

General Average Bond, General Average Guarantee, Salvage Guarantee, and Counter Guarantee for General Average claim documentation

In order to protect the rights of general average creditors (Ship-Owners), he is obliged to obtain reasonable security from contributing interests. The law assists him in this by allowing him to exercise his right of the common law possessory lien on the property until such security is given. The general average act gives rise to a possessory, not maritime, lien on the property. The owner, therefore, through the master, may withhold delivery of property at the destination until reasonable security has been provided.

Such reasonable security is usually construed as consisting of the following:

- (i) a **general average bond** signed by the consignee, *and*
- (ii) *either* (a) a **general average guarantee** signed by the insurer of the cargo, *or*, (b) if the cargo is uninsured or the particular cargo insurer is not acceptable to the ship owner, a **general average cash deposit** are to be provided for – of an amount which is usually recommended by the average adjuster, which amount will be held by the average adjuster, pending the completion of his adjustment.
- (iii) a **salvage guarantee** is generally to be provided independently direct to salvors, if salvage services may be involved in a GA casualty.

The general average bond, as backed by an insurer's general average guarantee or a cash deposit, is a new contract, being independent from the contract of affreightment, between the ship owner and the owner of the other interest.

General Average Bond, General Average Guarantee, Salvage Guarantee, dan Counter Guarantee dalam penyelesaian klaim General Average

Untuk melindungi hak-haknya atas general average, kreditor (Pemilik kapal) sebagai penanggung-jawab atas pengumpulan kontribusi dari para pemilik barang (yang barang-barangnya selamat), pemilik kapal berkewajiban untuk memberi ganti rugi kepada para pemilik barang yang barangnya tidak selamat. Karena adanya risiko yang demikian, maka pemilik kapal mempunyai hak gadai (*lien*) atas barang sehingga berhak menahan, bahkan menggadaikan barang, jika pemilik barang tidak memberikan jaminan yang pantas.

Untuk kepentingan pelepasan cargo, Jaminan yang diperlukan umumnya terdiri dari:

- (i) **general average bond** yang ditandatangani oleh penerima kargo (the consignee), *dan*
- (ii) (a) **general average guarantee** yang ditandatangani oleh perusahaan asuransi kargo, *atau* (b) dalam hal kargonya tidak diasuransikan atau general average guarantee yang ditandatangani oleh perusahaan asuransi kargo tidak adapat diterima oleh pemilik kapal (ship owner), maka **general average cash deposit** harus dibayarkan – sejumlah tertentu yang direkomendasikan oleh average adjuster.
- (iii) **salvage guarantee** umumnya diminta secara terpisah untuk diberikan kepada perusahaan penyelamat (salvors), jika operasi penyelamatan dilakukan dalam peristiwa GA tsb.

General average bond, yang didukung oleh general average guarantee yang diterbitkan oleh perusahaan asuransi kargo atau cash deposit, adalah menjadi kontrak perjanjian baru antara pemilik kapal dan pemilik kargo terpisah dari kontrak pengangkutan.

The contractual obligation assumed by the cargo interests under the security is to make payment of a liquidated sum at a future date, which will not arrive until the general average statement has been completed by an average adjuster appointed by the shipowners.

Time Bar

Rule XXIII of YAR 2004 provides that a claim for general average contribution, including any rights to claim under general average bonds and guarantees, shall be extinguished, unless an action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment was issued. In no case shall such an action be brought after six years from the date of termination of the common maritime adventure. The period may be extended upon the agreement of the parties after the termination of the common maritime adventure.

At the end of the day, it is the insurers (for hull or cargo) of the respective parties involved in the common adventure that pay for general average contributions which the parties can recover by way of indemnity under their respective insurance contracts. This falls within the scope of marine insurance.

Counter Guarantee

In consideration of a General Average Guarantee and/or Salvage Guarantee issued, Insurers may request a counter guarantee that the Insured will be undertaking to pay such proportion of the General Average Contribution and/or Special Charges and/or Salvage Contribution as may not be payable under the terms of the insurance effected including but not limited to any deductible/excess that may apply

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Kewajiban dalam kontrak tersebut adalah bahwa pemilik kargo akan membayar sejumlah biaya kontribusi dimasa depan yaitu saat dimana perhitungan klaim general average telah selesai dilakukan oleh average adjuster yang ditunjuk oleh pemilik kapal.

Daluwarsa

Rule XXIII of YAR 2004 menyatakan bahwa tuntutan biaya kontribusi general average atas general average bond dan general average guarantee harus sudah diajukan paling lambat dalam masa 1 (satu) tahun setelah perhitungan klaim general average diterbitkan namun tidak boleh lebih dari masa 6 (enam) tahun setelah berakhirnya perjalanan kapal. Masa daluwarsa tersebut dapat diperpanjang dengan persetujuan para pihak setelah berakhirnya perjalanan kapal.

Pada gilirannya, adalah kewajiban dari perusahaan asuransi kargo atau asuransi kapal yang bersangkutan untuk membayar biaya kontribusi general average yang mana biaya-biaya tersebut dijamin dalam kontrak asuransi pengangkutan atau asuransi kapal.

Counter Guarantee

Atas dasar penerbitan General Average Guarantee dan/atau Salvage Guarantee, Perusahaan asuransi dapat meminta counter guarantee sebagai jaminan dari pemilik kargo (Tertanggung) bahwa Tertanggung akan membayar seluruh biaya-biaya kontribusi general average atau biaya-biaya penyelamatan jika terdapat bagian yang tidak dijamin dalam polis asuransi terutama membayar biaya potongan klaim (deductible)

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