

General Average & Salvage – Frequently Asked Questions

1. What Procedures need to be followed?

The procedures are set out in the notice to cargo, which should have been sent immediately to all consignees. Full details including regular updates and copies of all necessary documents will be available from our casualty website.

2. Why do consignees have to go through this trouble?

Procedures following major maritime casualties are set out in internationally recognised law and practices. The procedures are well understood by cargo insurers who should handle the matter entirely, so that the cargo owners need only to provide the signed Average Bond (Form A), if requested and, the commercial invoice, and to ensure that their cargo insurers are advised.

3. In some cases separate Salvage Security is needed in addition to General Average Security. Why is this?

Under maritime law and the terms of salvage contracts such as the Lloyds Open Form, salvors have a direct claim against each piece of property saved. This unique position is in recognition of the high levels of risk that salvors often encounter when saving property. Recognised procedures that are well known to cargo insurers are in place for the lodging of salvage guarantees with Lloyds Salvage Branch in London.

General Average security is due to the shipowners on behalf of the common adventure to ensure that all parties contribute equitably to losses/expenses that have been incurred for their benefit in the casualty situation.

4. Who signs the security documents?

Average Bond (Form A) – In cases where this is required, this should be completed and signed by cargo owners.

Average Guarantee (Form B) – In cases where this is required, this should be completed and signed by Insurers of the cargo.

Salvage Security - In cases where this is required, this should be arranged by cargo Insurers.

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5. What if the cargo is not insured?

The majority of cargo will be insured but, if it is not, a cash deposit will need to be provided instead of salvage and general average guarantees. The amount of deposit will be a percentage of the sound C&F value of the goods – the percentage will be advised by the adjusters as soon as possible. The cash deposits will be held by the adjuster in an interest earning account. An Average Bond (Form A) will also be required to be completed by cargo owners.

Once the cargo's liability for salvage and general average has been determined by arbitration and adjustment, funds will be taken from the account to pay the relevant parties and the balance will be refunded to the depositor.

6. If insurers are giving a guarantee, why must the consignee often be required to also sign an Average Bond (Form A)?

The Bond establishes the identity and contact details of the cargo owners so that they can be contacted if necessary (for example for information regarding the goods) after delivery. The Bond also establishes a promise to pay which “triggers” the liability of the cargo insurer.

7. Once full security has been given, how will we know that cargo can be released?

At the end of every working day, adjusters will send the shipping lines a list of fully secured cargo that can be released. A list of secured cargo will also be available on our casualty website.

8. What happens with consolidated / groupage containers?

Containers holding several groupage cargoes cannot be released until security has been provided for the full contents. The agents responsible for groupage containers are urged to contact us as soon as possible with a breakdown of the contents of these containers, so that options for provision of security and delivery can be discussed.

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9. What is the role of the General Interest Surveyor?

Where there is General Average Sacrifice damage to cargo and / or ship it may be necessary to appoint a surveyor to act in the general interest – usually referred to as the “G.A. Surveyor”.

The G.A. Surveyor is not required to investigate the circumstances leading up to the general average situation, but once the situation exists his role would be to advise all parties on steps necessary to ensure the common safety of ship and cargo, to review general average expenditure, and to identify and quantify any general average sacrifice of ship or cargo.

10. What is the role of the Average Adjusters?

Average Adjusters are often appointed by shipowners to assist with the collection of general average and/or salvage security from all interests onboard a vessel at the time of a casualty.

The modern average adjuster is involved in a wide range of activities in the fields of marine insurance and maritime law, and general average occupies less of our time than was once the case. Nonetheless it has been the profession's involvement with general average that has given it its unique status in the commercial world.

The average adjuster may be appointed by any member of the maritime or marine insurance communities having an interest in the matter concerned, and, irrespective of the identity of the party appointing him, the average adjuster shall act in an impartial and independent manner. The average adjuster may advise any party seeking his opinion on any matter within the area of his expertise.

Members of Richards Hogg Lindley also participate actively in the affairs of the British Association of Average Adjusters, and other similar bodies. All Richards Hogg Lindley adjustments are reviewed and signed off by qualified fellows of the Association of Average Adjusters.

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11. What is General Average?

General Average arises by reason of the international law of the sea and has been in existence since about AD 530. The basic principle is that in time of peril affecting both the ship and her cargo, the costs of acts undertaken for the preservation of the ship and cargo from the peril, will be contributed to by the ship and the various cargo interests in proportion to their values at destination.

