

On 6 May 2016 in New York the International Working Group of the Comité Maritime International (IWG) approved the 11th revision of the York-Antwerp Rules (YAR), the York-Antwerp Rules 2016. The intention of the parties involved in this process was to create a new set of rules that would enable the YAR to correspond to the established adjusting practice and the needs of the various parties of the shipping industry, also achieving greater uniformity in the treatment of general average.

The changes were based on the 1994 rules which until now are the most commonly used version of rules. The IWG, in drafting the YAR 2016 took into account amongst other things, the various concerns that were expressed during the last 12 years regarding the 2004 rules and the issues that prevented them from replacing the 1994 version.

Overall, this set of rules preserves some of the elements of the 2004 version that were generally acceptable as modernizing the way general average is treated and embodies the provisions that made the 1994 rules a successful set of rules during the last 20 years.

The amendments and changes brought by the YAR 2016 are as follows:

- Rule B, which concerns commercial tug and tow situations has been amended so as to clarify the treatment of general average cases involving flotillas, and to be more close to relevant court decisions in UK, USA and Norway concerning the treatment of this rule. Thus, r. B now clarifies the cases where the disconnection between tug and tow will be a GA act and introduces a provision regarding the treatment of port of refuge expenses in these cases. It is reminded that a careful look is always needed at the clauses in the policy and in the towage contract applicable.
- Under Rule E, all parties to the adventure, regardless of whether they are claiming in GA or not, shall supply particulars of value in respect of their contributory interest to the average adjuster as soon as possible. The 12 month period allowed to the parties to supply particulars in support of a notified claim in GA, now starts to count either from the date of the termination of the adventure or from the date of payment of the expenses, the latter option being an innovation of these rules that will ensure that the costs and delays involved in the process of the adjusting will be generally minimised. Where any of the parties to the adventure receives a recovery, then the particulars of the recovery shall be supplied to the adjuster within two months of the receipt of same so that credit to the GA is made in a prompt and equitable way.
- Rule G has been amended to provide that the Bigham cap will not apply to allowances made under Rule F (substituted expenses). The change is intended to ensure uniformity in adjusting practice.
- Under Rule VI, there has been one of most significant changes of this set of Rules. LOF salvage costs, which are paid independently by ship and cargo interests are generally not to be allowed in GA, unless an inequitable position would exist by not including them. The rule provides for the scenarios in which this might be the case. The inequity must be significant in order for such salvage awards to be re-apportioned in GA and the mere existence of one of the scenarios does not in itself suffice. The non-reapportionment of such costs must lead to gross inequity. Contractual salvage will continue to be included in GA and the standard procedure of reapportionment of the daily hires on the basis of the contributory values in GA will be followed.

- Wages and maintenance of the master, officers and crew whilst the vessel is at a port or place of refuge are allowed in GA under Rule XI. This is one significant provision of these rules, restoring the position as it was in YAR 1994.
- The YAR 2016 also address issues on the contributory values of the cargo. Amendments to Rule XVII allow the adjuster to exclude from the GA any cargo of low value whose contribution would be less than the likely cost of including that cargo, thus confirming what has been a long-standing practice. The new rule also confirms that where the parties have incurred salvage payments which have not been allowed in GA, then such payments will be deducted in arriving at the contributory values of the properties.
- As regards the commission allowed in general average, the YAR 2016 preserve the position of the 2004 version of the rules, which abolished the 2% commission.
- As far as the allowance for the interest this is now as per the 12-month ICE - Libor of the currency in which the adjustment is prepared, as announced on the first banking day of each year, + 4% or the US Dollar 12-month ICE-Libor where there is no such announcement for the respective currency + 4%.
- Where cash deposits are collected in respect of cargo interests' liabilities for GA, salvage and special charges, payments shall be remitted to the adjuster into a special bank account in his name.
- The YAR 2016 also incorporate the time-bar provision firstly introduced in the YAR 2004. Thus, the parties claiming a contribution in GA shall bring their action within 1 year from the date of issue of the average adjustment but no later than 6 years after the termination of the common maritime adventure.

There were other changes in the wording of the Rules that were made for reasons of tidying up the provisions and modernizing the language used but which did not alter the substance of the rule.

Whilst YAR 2016 have been launched with the consensus of the marine insurance industry, it remains to be seen whether in practice they will satisfy the needs of the interests involved in a maritime adventure. Bimco's Documentary Committee have already agreed that all new and revised Bimco charter parties and bills of lading will now refer to general average being adjusted in accordance with the new YAR 2016.

If any clarification or further information is required on the above, please do not hesitate to contact the author.