

**PROVISIONAL RULES FOR GENERAL AVERAGE ADJUSTMENT**

*(Translation)*

With a view to dealing properly with general average adjustment on the basis of equality and mutual benefit so as to enhance friendly relations among peoples of different countries and promote the development of international trade and marine transport, the China Council for the Promotion of International Trade has adopted the present Provisional Rules and set up the Department for Average Adjustment.

**Article 1. Scope of General Average**

The following extraordinary loss or damage and reasonable extra expenses arising from measures properly taken for relieving a ship, cargo, etc. from common danger caused by natural calamities, accidents and/or other extraordinary circumstances in marine transport shall fall within the scope of general average:

1. Loss or damage reasonably caused to the ship, cargo, etc. for rescuing the same from danger;
2. Extra expenses incurred by the ship for entering a port of refuge, port charges incurred during the extra period of detention of the ship in a port of refuge and extra expenses for the ship's leaving the port of refuge subsequently with her original cargo or a part thereof;
3. Crew's wages and maintenance incurred as well as fuel and stores consumed during the prolongation of the voyage occasioned by the ship proceeding to a port of refuge and during the extra period of detention of the ship in a port of refuge;
4. Salvage expenses, expenses for forced discharge and reloading of the cargo, etc. and other extra expenses.

Where the ship needs repairs for the safe completion of the voyage in consequence of damage caused by an accident during the voyage, the port charges; crew's wages and maintenance and fuel and stores necessarily incurred or consumed during the reasonable period of detention of the ship in the port of repair, as well as the expenses and loss or damage arising from such discharging, reloading and handling on board of the cargo, etc. as are required for the repairs, may under the present circumstances be admitted as general average.

Where any expense is incurred to save another expense which would have been admissible in general average, such expense may be allowed in general average as a substituted expense. Unless otherwise agreed upon by and between the ship and cargo interests, the amount so allowable shall not exceed the amount of the expense saved.

With the exception of loss or damage and expenses referred to in the above three paragraphs, any other indirect loss, including loss or damage and expenses through delay, shall not fall within the scope of general average.

**Article 2. Principle of Adjusting General Average**

The principle of general average adjustment is the ascertainment of liability on the basis of investigation and study and dealing with the compensation for and contribution to various losses and expenses fairly, reasonably and in a truth-seeking way.

The onus of proof shall be upon the party applying for general average adjustment as well as other parties concerned to show that their respective loss or damage and expenses claimed for are allowable as general average according to the provisions of the Rules.

If the event giving rise to a claim submitted for adjustment as general average is due to a fault of one of the parties to the contract of affreightment, for which he is not entitled to exemption from liability, no general average adjustment shall be proceeded with, but the case may be otherwise appropriately dealt with through consultation according to the circumstances involved.

### **Article 3. Computation of Amount of General Average Loss or Damage**

The amount to be admitted as general average for loss or damage to the ship, cargo and freight shall be computed on the following basis:

1. The amount allowable for loss or damage to the ship shall be computed in accordance with the actual reasonable cost of repairing such damage, including cost of temporary repairs and of replacements subject to reasonable deductions in respect of "new for old". Where no repairs have been effected, computation shall be made in accordance with the reasonably estimated cost of necessary repairs. The amount allowable for loss of or damage to fuel and stores, etc. shall be computed on the basis of their actual values.
2. The amount allowable for loss of or damage to the cargo shall be computed on the basis of the c.i.f. value, less the freight which would have been incurred but for such loss or damage. Where the cargo so damaged is sold and it is impossible to ascertain the extent of the damage, the amount shall be computed on the basis of the difference between the c.i.f. value and the net proceeds of sale.
3. The amount allowable for loss of freight shall be computed on the basis of the freight lost owing to the loss of or damage to the cargo, less the operating costs of the ship, which would have been incurred but for such loss or damage.

### **Article 4. Contribution to General Average**

General average loss or damage and expenses shall be contributed to by the benefited interests in proportion to their respective contributory values.

The contributory values shall be computed on the following basis:

1. The contributory value of the ship shall be computed either in accordance with the value of the ship in sound condition at the time and place of the termination of the voyage, less the amount of loss or damage not allowable in general average, or in accordance with the actual net value of the ship at the time and place of the termination of the voyage, plus the amount allowable in general average.
2. The contributory value of the cargo shall be computed on the basis of the c.i.f. value, less the amount of loss or damage not allowable in general average and the freight at the risk of the carrier.

Undeclared or falsely declared cargo shall contribute on the actual value, but loss of or damage to such cargo, if any, shall not be admitted as general average.

Passengers' luggage and personal effects shall not contribute to general average except under extraordinary circumstances.

3. The contributory value of the freight shall be computed on the basis of the freight at the risk of the carrier and subsequently earned, subject to a deduction corresponding to the extent of the voyage still uncompleted at the time of the event giving rise to general average, plus the amount of loss of freight allowable in general average.

#### **Article 5. Interest and Commission**

Interest shall be allowed on general average loss or damage and expenses at the rate of 7 percent per annum until the date of the completion of the general average adjustment.

A commission of 2 percent shall be allowed on general average expenses other than crew's wages and maintenance and fuel and stores.

#### **Article 6. General Average Security**

The contributing parties shall, at the request of the parties concerned, provide a security to ensure the contribution to general average. Such security may be in the form of a reliable letter of guarantee or a cash deposit. Where a cash deposit is provided, same shall be paid into an account in a bank in the name of the Department for Average Adjustment unless otherwise agreed upon by and between the parties concerned. Any use of the cash deposit shall be decided by the Department for Average Adjustment. The provision, use and refund of the cash deposit shall be without prejudice to the ultimate liability of the contributing parties.

#### **Article 7. Time Limit of General Average**

For the purpose of safeguarding the interests of all parties concerned and completing the adjustment of general average as promptly as possible, all parties shall, upon the occurrence of the event giving rise to general average, do everything necessary in time and declare general average and provide the Department for Average Adjustment with relevant materials within the following time limits:

1. Declaration of General Average

Within forty-eight hours upon the ship's arrival in the first port after the event, if it has occurred at sea, or within forty-eight hours after the event, if it has occurred in a port;

2. Provision of Relevant Materials

For documentary evidence pertaining to the occurrence of general average and general average loss or damage, within one month after receipt thereof by the claiming party, but all materials shall in any case be provided within one year of the completion of the voyage.

In case of extraordinary circumstances the above time limits may be appropriately extended, provided reason for extension has been given within the respective time limits to the Department for Average Adjustment and its approval obtained.

In case of failure to observe the above stipulations on the part of any of the parties concerned, the Department for Average Adjustment may either decline to proceed with adjustment or adjust the case on the basis of the materials in its possession.

**Article 8. Simplification of Adjustment of General Average**

With a view to lightening the burden of all parties concerned and improving working efficiency, the adjustment of general average shall be made as simple as possible; unduly complicated procedures and calculations shall be avoided; adjustment shall be made as clear and concise as possible and easy to execute.

Summary adjustment may be applied in simple cases.

For cases in which the amount involved is small, adjustment may be dispensed with if consent has been obtained from the principal parties concerned.