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MASTER'S THESIS (*pre Bologna period*)

# **AN INTRODUCTORY VIEW OF SALVAGE CLAIMS**

A theoretical and practical analysis of a real case scenario

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## **ABBREVIATIONS**

Brice	Brice, G. Maritime Law of Salvage. Sweet and Maxwell. London, 4th ed., 2003.
C.M.I	Comité Maritime International
C.F.R	Cost & Freight
C.I.R.	Cost, Insurance & Freight
F.O.B	Freight On Board
I.M.O	International Maritime Organization
I.S.U.	International Salvage Union
Keneddy& Rose	Rose, F.D. Kennedy & Rose - The Law of Salvage. Sweet and Maxwell. London, 6th ed., 2002.
L.O.A.	Length overall
L.O.F.	Lloyd's Standard Form of Salvage Agreement. Same as Lloyd's Form.
L.O.I	Letter of Indemnity
L.P.R.	Lloyd's Procedural Rules
L.S.S.A.C.	Lloyd's Standard Salvage and Arbitration Clauses
P&I	Protection & Indemnity
R.N.L.I	Royal National Lifeboat Institution
S.A.B.	Lloyd's Salvage Arbitration Branch
S.C.O.P.I.C.	Special Compensation P&I Clause
S.C.R	Special Casualty Representative
S.D.R.	Special Drawing Rights
USCSG	United States Coast Guard



## **FIGURES**

**Figure 1:** Elements of a salvage claim

**Figure 2:** Recognized salvage matter

**Figure 3:** Danger considerations

**Figure 4:** Voluntary service check

**Figure 5:** Success check

**Figure 6:** LOF process



## **INTRODUCTION**

The objective of this thesis is to view the process of a salvage claim through a theoretical and practical analysis of a real case scenario.

The rules for resolving disputes involving maritime trade were developed in early years, given the important role of seaborne transport. Since then, maritime law remains a very important part of commercial law. The author gained knowledge in this field throughout the course of a Master's degree in Nautical Science at Barcelona and a year of experience as a claims executive dealing with salvage and general average claims at London. Hence, the author conveys in this paper a principal marine claims topic: salvage claims.

Claims management is a significant sector of the extensive shipping industry based in London. Within marine claims handling, salvage claims are a strong and very interesting subject. The salvage cases that arise worldwide are usually under English Law and in particular the Lloyds Open Form (LOF). In order to understand salvage claims handling, an overview of the Law of Salvage must be brought up. There are three areas related to this law: property salvage, life salvage, and treasure salvage; the first of which is the focus of this paper.

Before getting into the case study and following the process of a salvage claim; the nature of salvage must be clearly defined. In order to achieve this, the question: ‘What is salvage?’ must be addressed. This question is answered through the definition of salvage and the description of its underlying principles.

Furthermore, when dealing with a salvage claim one must look into the International Convention on Salvage, 1989. This is the Convention by which the modern law of maritime salvage is primarily governed. The implementation and main articles of this Convention are described in the nature of salvage.

In practice, the salvage agreements or contracts used for salvage services carry the clauses by which the salvage cases are ruled. There are a number of salvage contracts around the world, but Lloyds Open Form (LOF) is the most widely used. Therefore, it is further analysed through its clauses, with specific mention to the Special Compensation P&I Club (SCOPIC) clause. This clause was introduced to prevent environmental damage when little or no salved value is involved in the salvage; hence, why it is invoked in several salvage cases and is necessary to be clarified.

Once there is a casualty that is saved at sea, there is a whole procedure to follow which involves taking statements, assessment of dangers, whether to appoint experts, choosing witnesses, calculating salved values, salvors’ out of pocket expenses, etc. The lawyers representing salvors, hull, P&I and cargo, usually deal with this. The *Dragon Seas* case described in this paper outlines the steps when dealing with an LOF claim from start to finish.

The case study wraps up the theory in the salvage overview. Furthermore, we have to consider the nature of salvage rewards, the cases in which they can be claimed, and the liability of ship, freight and cargo to contribute in payment of them. By setting such a straightforward case, almost every aspect of a salvage claim is put into practice.

