

Public certification process under Maritime Navigation Act

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General average

Deposit and sale of goods and luggage

General average

If the bill of lading provides that settlement of the general average should be carried out privately by the parties involved, this constitutes a full binding agreement between them. In the absence of such agreement, private settlement of the general average is unenforceable against the parties, who can discuss it throughout the relevant legal proceedings.

In the absence of a private settlement, the parties can settle the general average according to the procedures set out in Articles 506 to 511 of the Maritime Navigation Act. The liquidation proceedings set out in the act are not common, since these proceedings are usually handled privately by renowned liquidators.

If this does not happen or if no agreement is reached regarding private settlement of the general average, any party with an interest in the maritime voyage may submit a written request to a notary public to record a statement of facts expressing the damages and expenses incurred, attaching supporting documents and a list of the parties with an interest. Only one notary public should be competent to hear the proceedings; thus, if another notary is subsequently required, he or she should refuse to act.

After notifying interested parties of their right to intervene in the proceedings, the notary shall appoint a liquidator to present a report including a settlement proposal or refusing a settlement if there is no general average. The report will be delivered to the parties, who are entitled to challenge it within 30 days. Any challenges will be submitted to the liquidator, who will then submit his or her final report to the notary within 30 days. After examining both the report and the claims of interested parties, the notary will issue a reasoned resolution, which provides a basis for enforcement proceedings against any party which does not pay the contribution set out in the decision within 15 days.

The notarial resolution may be appealed before the commercial court of the place where carriage was completed, and enforcement proceedings will be suspended until the appeal is complete.

Deposit and sale of goods and luggage

The public certification process applies when the law applicable to the charter contract entitles the carrier to request the deposit and sale of goods or luggage carried in the following circumstances set out in Article 512 of the Maritime Navigation Act:

- non-payment of:
 - freight, delays and expenses (including general average and salvage) by the consignee;
 - the ticket by the passenger; and
- failure to remove the goods or luggage by:
 - the consignee or passenger at the destination port; or

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- o the charterer at the final port of arrival.

In these cases the carrier can request a notary to arrange the deposit and sale of the goods by proposing a depository for this purpose. If the consignee of the goods is known – either because the title is nominative or because the applicant appointed a specific person for that purpose (usually the person to whom the goods were shipped or the person to be notified of the goods' arrival) – the consignee is required to make payment within 48 hours in proceedings for default payment. If it fails to grant a sufficient guarantee of payment within that period (even if it opposes the payment), the goods shall be deposited, valued and sold according to a procedure that must be further developed, as established in the 11th final provision of the Maritime Navigation Act. At present, this takes place through a notary auction process.

If the consignee does not oppose the payment, the amount of the sale will be delivered to the carrier until the debt is fully paid, after deducting the costs of the proceedings (Article 514 of the Maritime Navigation Act). Conversely, if the owner opposes this process and files a claim before the competent court or arbitrator within 20 to 30 days, the sale amount shall be deposited awaiting trial.

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