST ON GENERAL AVERAGE FUNDS

The 1994 version of the rules set a specific 7% interest rate that could be added to general average funds. In Rule XXI, the 2016 York-Antwerp Rules have moved to a more flexible, equitable link to the prevailing ICE LIBOR rate, adding four percentage points to that rate. While this may currently be more favourable for contributors (and their insurers) than the 7% interest rate stated within the 1994 rules, should interest rates rise significantly in the future, this could become more expensive.

In addition, commission of 2% on general average disbursements, allowed under the 1994 rules (Rule XX) will no longer be recoverable. This was one of the few changes made by the York-Antwerp Rules 2004, which was retained in the latest rules.

WILL THE NEW RULES BE WIDELY USED?

In contrast to the 2004 York-Antwerp Rules, it is important to note that the 2016 York-Antwerp Rules have already received the approval of the International Chamber of Shipping (ICS), The Baltic and International Maritime Council (BIMCO), and the International Union of Marine Insurers (IUMI). The latter is important for those who buy marine insurance, as the general average contributions of cargo and hull interests are generally covered as an additional charge on most marine cargo and hull and machinery policies (sometimes subject to policy deductibles), and the provision of general average guarantees is often provided by IUMI insurers.

Marsh believes that these new 2016 rules will be used extensively by the shipping community to replace previous contractual references to the 1994 York-Antwerp Rules, and cargo and hull interests should check to ensure that their insurance cover continues if the 2016 York-Antwerp Rules are used.

HOW WILL THE RULES AFFECT CHARTERERS?

BIMCO have said that moving forward, they will refer to the 2016 York-Antwerp Rules in any new charter parties they publish and that they will similarly amend any of their existing charter party agreements, whenever those charter parties require other amendments in the future. Marine charterers and ship owners who contract under such charter parties should, therefore, be aware of this change and they should also check that their insurances will remain in force, should the 2016 York-Antwerp Rules be referred to in charter party agreements.

CONTACTS

If you have any concerns about the insurance impact of the new 2016 York-Antwerp Rules, please discuss this with your usual Marsh contact, or a colleague below.

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