The overview of salvage makes it simple for anyone to understand what it is and what it involves. This paper could be perceived either as an easy guide for handling salvage claims for someone that has never come across one, or as a reinforcement of the main elements involved in salvage cases. Throughout this paper, the reader is prepared to understand a salvage claim through salvage law theory and a case study. The practical case makes the reader get involved and probably, if interested enough on the topic, prepared to handle a salvage claim.





## **I. NATURE OF SALVAGE**

Salvage at sea has developed from both maritime law and equitable principles. It is an important part of the wider law governing marine perils and safety at sea. The law of marine salvage originated within the Edicts of Rhodes, the laws of the Romans, the Justinian Digest, the Medieval Laws of Oleron, and the Code of the Hanseatic League. The regulations implemented by such laws served as a form of insurance, dividing the cost of the losses due to marine perils between the shipowner, the owners of the cargo, and the passengers. Rhodian laws were the first to allow a salvor to claim a reward based on a percentage of the property saved and the danger involved in the operation.

A salvage service saves or helps to save ship, cargo or another recognized subject of salvage when in danger. By attributing a salvage award to a voluntary salvor, salvage law supports the public policy issues of preservation of maritime property and return of distressed property to a use beneficial to society.

For salvage to be possible, the following elements must be present:

- Subject of salvage in danger
- Voluntary nature of salvor
- Success in the salvage service(s)

The law of salvage as administered by the Court of Admiralty is a maritime law derived from ancient and various sources and developed and built upon by decisions of the Court.<sup>1</sup> The principles of salvage and salvage law have evolved over many centuries and the modern law is primarily governed by the International Convention on Salvage 1989.

## **A. Definition of Salvage**

Salvage has been defined as “service voluntarily rendered in relieving property from an impending peril at sea or other navigable waters by those under no legal obligation to do so<sup>2</sup>.”

The term salvage is a very old principle which comes from a Latin principle *jus liquidissimum* meaning those that save the property should be rewarded fairly. In other words, salvage is a claim brought by a third party volunteer who has assisted the ship and cargo to save it from a peril.

Any event which results in the ship and cargo needing outside assistance may lead to salvage, for example:

- Grounding
- Fire
- Collisions
- Engine Failure
- Structural failure

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<sup>1</sup> As stated by Lord Roche in *Admiralty Commissioners v. Valverda (Owners)* [1938] A.C. 173, 200.

<sup>2</sup> Norris, M.J. Benedict on Admiralty: The Law of Salvage § 2, at 1-4 (7th ed.1991).

- Heavy weather damage
- Capsizing
- Sinking

Other definitions relating to marine salvage:

- Salvor: one who salvages or assists in salvaging a ship or its cargo.
- Vessel: any ship or craft, or any structure capable of navigation.<sup>3</sup>
- Wreck: defined at common law as any ship lost at sea and its cargo, gear and equipment that were thrown on the land.<sup>4</sup>
- Flotsam: refers to floating wreckage after a vessel has been lost or to things accidentally lost at sea such as cargo which is washed overboard in a storm.
- Jetsam: cargo, fittings or gear deliberately cast into the sea to lighten the ship.
- Lagan: material cast into the sea, but buoyed for recovery later.
- Derelict: property, be it ship, cargo or equipment, abandoned at sea without hope or intention of returning to it.
- Abandoned cargo: often cargo which is not paid for or accepted by the consignee will be sold as, or for, salvage. Often such goods only achieve a fraction of their original value, which is referred to as their salvage value.

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<sup>3</sup> Definition under art.1 of the International Salvage Convention 1989.

<sup>4</sup> 'Flotsam', 'jetsam', 'lagan' and 'derelict', for the purposes of the Merchant Shipping Act of 1894, Section 510, fall within the definition of wreck.

