

**IMO**  
**International Maritime Law Institute**

**DRAFT**  
**GENERAL AVERAGE ACT B.E....**  
**OF THAILAND**

**By**

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## Explanatory Note

**Ships travelling on the sea face different kinds of dangers such as perils of the sea and dangers that occur from human errors or technology errors. These dangers give rise to losses, damages or expenditures to the owner of property, that is to say, owner of the ship, owner of cargo, and owner of other property on board the ship. In addition, in some situations they may cause casualty or loss of or damage to third person's property, or affect the environment. These situations, however, may force the master of the ship to decide to sacrifice some parts of the ship or some property on board the ship in order to preserve the ship or other property on board or there may have some necessary expenditure to be incurred in order to preserve such ship or property.**

**The losses or damages or expenditures incurred thereof by the owners of the ship or cargo or other property can be made good through the principle of**

**general average, which has been widely accepted by custom and practice in sea transport for a long time. The owners of property that has been preserved have the duty to contribute for the losses, damages or expenditures of the others.**

**However, Thailand has not yet had the law governing in this area. Therefore, the Act can ensure that the maritime law of Thailand is consistent with the international maritime law and support its international trade. In addition, it shall fill the gap in Thai maritime law by enabling the provisions relating to general average contained in the Carriage of Goods by Sea Act B.E. 2534 (1991) and the Arrest of Ship Act B.E. 2534 (1991) which are ineffective come into operation.**

**Provisions in the Act are divided into seven chapters and shall be applied only when the parties concerned do not otherwise agree.**

**1) Chapter one is the Preliminary, which gives effect to the Act within 90 days from the date of its publication in the Government Gazette.**

2) Chapter two contains definitions. It especially provides the meaning of '*peril*', which must be '*imminent and real*'. This is the principle that has long been laid down by English courts.

3) Chapter three deals with the General Average principles. This chapter contains principles concerning general average act, the property involved in a general average act, the sort of losses, damages or expenses that can be made good as general average, the right to contribution, example of losses, damages or expenses that allow in general average, and examples of losses, damages or expenses that are allowable as general average, and examples of exceptions that are not allowed as general average.

The Act also provides principles of general average that correspond with the York-Antwerp Rules, more particularly, the Lettered Rules.

Furthermore, the Act contains provisions as to when a peril shall not be regarded as a common peril and when the adventure shall be regarded as a common maritime adventure in respect of towing and pushing another ship or ships.

**With regard to losses, damages or expenses incurred or made, only direct consequences shall be allowed as general average. However, the additional expense incurred in place of another expense, which is allowable in general average is also deemed to be general average and allowed to be made good under this Act.**

**With regard to the right to contribution in general average, the Act lays down the principles of contribution, which are based on the actual value of the ship at the termination of the adventure. The value of the cargo is the value at the time of discharge. However, mails, passengers' luggage, personal effects and accompanied private motor vehicles are excluded from contribution.**

**Apart from the principles of general average established along the Lettered Rules, the Act provided for examples of losses, damages and expenses that can be made good as general average. For examples, jettison of cargo, damage done to the ship or cargo by water or in extinguishing a fire and the cost of measures undertaken to prevent or**

**minimize damage to the environment. With regard to the environmental issue, it is intended in this Act to promote the protection of the environment. Furthermore, it gives examples of the losses, damages or expenses that are not allowed in general average, such as, losses, damages or expenses incurred in respect of damage to the environment, demurrage, and cargo carried contrary to the custom of trade. These examples are merely intended to give an idea for the application of the general average principles in each circumstance subject to the discretion of the court in each case. Therefore, when there is no agreement among the parties concerned, the court shall determine whether or not it should be allowed to be made good in order to balance the interests between the interested parties concerned in general average.**

**4) Chapter four, Claim for General Average and Time Limit, lays down the onus of proof on the party claiming general average to show that the loss, damage or expense claimed is allowable in general average. In addition, the Act provides the right,**

**without a time limit, of the owner of property, i.e., the shipowner, cargo owner or owner of other property, to claim general average. However, when the general average is claimed, there is a time limit of six months for all parties claiming general average to give notice in writing to the average adjuster. Furthermore, the Act stipulates a time bar for the interested parties to bring in an action within one year from the date the average adjustment has been received by the claimant, which period shall not exceed five years from the termination of the general average act.**

**In addition, the Act provides for a shipowner a right of retention on the goods in order to satisfy the contribution of such goods subject to the provisions as to the right of retention in the Thai Civil and Commercial Code, Section 241-250. Under the Code the shipowner may retain the goods until the obligation is performed or the cargo owner gives proper security. Although the Act has not provided a similar right to the cargo owner, he shall have a right to arrest the ship or the sister ship of the same owner in order to secure his general average claim, under**

