

# General Average



General Average, a long-established principle of Maritime Law, is the process whereby an extraordinary sacrifice or expenditure is intentionally and reasonably incurred for the common safety and for the purpose of preserving from peril the property involved in a common maritime adventure be this the ship or the cargo aboard.



Examples of General Average Sacrifice and Expenditure would be cargo jettisoned to prevent a vessel from becoming a total loss, cargo damaged by water used in extinguishing a fire on board ship or employing salvage tugs when the vessel suffers an engine breakdown.

All the parties to the adventure, who benefit from the sacrifice or expenditure, must contribute to make good the amount sacrificed, or the expenditure incurred whether or not they are insured. The costs would be contributed to by the ship owners, including values of fuel and stores and the owners of cargo (including containers) with each party contributing pro-rata to the value of its goods, which have been saved.

If a General Average situation arises a firm of Average Adjusters is normally appointed by the ship owner to collect the contributions from all the parties liable to pay. The adjuster works out how much each party is liable to contribute by establishing the total value of the property rescued and the values of the sacrifices and expenditure.

As this is a very lengthy and detailed process and goods would be required to be released much sooner to ensure that payment will be received, the adjuster requires each party to provide a Bond as security that they will pay funds the adjuster determines should be paid which is usually backed by a Guarantee.

If the cargo owner does not have insurance, they will need to provide the guarantee themselves, usually with a cash deposit or surety bond that will cover the prorated General Average claim. Cargo will not be released to the cargo owner until the General Average guarantee has been provided.

**If the cargo owner has Marine Cargo Insurance that covers General Average, the insurance company will issue the guarantee and cover the costs of General Average contributions** and the insurers will take over the detailed work of providing the guarantee and dealing with the adjuster and so the first step should be to try to establish if such cover is in place and to pass the documents received to the Insurers.

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A freight forwarder should never complete a guarantee in respect of cargo they should report the matter to their Freight Liability Insurer as a precautionary step as they can help with advice regarding the process to follow and how to obtain release of containers especially in cases where there is difficulty in obtaining acceptable guarantees from the cargo owners. A BIFA member would be able to rely on clauses 20D and 22 of their terms to enforce the position with their customers which both set out responsibilities in the case of General Average.

There could be additional complication in respect of the contribution due for the shipping containers dependent on whether these are owned or leased equipment or the shipper's own containers, if a freight forwarder has equipment on board that is insured by them they should contact the appropriate Insurer.

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