There are two principal types of general average costs, general average sacrifice, and general average expenditure. Both flow from the general average act. A simple example of a general average act that would create a general average sacrifice is the jettison of cargo to prevent a ship from sinking. This is a general average sacrifice of the cargo and the costs of the cargo sacrificed would be contributed to by the ship and other cargo interests. A simple example of general average expenditure is the amount paid by the ship owner for tug assistance in time of peril. The expenditure incurred by the ship owner for the common benefit of the ship and cargo would be contributed to by the ship and cargo interests.

Fire aboard ship often gives rise to both general average sacrifice and general average expenditure. Both the ship and the cargo may be damaged as a result of extinguishing operations and this would constitute sacrifice. Costs incurred in fighting the fire would be expenditure.

The amount payable by the ship and the separate cargo interests is the general average contribution. It is calculated by the average adjusters and is based upon the value of the interests involved, i.e. the ship and cargo. As a very simple example if the ship is worth say 100 and the cargo 50, and the general average is say 15; then the total contributory values are 150 and the general average is 10% of the contributory values. The contribution payable by the cargo will therefore be 10% of 50 = 5.

The ship owner has a possessory lien on cargo for its contribution to general average. In other words, the ship owners may withhold delivery until payment of the contribution due. Calculation of the general average by the average adjusters may take many months as considerable time is required for collation of all the necessary documentation to evidence the costs incurred and the contributory values. Clearly it would be neither reasonable or practical to withhold delivery for this period and the solution is to release the cargo in return for promises by the receiver and his insurer that they will pay the contribution due when properly called upon to do so. The average bond contains the promise by the receiver and a similar promise is made by the insurer under the average guarantee. General average contributions are normally covered by the insurance policies on the ship and various cargo interests. However, if the cargo is uninsured the ship owner may request a cash deposit as security.

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12. What are the York-Antwerp Rules?

"That which has been sacrificed for the benefit of all shall be made good by the contribution of all."

The York Antwerp Rules are a code of practice for general average, and are included in the contract of carriage by incorporation into the bill of lading. These rules extend the basic concept of general average to include certain additional expenses and can include the extra costs of delivering cargo by other vessel.

An International Conference held in York in 1864 produced the York Rules, which were revised at Antwerp in 1877 to become the first set of York-Antwerp Rules; the latest version was produced in 2004.

The York-Antwerp Rules play a pivotal role in ensuring uniformity internationally in the handling of maritime casualties.

13. What is Salvage?

The 1989 Salvage Convention defines a salvage operation as:

"any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever."

In 1898 the English Admiralty Court, in the classic case of the "GLENGYLE", summarised for the first time the principle of public policy that the salvor, and in particular the professional salvor, ought to be encouraged by generous awards to maintain tugs and other salvage equipment in constant readiness. The judge in that case put it this way:

"The maintenance of salvage steamers is for the general benefit of owners and underwriters and others interested in seagoing vessels and their cargoes and the crews and passengers of those vessels and ... the Admiralty Court will be liberal in its awards in respect of services rendered by salvage steamers even though the awards may fall somewhat heavily on individual owners. The owners of salvage steamers invest a large amount of capital in them and maintain them and their crews divers and appliances and have no remuneration to look forward to except that which may be earned by occasional salvage service."

The general principle is that salvage is paid by the various salvaged interests in proportion to their salvaged value, which is usually their value at the completion of the salvage service.

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14. What is the Lloyds Open Form (LOF)?

Because of the high values involved, most major container ship casualties are dealt with on LOF terms. The Form provides a sophisticated and well tried system for arbitrating Salvage Awards, dealing with interim disputes and for the provision of security. The Form has been regularly revised and the present version was issued in 2000. It is referred to as LOF 2000.

Two elements of LOF have particularly important implications:

- In signing the form the Master or Owner binds himself and cargo interests to the contract as if they had both signed separately. The liability to pay salvage is therefore separate so that the shipowner cannot be asked to pay cargo's proportion, or vice versa.
- Ship and cargo are under a separate obligation to provide security to the salvor. This is straightforward for ship interests but it can be a long and complicated business for the thousand or more separate cargo interests aboard a container ship to make the necessary arrangements.