**the Arrest of Ship Act B.E. 2534(1991), Section 3 and 4.**

**The Act also allows an interest rate of 7.5 per cent per annum for the amount made good as general average from the date of the general average act. The rate is in accordance with the Thai Civil and Commercial Code, Section 224, which is also the rate of debts during the default period. In this respect the Act slightly departs from the 7 per cent stated in the York-Antwerp Rules, Rule 21.**

**5) Chapter five, Average Adjuster and Competent Court, deals with conferring jurisdiction over general average matters to the Intellectual Property and International Trade Court. The Court is a court of first instance, which has rules dealing within its jurisdiction to ensure convenience, expediency and fairness of the proceedings. Moreover, judgments of the Court shall be appealed directly to the Supreme Court. Under the Act, the average adjuster shall be appointed by virtue of laws and regulations set out by the Government to perform an average adjustment as requested by any**



**interested party. However, there is another kind of average adjuster appointed by the Court in case of dispute arising out of the adjustment where an interested party disputes the average adjustment. The Court may, by virtue of the Act for the Establishment of, and on Procedure for, Intellectual Property and International Trade Court B.E. 2539 (1996), Section 31, call the average adjuster to appear and give opinions for its consideration. In this regard, by virtue of Section 32 of the said Act, the average adjuster shall be entitled to an allowance of transportation and accommodation expenses.**

**6) Chapter six is the General Provision, which provides that the Minister of Transport and Communications is to take charge of this Act.**

**7) The last chapter of the Act is Chapter seven, Transitional Provision, and provides that the Act shall apply only to general average acts taking place after the Act enters into force.**

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**Draft**  
**General Average Act of Thailand**  
**B.E.....**

**Chapter one**  
**Preliminary**

Section 1      This Act shall be called General Average Act B.E. ....

Section 2      This Act shall come into force within 90 days from publication

in the Government Gazette.

## **Chapter two**

### **Definitions**

- Section 3      In this Act:
- ‘Ship’ means a sea-going ship
  - ‘Shipowner’ means the natural or legal person who owns a ship
  - ‘Peril’ means danger that is imminent and real.

## **Chapter three**

### **General Average**

Section 4                      There is a general average act when, and only when, an extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Only losses, damages or expenses that are the direct consequence of such act shall be allowed as general average.

Section 5                      A ship is not in common peril with another ship or ships if by simply disconnecting from the other ship or ships she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

Section 6                      There is a common maritime adventure when one or more ships are towing or pushing another ship or ships, provided that they are all involved in commercial activities and not in a salvage operation. The same shall be applied to measures that are taken to preserve the ships and their cargoes, if any, from a common peril.

Section 7            Notwithstanding anything contained in this Act, the interested parties may agree between themselves with regard to general average act, contribution and average adjustment.

Section 8            General average sacrifices and expenditures shall be borne by the owners of property saved by virtue of general average act provided for in Section 4.

Section 9            Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

Section 10           The right to contribution takes place when the ship and cargo wholly or partly are saved unless one of them has been wholly sacrificed for the safety of the other.

Section 11           The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value.

Section 12           The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.  
Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Section 13           The ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charter party to which the ship may be committed.

Section 14 Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute in general average.

Section 15 Rights to contribution in general average shall not be affected though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties of the adventure, but this shall not prejudice any remedies or defenses which may be open against or to that party in respect of such fault.

Section 16 When a ship is at any port or place in circumstances which would give rise to an allowance under Section 19 (9), and the cargo or parts thereof are forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.  
The proportion attaching to cargo of the allowance made in general average by reason of applying the foregoing paragraph shall not exceed the cost, which would have been borne by the owner of cargo if the cargo had been forwarded at their expense.

Section 17 In the circumstances envisaged in Section 16 the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination.

Section 18 General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

Section 19 Losses, damages or expenses that shall be made good as general average include the following:

- 1) Loss of freight arising from loss of or damage to cargo, either when caused by a general average act, or when the loss of or damage to cargo is so made good.
- 2) Loss or damage incurred by jettison of cargo
- 3) Loss of or damage to the property:
  - (a) By water, which goes down a ship's hatches opened, or other opening made for the purpose of making a jettison.
  - (b) When a ship is run on shore whether or not she might have been driven on shore.
  - (c) When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged.
- 4) Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship.
- 5) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.
- 6) Damage caused to any machinery and boilers of a ship, which is ashore and, in a position of peril, in endeavoring to refloat when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage.
- 7) The extra cost of lightening, lighter hire and reshipping, if incurred.
- 8) Cargo, ship's material and stores, or any of them necessarily used for fuel. But when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel, which would otherwise have been consumed in prosecuting the intended voyage.
- 9) The expenses of entering a port or place when a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety; and the corresponding expenses of leaving such port or place consequent, with her original cargo or a part of it, upon such entry or return.

- 10) The cost of measures undertaken to prevent or minimize damage to the environment when incurred in any or all of the following circumstances:
  - (a) As part of an operation performed for the common safety which, if the measures had been undertaken by a party outside the common maritime adventure, it would have entitled such party to a salvage reward;
  - (b) As a condition of entry into or departure from any port or place in the circumstances as provided in (9) of this Section;
  - (c) As a condition of remaining at any port or place in the circumstances as provided in (9) of this Section, provided that when there is an actual escape or release of pollutant substances;
  - (d) Necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is admissible as general average.

