

**CMI International Working Group**

**General Average – Questionnaire**

**1. Does the law of your country contain provisions on general average?**

The new Belgian Maritime Code (“BMC”) does contain provisions dealing with general average, both for seagoing vessels and for inland navigation vessels. Considering the scope of interest of CMI we will, for the purposes of this questionnaire, be looking solely at those provisions of the BMC which concern seagoing vessels.

In the BMC, which will enter into force on 1<sup>st</sup> September 2020, the main body of provisions dealing with general average is contained in Chapter 1, ‘Average’ of Title 7, ‘Navigation Incidents’, and in particular Articles 2.1.7.4 and following. The BMC provides that general average shall be adjusted in accordance with the York-Antwerp Rules. Pursuant to Article 2.1.7.4 §2 the King will determine the applicable version of the York-Antwerp Rules. A Royal Decree is in the making, providing for the application of the York-Antwerp Rules 2016. YAR 2016 will therefore apply to any Belgian general average adjustment.

**1.1 If so, does such law provide that contributing parties have to provide security in respect of such contributions?**

As such, the relevant provisions of the BMC do not stipulate that contributing parties have to provide security in respect of their contributions. The only relevant provision in the BMC regarding general average security, is Art. 2.7.1.7 which deals with the carrier’s right of retention of the goods respectively the sale revenue of the goods, any contributory freight or any other contributory goods on board the vessel. In its §3 it is provided that the carrier can no longer exercise its right of retention once sufficient security has been put up. Conclusion is that there’s no statutory requirement to put up security.

**1.2 If so, are there statutory requirements for such security?**

Not applicable since there is no legal obligation to provide security.

**1.3 If the law only requires security to be provided but no particular form, is it common in your country that cargo interests issue general average bonds and insurers issue general average guarantees?**

Not applicable.

**2. Are there any wordings generally used in your country for such securities?**

It rarely happens that general averages in relation to seagoing vessels are adjusted in Belgium. Wording used is quite often that of the Lloyd’s average bond.

**3. Does the law of your country have any requirements for the validity of such security (like original signature, notarization, consideration)?**

Belgian law does not impose any specific requirements for the validity of security bonds or guarantees. Such security documents are subject to general commercial law regarding simple contracts. Notarization is not required. Consideration is not a concept used in Belgian law, which is a typical European continental civil law system.

**4. Do such securities usually contain provisions on applicable law and jurisdiction?**

Securities commonly contain provisions on applicable law and jurisdiction.

**General remark**

Under Belgian law as well as under Belgian insurance policies, contributions in general average (and/or salvage) by saved cargoes are settled directly by insurers towards the general average adjuster. There is thus – contrary to rules and regulations in other jurisdictions – no ‘paid to be paid’ rule. Same is obviously much to the benefit of the insured who will not be out of pocket in the event he is required to make a major contribution.

Other important remark is the fact that the insured amount is always re-constituted after a contribution by the insurers in a general average adjustment. This implies that in fact the insured benefits from a 200 % coverage in case of concurrent general average and particular average claims.