General Average - York Antwerp Rules 2004

General Average is a mechanism for allocating the costs of dealing with a maritime casualty among those parties who benefit from the ship and cargo being saved. To ensure a uniform approach the principles for General Average are codified in the York-Antwerp Rules. The rules were first agreed in 1890 but from time to time have been reviewed and amended. The most recent review was 1994 and prior to that, 1974.

Rule A of the York Antwerp Rules sets out when there is a "General Average Act". There are two categories:
1. Losses and sacrifices incurred for the common safety of ship, cargo and other property involved in the common maritime adventure.
2. Expenses incurred for the common benefit to safely complete the voyage.

Since shortly after the 1994 revision of the York Antwerp Rules cargo underwriters, through the International Union of Marine Insurers ("IUMI") had been pressing for a further review. In particular, the restriction of General Average to common safety issues and excluding allowances for General Average in respect of the common benefit approach.

Reform of the York Antwerp Rules 1994 was discussed at the June 2004 meeting of the Comité Maritime International ("CMI"). Prior to the June Conference, and in the face of opposition from the shipping industry through the International Chamber of Shipping, IUMI amended its position from radical change to one of incremental change. The following changes were agreed and the revised rules will be known as the York Antwerp Rules 2004.

Rule VI - Salvage Remuneration

The York Antwerp Rules 1974 and 1994 provide for salvage claims to be recoverable in General Average. York Antwerp Rules 2004 will exclude salvage from allowable General Average recoveries.

Rule XI - Wages and Maintenance of Crew and Other Expenses putting into a Port of Refuge

These costs will no longer be allowed during the period the vessel is in port or place of refuge undergoing repairs recoverable in General Average. Fuel and stores consumed will continue to be allowable expenses.

Rule XIV(b) - Temporary Repairs

A new clause will be introduced to restrict the advantage to the shipowner where temporary repairs make it possible to effect permanent repairs at a place where such repairs can be made more cheaply than at or near the place of refuge.

Rule XX

The payment of a commission of 2% on General Average disbursements will be abolished.

Rule XXI

Interest will no longer accrue at a fixed rate of 7% but will be set on an annual basis by the CMI.

Rule XXIII

If permitted by domestic law, a time bar provision will be inserted extinguishing rights to claim General Average contributions one year after an adjustment has been issued, or six years after the termination of the "Common Maritime Adventure".

The York Antwerp Rules 2004 are not mandatory but (i) may be incorporated into contracts of affreightment, and therefore applied to the adjustment of claims in General Average, from 31st December, 2004, and (ii) are a new set of rules and not merely an amendment to the 1994 Rules. Therefore, specific reference to the new rules must be set out in a bill of lading if the York Antwerp Rules 2004 are to apply. Bills of lading that refer to "... York Antwerp Rules 1994 and amendments thereto ..." or use similar words, will apply the York Antwerp Rules 1994.