

# **CMI Standing Committee on General Average**

## **Report – September 2021**

At the 42nd International Conference of CMI in New York (in May 2016) both the York-Antwerp Rules 2016 and the first edition of the CMI Guidelines on General Average were adopted by the plenary session and ultimately approved by the Assembly of CMI. In order to monitor the working and effectiveness of the CMI Guidelines, and to recommend changes to the Guidelines as deemed sensible or necessary, a Standing Committee was constituted, originally 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 was later extended by the CMI Executive Committee and currently comprises eleven members, namely:

Paula Bäckdén (Sweden)  
Richard Cornah (UK – Association of Average Adjusters, AAA)  
Jörn Groninger (Germany – Chair)  
Michael Harvey (UK – Association Mondiale de Dispatcheurs, AMD)  
Kiran Khosla (UK – ICS)  
Jiro Kubo (Japan, Insurer)  
Daniella de Lint (The Netherlands – IUMI)  
Sveinung Måkestad (Norway, Insurer)  
Dieter Schwampe (Germany – CMI ExCo)  
Jonathan Spencer (USA – AAA of the US and Canada)  
Esteban Vivanco (Argentina)

Throughout the SC's work valuable input was i.a. rendered by Philip Norwood (Chairman of the IUMI Salvage Forum) as well as John Macdonald and Richard Sarll (on a committee of the AAA), all based in the UK.

The major tasks for the Standing Committee were identified as follows:

1. To see if the Guidelines could benefit from amendments.
2. To develop wordings for general average security forms.
3. To suggest an amendment of Rule XXI of the York-Antwerp Rules 2016 (in view of plans to discontinue the LIBOR which is referenced therein).

After sporadic meetings in person and several email exchanges, a questionnaire was sent out to the national MLAs in January 2020, attracting some 21 responses.

The SC's work gained momentum as of autumn 2020. Since then, 16 virtual meetings / video conferences were held to discuss scheduled topics and the homework prepared in between. During this period, views on then current suggested security wordings were gauged from the IUMI Salvage Forum, from ICS and BIMCO, and from the International Group of P&I Clubs in order to ensure that the final recommended wordings be carried by a broad industry consensus. The results of the discussions are summarized hereunder and the final drafts of all documents, as recommended by the SC, are attached.

## **1. Guidelines on General Average**

The guidelines were felt to be a good product already. However, apart from some minor amendments a short introduction was added as well as a chapter giving an overview of salvage under Lloyd's Open Form – a situation that brings considerable additional complexity into a GA. The attached draft is coloured; green shows original 2016 text while suggested changes / amendments are red or black.

While the SC considered the 18-page booklet to provide good in-depth guidance to interested parties, there was also agreement that it is way too detailed for the average shipper or a cargo insurance person just seeking a quick confirmation of the actions required from him by some unknown average adjuster. To cater for this type of readership, a strongly shortened version was prepared.

## **2. General average security**

This project had already been on the agenda before 2016, but there was not sufficient time to complete the task before the conference.

The practice in GA cases shows that the standard forms often used are pretty old; the "Lloyd's Average Bond" of 1977 and the "Institute of London Underwriters GA Guarantee" of 1995 are still in frequent use. In many cases the instructed average adjusters provide own forms, mostly based on the a.m. standards but amended with further clauses – widely similar but differing in detail. This regularly leads to discussions with cargo interests or their legal representatives about the correctness or justification of such security forms, costing time and money. The SC therefore considers that the professional practice could strongly benefit from a unified, clear and equitable wording that has received industry-wide approval.

A second objective was driven by the fact that (particularly in the container trade) many people are confronted with a GA security request who have no or almost no knowledge of GA and its usual procedures. Thus, while avoiding to 'reinvent the wheel' but rather rely on tried and tested wording where possible, the SC felt that a more modern approach to the layout and wording would be of assistance. For additional comfort of those asked to sign, new clauses have been inserted to:

- clarify that no liability attaches before discharge of the goods,
- include a limitation of the liability under the GA Bond and Guarantee to the secured property's contributory value, and
- emphasize the contents of Rule D of the YAR (i.e. that defences arising from the contract of affreightment are not affected by the provision of security).

On the other hand, a provision is suggested to encourage the timely provision of information to the adjuster in order to accelerate the adjusting procedure.

Apart from the 'traditional' average bond and guarantee for cargo, further forms have been prepared for the contributions due from (time charterers') bunkers and freight, if at risk. All forms are appended to the Guidelines.

### **3. The interest provision in the YAR 2016 (and 2004)**

Rule XXI of the YAR 2016 sets the interest rate for GA allowances at LIBOR plus four percentage points. Now, however, the LIBOR is set to be discontinued, probably as from the end of 2021. This means that application of the current Rule XXI will become impossible in the near future, and ExCo tasked the SC with suggesting an alternative solution.

Various options to sensibly replace the existing Rule were discussed. Views were gauged from the SC on General Average Interest Rates, and advice on various financial interest indices was sought from David Osborne, Chair of CMI's IWG on Security Interests over Shipping Containers.

The LIBOR's particular charm was that it existed for a variety of currencies. There is no similar universal instrument replacing it. Thus, to keep the GA interest rule manageable it is deemed unavoidable to return to a one-for-all solution as in the 2004 and all earlier versions of the YAR. The SC acknowledges that a rate geared to the financial markets is generally preferred over a fixed rate. A comparison of index charts over the last 25 years has shown that the USD Prime Rate has usually developed very similar to the LIBOR in most currencies and, with the majority of all GA adjustments made up in USD, it appears to be the most suitable single reference index to be referred to.

In conclusion, thus, the SC recommends that Rule XXI, paragraph (b) of the YAR be amended as follows:

*The rate for calculating interest accruing during each calendar year shall be the US Dollar Prime Rate as announced on the first banking day of that calendar year, increased by two percentage points.*

This is consistent with a long-standing Rule of Practice of the US and Canadian AAA, and at least historically this method would have produced results similar to the existing, LIBOR based Rule XXI of the YAR 2016.

At the same time the SC recommends that also the YAR 2004 be amended in the same way. A certain discontent has repeatedly been voiced with regard to the rates fixed for adjustments under the 2004 Rules, mainly because they were deemed too low to mirror realistic market conditions for shipowners in need of bank loans. The SC considers it desirable to harmonize the two sets of rules in this point, and it would be a sensible reaction to the criticism concerning the YAR 2004.

The above suggestions are supported by the SC on General Average Interest Rates.

### **Concluding remarks**

All the draft wordings are not only the result of intense work, detailed discussions and thorough considerations within the Standing Committee. In addition, ICS (with a liaison to BIMCO) and IUMI as the main industry stakeholders were permanently tied in through their representatives on the SC and the co-opted Chair of IUMI's Salvage Forum. The final, official approval of the drafts from these bodies is currently being obtained; it is, in the SC's considered opinion, of essential importance for the success and universal future use in particular of the GA security forms. Disturbing the compromises found may not only lead to the SC having to take up the work anew but may as well lead to these associations turn away from the project altogether. The SC therefore hopes that the CMI membership will recognize and endorse the suggested wordings as a fair and equitable recommendation.

Bremen, 23rd September 2021

Jörn M. Groninger

Chair