



## **KPI Information Update IU-97-2016** **(York-Antwerp Rules (YAR) 2016)**

The York-Antwerp Rules (YAR) revised in New York on 5<sup>th</sup> of May 2016 attempts to strike a better balance between cargo interests and ship owners. Major shipping association BIMCO has stated that all new and revised BIMCO charterparties, bills of lading and waybills will now refer to general average being adjusted in accordance with the YAR 2016. The International Union of Marine Insurance (IUMI) and the International Chamber of Shipping (ICS) have also given their approval to the YAR 2016. Accordingly, YAR 2016 is expected to be widely incorporated into contracts of carriage.

The key amendments are in **Bold Print**:

**Tug and tow (Rule B):** Has been amended to provide clarity as to whether a disconnection between vessels in common peril amounts to a general average act **even if upon disconnection the disconnecting vessel itself stands in safety**. Rule B now confirms that such disconnection will be a general average act as opposed to a termination of the common maritime adventure provided the disconnection is for safety reasons.

**Onus of proof (Rule E):** In order to expedite the adjusting process, Rule E has been amended to oblige a party to the common maritime adventure to supply particulars of value and particulars in support of a claim to general average contribution within 12 months to the average adjuster. If these particulars are not provided within 12 months, the adjuster can estimate allowances and contributory values and these estimates will be binding **unless challenged within 2 months of receipt of the communication**. The adjuster's estimates may only be challenged on grounds that they are "manifestly incorrect". There is also an added requirement to keep the adjuster fully informed of any **successful recoveries in**

**general average against third parties within two months of its receipt.**

**Valuation of losses and contributory values - the non-separation agreement (Rule G):** The non-separation agreement in Rule G allows the shipowners to exercise their option of forwarding the cargo to destination from port of refuge in circumstances in which the voyage is justifiably abandoned at the port of refuge and cargo owners will remain under an obligation to contribute to expenses that would have been allowed in general average under Rules X and XI to the extent that the cargo had justifiably under the contract of affreightment been retained by the carrier and conveyed to destination by the original carrying vessel. However, this responsibility is capped under the fourth paragraph of Rule G, commonly known as the Bigham clause, to the cost the cargo owners would have had to bear had the cargo been forwarded to its final destination at their expense. **The amendments to Rule G now make it clear that this cap does not in fact apply to any allowances under Rule F (Substituted expenses).** The non-separation agreement and Bigham clause

had been added to the York-Antwerp rules as from its 1994 version.

**Salvage remuneration (Rule VI):** The changes in relation to salvage are a compromise between YAR 1994, which allowed salvage generally, and YAR 2004, where this allowance was severely restricted. **YAR 2016 includes a compromise on salvage whereby salvage expenditure is included in general average. However, where a salvage contract or legal liability to salvors exists (i.e. Lloyds Open Form-type salvage) then this is not included in general average unless one of the five scenarios listed at Rule VI(b)(i) to (v) occurs and if they are “significant”. However, no definition of “significant” is provided.**

**Wages and maintenance of crew and expenses bearing up for and in a port of refuge (Rule XI):** YAR 2016 restates the position under the 1994 Rules, that **wages and maintenance of the master, officer and crew, which are reasonably incurred at a port of refuge, are allowable as general average expenses. A new addition makes it clear that port charges under the YAR include all customary/ additional expenses incurred for the common safety.**

**Deduction from cost of repairs (Rule XIII):** YAR 2016 now excludes the cost of cleaning, painting or coating of bottom of the ship from allowance in general average unless the bottom has been cleaned, painted or coated within **24 months** preceding the general average act against the 12 months in previous versions and only in both cases one half of such costs would be allowed.

**Contributory values (Rule XVII):** **YAR 2016 now provides that low value cargo can be excluded at the discretion of the adjuster from contributing to general average if it is considered that the cost of including it in the adjustment, in comparison to the value of its contribution, is disproportionate.** The effect of this Rule is that it negates the difficulties faced in obtaining security from all the cargo owners on big container vessels. It has been known that the costs incurred in obtaining security for some low value containers, has exceed the value of their contribution.

**Interest on losses made good in general average (Rule XXI):** **Interest on general average funds will be 4% above the 12-month LIBOR rate for the particular currency in which the adjustment is prepared.** This is more flexible than the 7% interest provided for under the YAR 1994, which was deemed generous to ship owners, but more than the 2.5% under the YAR 2004. Rule XX now **omits the entitlement to a 2% commission** provided under the YAR 1994, as also omitted under the YAR 2004, with the interest rate acting as compensation.

**Treatment of cash deposit (Rule XXII):** **The adjuster is now required to open a “special account” in his name in trust for the parties in accordance with the relevant law in the adjuster’s domicile.** Longstanding provisions in successive YARs regarding setting up joint accounts to hold deposits have in the past caused problems with USA anti-trust legislation. Modern anti-money laundering and anti-terrorist legislation has made the setting up of such joint accounts extremely difficult and often impossible.