Section 20            Subject to Section 4, losses, damages or expenses that are not allowed in general average include the following:

- 1) Losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.
- 2) Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently.
- 3) Loss or damage caused to goods loaded without the knowledge of the shipowner or his agent or to goods willfully misdescribed at time of shipment, but such goods shall remain liable to contribute, if saved.
- 4) Cargo carried contrary to the recognized custom of the trade.
- 5) Loss or damage sustained by cutting away wreck or parts of the ship, which have been previously carried away or are effectively lost by accident.
- 6) The wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages of the ship taken place during voyage and discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage.

- 7) Loss or damage caused by working the propelling machinery and boilers when a ship is refloated after situation in Section 19 (6).

#### **Chapter four**

### **Claim for General Average and Time Limit**

- Section 21      Ascertainment of the general average, the expenses and the sacrifices related to loss of or damage to the property, as well as the sharing of the contributions among the ship, the goods and the freight shall be performed by means of an average adjustment.
- Section 22      The onus of proof is upon the party claiming in general average to show that the loss, damage or expense claimed is properly allowable as general average.
- Section 23      When interested parties claim general average, the claimant shall proceed to;
- 1) appoint an average adjuster; and
  - 2) inform in writing the other interested parties, if practicable, by providing the name and address of the average adjuster and information concerning the general average act.
- Section 24      All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 6 months from the date of the notice of claim for general average has been sent to them.
- Failing such notification, or if within 6 months of a request for the same any of the parties fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.



- Section 25        The shipowner shall have a right of retention on the goods in order to satisfy the contribution for such goods in the general average. In such case, the Civil and Commercial Code, Book Two, Title One, Part Five ‘Right of Retention’ shall be applied.
- Section 26        Interest shall be allowed on the amount made good as general average at the rate of 7.5 per cent per annum from the date of the general average act.
- Section 27        The remuneration of the average adjuster and the expenses reasonably incurred for the working out of the average adjustment shall be borne by contributing parties. The remuneration and expenses shall be included into the general average total amount and shall be contributed to by the interested parties in proportion to their shares in the general average.
- Section 28        In working out an average adjustment, the average adjuster shall examine, determine and draw up a general average statement in accordance with international custom and practice.
- Section 29        Claims for general average shall be made by any interested party within 1 year from which the average adjustment has been received by the claimant, but in any event shall not exceed 5 years from the termination of the general average act.

## **Chapter five**

### **Average Adjuster and Competent Court**

- Section 30        The average adjustment is made by an average adjuster. The average adjuster shall be appointed by the Government under rules and regulations set out.

- Section 31        The Intellectual Property and International Trade Court shall have jurisdiction over any claim arising out of an act which is, or is claimed to be, a general average act.
- Section 32        Upon request of an interested party, if the adjustment is not friendly admissible or in the case of Section 24 paragraph 2, the adjustment shall subject to confirmation or readjust. The Court shall appoint a new adjuster to proceed to the followings:
- 1) Examination of the request for recognition of the existence of a general average and the issue of substantiated ruling on recognition of the existence of a general average or on rejection of the request; and
  - 2) Drawing up and issuing of a general average adjustment.  
Proceeding of appointing a new adjuster and remuneration shall be in accordance with rules of the Court issued by virtue of Section 30 of the Act for the Establishment of, and on Procedure for, Intellectual Property and International Trade Court B.E. 2539.
- Section 33        The adjustment issued by the average adjuster appointed by the Court in Section 32 must, at least, contain the following:
- 1) Date and place of issue.
  - 2) The full name of the average adjuster drawing up the adjustment.
  - 3) Brief description of the pertinent circumstances.
  - 4) Determination of the losses and expenditures of the general average.
  - 5) Determination of the currency.
  - 6) Determination of the value of the ship.
  - 7) Determination of the freight.
  - 8) Determination of the value of the cargo.
  - 9) Determination of the losses and the expenditures recognized as general average.
  - 10) Contribution capital.
  - 11) Apportionment of the general average.
  - 12) Balance and final account.
  - 13) Liquidation account among the parties.
  - 14) Settlement of cash deposits.
  - 15) Differentiation between the present and previous adjustment, if any.

Section 34            The Court may call the average adjuster to appear and give opinions for its consideration. In this case, the Act for the Establishment of, and on Procedure for, Intellectual Property and International Trade Court B.E. 2539, Section 31 and 32 shall be applied.

**Chapter six**  
**General Provision**

Section 35            The Minister of Transport and Communications shall take charge of this Act and shall be empowered to issue rules and regulations for the enforcement of this Act.

**Chapter seven**  
**Transitional Provision**

Section 36            This Act shall not apply to any general average act taking place before the Act enters into force.

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