## B.Underlying principles

Any salvage case will turn on the particular laws and contracts that apply, as well as the court which has jurisdiction. Even though there are a myriad laws around the world concerning salvage, the basic principles of the maritime law of salvage were laid down by decisions of the Admiralty Court; also known as Admiralty law.

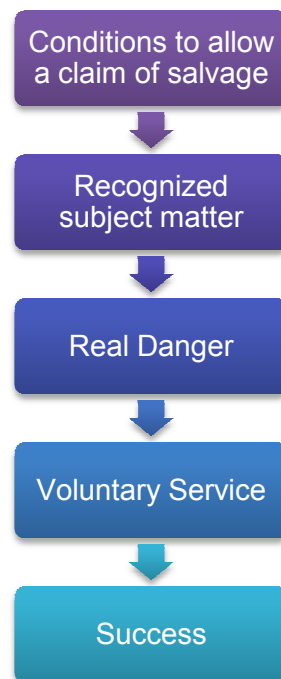
As defined by Kennedy's Law of Salvage:

*“the law of salvage applies where (i) there is a recognised subject of salvage (ii) which has come into a position of danger necessitating a salvage service to preserve it from loss of damage and (iii) a person falling within the classification of salvors (traditionally called a volunteer) (iv) is successful or meritoriously contributes to success in preserving the subject from danger.”*<sup>5</sup>

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<sup>5</sup> Kennedy&Rose, pg.1.

These four main elements must be present to allow a salvage claim:



**Figure 1:** Elements of a salvage claim

## **1. Subject of salvage**

The first element is that the maritime venture must have property capable of being salvaged. This includes ship or craft ("vessel"), cargo on board, freight payable, and bunkers carried on board. Also, the vessel has to be capable of navigation for example; an oil rig fixed to the sea bed is not capable of navigation so it cannot be salvaged.<sup>6</sup>;

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<sup>6</sup>The concept of property was expanded by the art. 1 of the 1989 Salvage Convention. See part C.

