

## TO ALL OWNERS AND MEMBERS

19 July 2016

Dear Sirs

### **General Average – ‘York Antwerp Rules (YAR) 2016’ adopted by the Comité Maritime International (CMI)**

Following four years of consultation and an extensive review by a CMI International Working Group (IWG), the YAR 2016 were adopted by the CMI Assembly at its conference in New York in early May.

The adoption of the YAR 2016 brings to an end twelve years of uncertainty for shipowners and marine insurers following the adoption of the YAR 2004, which did not have the support of shipowners and were very rarely used in preference to the well-established and well understood YAR 1994. The development and finalisation of the YAR 2016 is the product of an extensive review undertaken by the IWG, with input from the International Group, the international average adjusting community, National Maritime Law Associations, the International Chamber of Shipping, BIMCO and IUMI amongst others.

The most contentious areas of the YAR 2004 have been satisfactorily addressed in the YAR 2016, notably in relation to:

- the treatment for adjusting purposes of salvage remuneration (Rule VI) where, in contrast to the YAR 2004, salvage will remain allowable in General Average albeit subject to the adjuster's discretion that any of the criteria identified in Rule VI (b) (i)-(v) are satisfied (in essence, where the inclusion would make a significant financial difference);
- expenses (Rule X) at ports of refuge where the YAR 1994 wording has been retained with some additional clarification in relation to the application of provisions;
- the treatment of temporary repairs (Rule XIV) where the YAR 1994 wording, permitting the inclusion for adjustment purposes of the cost of temporary repairs carried out at a port of refuge to enable the safe completion of the common maritime adventure, has been retained;

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The Standard Club Asia Ltd

[www.standard-club.com](http://www.standard-club.com)

Incorporated in Singapore No. 199703224R. Authorised and regulated by the Monetary Authority of Singapore

Managers: Charles Taylor Mutual Management (Asia) Pte. Limited

Registered Office: 140 Cecil Street, #15-00 PIL Building, Singapore 069540. Registered in Singapore No. 199703244C

Telephone: +65 6506 2896 E-mail: [pandi.singapore@ctplc.com](mailto:pandi.singapore@ctplc.com)

- the exclusion of low value cargo (Rule XVII), where new provisions have been included to permit the possibility for exclusion from contribution of cargo where the adjuster considers that the cost of including it would be disproportionate to its eventual contribution; and
- provisions relating to commission and interest (Rules XX and XXI), where the YAR 1994 2% commission on General Average disbursements has been abolished in favour of an agreed interest rate on expenditure, sacrifices and allowances calculated on the 12-month ICE LIBOR rate for the currency in which the adjustment is prepared +4%.

There are a number of other edits and amendments to the YAR 2004 Rules, but overall the YAR 2016 satisfactorily address shipowners' concerns articulated by ICS and BIMCO and are supported by the International Group, which will hopefully encourage widespread adoption in shipping contracts. At the BIMCO Documentary Committee meetings in Copenhagen in May it was agreed that BIMCO charterparties and bills of lading should henceforth refer to General Average being adjusted in accordance with the YAR 2016. The ICS Maritime Law Committee has also closely followed the proposed changes over the past four years and approved the discussion drafts, and it is anticipated that at its next meeting in September 2016 it will strongly recommend adoption of the YAR 2016 to its member National Shipowner Associations.

In addition to the adoption of the YAR 2016, the IWG developed guidelines relating to General Average which were also approved by the CMI Assembly. The Guidelines are intended to assist in dealing with General Average cases and provide background information on the basic principles, guidance as to recognised best practice and an outline of General Average adjusting procedures. The Guidelines do not form part of the YAR, are not binding and are not intended to override or to alter the provisions of the YAR themselves. It is intended that the Guidelines will be a 'living' document and will be periodically updated under the supervision of a standing review committee.

Copies of the text of the YAR 2016 and the Guidelines can be viewed via the following link:

[https://www.bimco.org/Chartering/Clauses\\_and\\_Documents/Clauses/General\\_Average\\_Clause/General\\_Average\\_York-Antwerp\\_Rules\\_2016.aspx](https://www.bimco.org/Chartering/Clauses_and_Documents/Clauses/General_Average_Clause/General_Average_York-Antwerp_Rules_2016.aspx)

The International Group clubs welcome and support the adoption of the YAR 2016 and recommend the incorporation of the YAR 2016 in owners'/members' future shipping contracts. Such incorporation will not affect owners'/members' club cover.

The Standard Club's current rules (exclusion (1) to rule 3.8) provide that unless the board otherwise determines there shall be no recovery in respect of pollution liabilities which but for the terms of any contract of carriage would have been allowed in General Average adjusted under the unamended YAR 1994.

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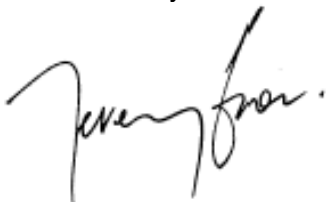
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Exclusion (1) to rule 3.8 will therefore be updated to make reference also to YAR 2016. Accordingly, unless the board otherwise determines there shall be no recovery in respect of pollution liabilities that should have been recoverable by reference to the YAR 1974, 1994 or 2016, but are not recoverable in General Average because of the owner's/member's contractual arrangements.

Owners/members must therefore be careful to avoid contracting on the basis that pollution liabilities are not allowed in General Average if they would otherwise be allowed in General Average by application of YAR 1974, 1994 and 2016.

All clubs in the International Group will also be issuing similar circulars.

Yours faithfully



Jeremy Grose  
Chairman  
Charles Taylor Mutual Management (Asia) Pte Limited

Direct Line: +44 20 3320 8835  
E-mail: [jeremy.grose@ctplc.com](mailto:jeremy.grose@ctplc.com)