

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO



CMI Questionnaire on General Average

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

Yes it does.

Sects 469 through 481 of the Italian Code of Navigation promulgated in 1942 under the Title Contribution to General Average cover a number of aspects of G/A.

The legal regime, although inspired to the then current YAR (1924), is generally regarded as somewhat uncomplete, fragmentary and, in some respects, contrary to the YAR.

In practice the Code can be said to govern some of the Lettered Rules (A-C-F) and some of the Numbered Rules (XV to XVIII and XXIII) and there are indeed some points which are at variance with the Rules.

The Code also contains a number of procedural rules, sects 610 through 619, to govern the adjustment procedure through the intervention of a Judge and of a G/A Adjuster as Court Assessor. This procedure has since long been abandoned (and indeed rarely applied), in favour of "private adjustment"

- 1.1 If so, does such law provide that contributing parties have to provide security in respect of such contributions?
- 1.2 If so, are there statutory requirements for such 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?

The law does not require that contributing parties have to provide security.

It is common practice however for G/A adjusted in Italy to require the contributing parties to provide a G/A Bond and their insurers to provide a G/A Guarantee (Security).

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

G/A Bond used in the Italian adjusting practice is almost invariably the standard Lloyd's Average Bond LAB77, whilst for G/A Guarantee the wording approved by the UK Association of Average Adjusters and the Institute of London Underwriters is often used.

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

The law does not require any particular form or other requirement for the validity of such security other than that it is in writing and signed.

In theory the signature should be coming from an authorized officer of the party concerned and its signature should ideally be authenticated by some means (such as a notary authentication).

In practice however this is not required and the signature is not, to our knowledge, ever disclaimed.

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

The G/A Bond and G/A Guarantee used in the practice (see above) do not contain an applicable law/jurisdiction clause.

Request for insertion of such clause is however increasingly experienced. In the adjusting practice request for inclusion of a law and jurisdiction clause is dealt with on case-by-case basis, although more or less elaborate wording commence to become standardized.

Since the Bond and the G/A are regarded as instrument originating an independent obligation it may be appropriate to insert a law/jurisdiction clause; although problems of coordination may arise with the law governing and the applicable jurisdiction the G/A (as provided for in the B/L or determined by conflict of law rules).