

## Responses to Questionnaire on General Average

### SECTION 1 - GENERAL

#### 1. THE BIG PICTURE

##### 1.1

- a) No.
- b) No comments.
  - i) No comments.
  - ii) No comments.

##### 1.2

- a) & b) At present we have no information about any areas, where the YAR are an impediment and where the 'general average' approach can also be usefully used.

#### 2. ROTTERDAM RULES

- a) We are of the opinion that it is doubtful that the Rotterdam rules will come into force in 2016. Moreover, at this stage we have no information about the willingness and readiness of Ukraine to ratify this convention. That is why we propose not to consider this issue before coming into force of the Rotterdam rules.  
In any case, if Rotterdam rules come into force as of 2016 or later, we believe that the YAR will be in line with this convention before the following revision of the YAR.
- b) See above.

#### 3. DEFINITIONS

- a) To use definitions in Ukrainian legislation is useful, but taking into account the fact that YAR relates to and used by international shipping community, we prefer to avoid inclusion of any definitions into YAR. One of the reasons is that definitions may lead to complexity of YAR's application in different jurisdictions. So, our answer is 'no'.
- b) N/A.

#### 4. SCOPE

- YAR as a self-contained and complete code will be useful, but, as in case with definitions above, it will make the YAR more complicated and may effect the uniform application of rules in different jurisdictions. So, our answer is 'no'.

#### 5. FORMAT

- Yes.

6. DISPUTE RESOLUTION

No. This issue shall be agreed between the parties involved and/or by applicable law.

7. ENFORCEMENT

a) No need.

b) It will be useful to have a recommended standard, drafted separately, without incorporation into the YAR.

8. ABSORPTION CLAUSES

The Absorption clauses are the contractual terms agreed between the Hull insurer and the shipowner. There is no need of regulation by the YAR the commercial matters.

9. PIRACY

a) At the present time the issue of piracy is complicated and not resolved and regulated in all jurisdictions on a consistent basis. For this reason we propose not to consider this issue now and let it lie.

b) Actually Ukraine does not have any restrictions to pay ransoms, but due to some strict foreign exchange regulations it is almost impossible to pay a ransom abroad legally.

10. COSTS

a) Issue on reasonableness of adjusters fee has to be settled, but we believe, that it shall not be covered by the provisions of YAR.

b) No.

c) No.

d) No.

11. OTHER MATTERS

Nothing.

**SECTION 2 - INTRODUCTORY RULES**

**1. RULE OF INTERPRETATION**

Not necessary.

**2. RULE PARAMOUNT**

Not necessary.

**3. RULE OF APPLICATION**

No. It would be fair to give the parties the express right to decide with version to include in the contract of affreightment, instead of providing the version by default.

**SECTION 3 – LETTERED RULES**

1. RULE A

N/A

2. RULE B

2.1 Yes.

2.2 No.

3. RULE C

3.1 No, because it is difficult to calculate and it will overextend adjustment of GA.

3.2

a) Not necessary.

b) Not necessary.

4. RULE D

Nothing.

5. RULE E

5.1 Time limits are sufficient and at present we see no reason to stipulate additional measures.

5.2 Yes, the period should start counting from the date of casualty.

6. RULE F

6.1 No.

6.2 ('a', 'b'), 6.3 - No comments.

7. RULE G

7.1 No, the Adjuster in each particular case should decide this issue.

7.2 We believe that this can be settled by the Adjuster.

7.3 It should be retained.

7.4

a) only up to the point at which it becomes apparent that the voyage is frustrated.

b)

7.5 We propose to let it lie.

**SECTION 4 – NUMBERED RULES**

1. RULE I

Nothing.

2. RULE II

Nothing.

3. RULE III

Nothing.

4. RULE IV

No reasons to change the rule.

5. RULE V

Nothing.

6. RULE VI

6.1 Considering this issue and looking at Ukrainian law we can note the following:

On the one hand, one of the criteria for fixing of the salvage reward is *the salvaged value of the vessel and other property* (article 13 of the International Convention on Salvage, 1989, article 333 of the Merchant Shipping Code of Ukraine (hereinafter – “MSC”)).

According to the same provisions of the Salvage Convention and the MSC, the fixed reward shall be paid by all of the vessel and other property interests in proportion to their respective salvaged values. And if the payment of a reward has been made by one of these interests, this interest has recourse against the other interests for their respective shares.

On the other hand, under Ukrainian law the general average shall be apportioned between vessel, freight and cargo in proportion to their respective values.

And according to article 279 of the MSC the GA shall include, on top of everything else, *the expenses made with the purpose to receive assistance as according to the salvage agreement so without this agreement, inasmuch as these salvage operations are carried out with the purpose to prevent peril for the ship, the freight and the cargo.*

From the point of view of Ukrainian law, the correct option is to retain the 1994 position. However, from the practical point of view, we incline to an opinion that 2004 wording shall be retained.

Moreover, we believe that sooner or later the Ukrainian maritime law will be reconsidered by the parliament with implementation into national law of the latest trends of international private maritime law.

a) We support (ii).

b) No.

c) N/A

6.2

a) No.

b) We have some doubts that it would encourage cooperation.

#### 7. RULE VII

In Ukrainian language “ashore” and “aground” can have the same meaning.

#### 8. RULE VIII

a) See comments to the Rule VII.

b) Yes.

#### 9. RULE IX

Nothing.

#### 10. RULE X

10.1 Yes, agree with the insertion.

10.2 We have no objections on this issue, but it is necessary to discuss the particular wording.

#### 11. RULE XI

11.1 We are of the opinion that the position of a new YAR shall be as under the YARs 1994 (XI(b)).

11.2 No. It has to be decided by the adjuster in every particular case.

11.3 No. It has to be decided by the adjuster in every particular case.

11.4 Yes.

11.5

a) No.

b) No.

c) It's possible.

d) No need.

#### 12. RULE XII

Nothing.

#### 13. RULE XIII

Nothing.

#### 14. RULE XIV

14.1 2004 should be retained.

14.2 No.

15. RULE XV

Nothing.

16. RULE XVI

We agree with the proposal only if it relates to multimodal transportation of goods.

17. RULE XVII

17.1 No. We propose to leave it at the discretion of the adjuster.

17.2 No.

18. RULE XVIII

Nothing.

19. RULE XIX

Nothing.

20. RULE XX

Yes.

21. RULE XXI

21.1 Yes.

21.2 No.

22. RULE XXII

Yes.

23. RULE XXIII

We are of the opinion that these provisions should not be retained, because this issue shall be regulated by applicable national law.