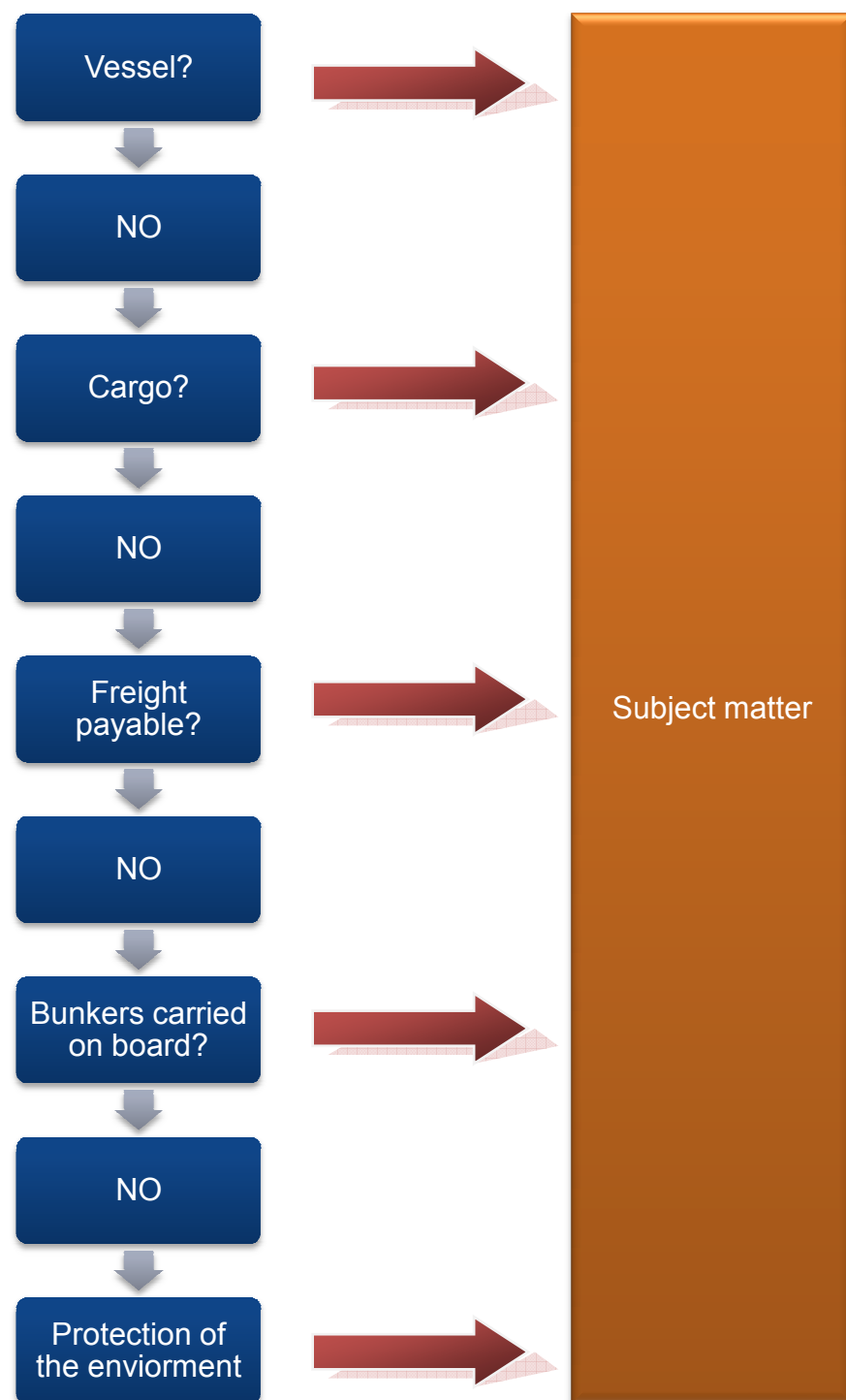
By virtue of the Sea fisheries Act of 1883, all fishing boats' gear, nets, floats etc, whether marked or not, fall within the definition of wreck. A navigational buoy or a club's racing mark that comes adrift is not part of a ship's gear or cargo, and therefore isn't wreck. A yachtsman finding such a buoy is simply finding someone else's property and is obliged in law to return it, and therefore cannot claim salvage. The finder of wreck is required by law to hand it over to the delay, and then proceed with a salvage claim. The receiver has the power to delay, and then proceed with a salvage claim. The receiver has the power to suppress plundering or disorder when a vessel is wrecked or stranded which means that it is an offence to board a stranded vessel to salvage its gear without the permission of the owner or the receiver<sup>7</sup>,.

Therefore, there must be a recognised subject of salvage. Saving life does not in itself give the right to claim salvage; instead, salvage must involve the saving of property. Nevertheless, if both life and property are saved the award to salvors will be more generous. If the salvor prevents oil pollution only, the salvor will be rewarded with special compensation, i.e., *liability salvage* instead of *property salvage*.<sup>8</sup>

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<sup>7</sup> Art. 394 of The Merchant Shipping Act 1958

<sup>8</sup> See also SCOPIC clause in section II.



**Figure 2:** Recognized subjects of salvage

## **2. Real danger**

The second element is that the salvaged property must have been in danger, but that does not necessarily mean danger of total loss. The danger does not need to be permanent or imminent. It must be a danger from which the subject of salvage cannot be extricated unaided. Hence, the vessel salvaged, or somebody on it, must be in real danger; not just imagined danger.

Dangers at sea can be proved to exist by:

- The state of the vessel – on fire, sinking, out of control, without power, abandoned.
- Its position – on a lee shore, stranded, standing into danger.
- The condition of the crew – injured, incapable
- Danger to the environment by reason of the above.

In a salvage claim, the burden of proving that a real danger existed is upon those who claim as salvors. The salvor can further advance his case by citing evidence of distress signals, or he can say that the crew of the salvaged vessel readily accepted help. Furthermore, the danger can be proved to exist not only from the state of the salvaged vessel but the ignorance and lack of skill of master and crew.

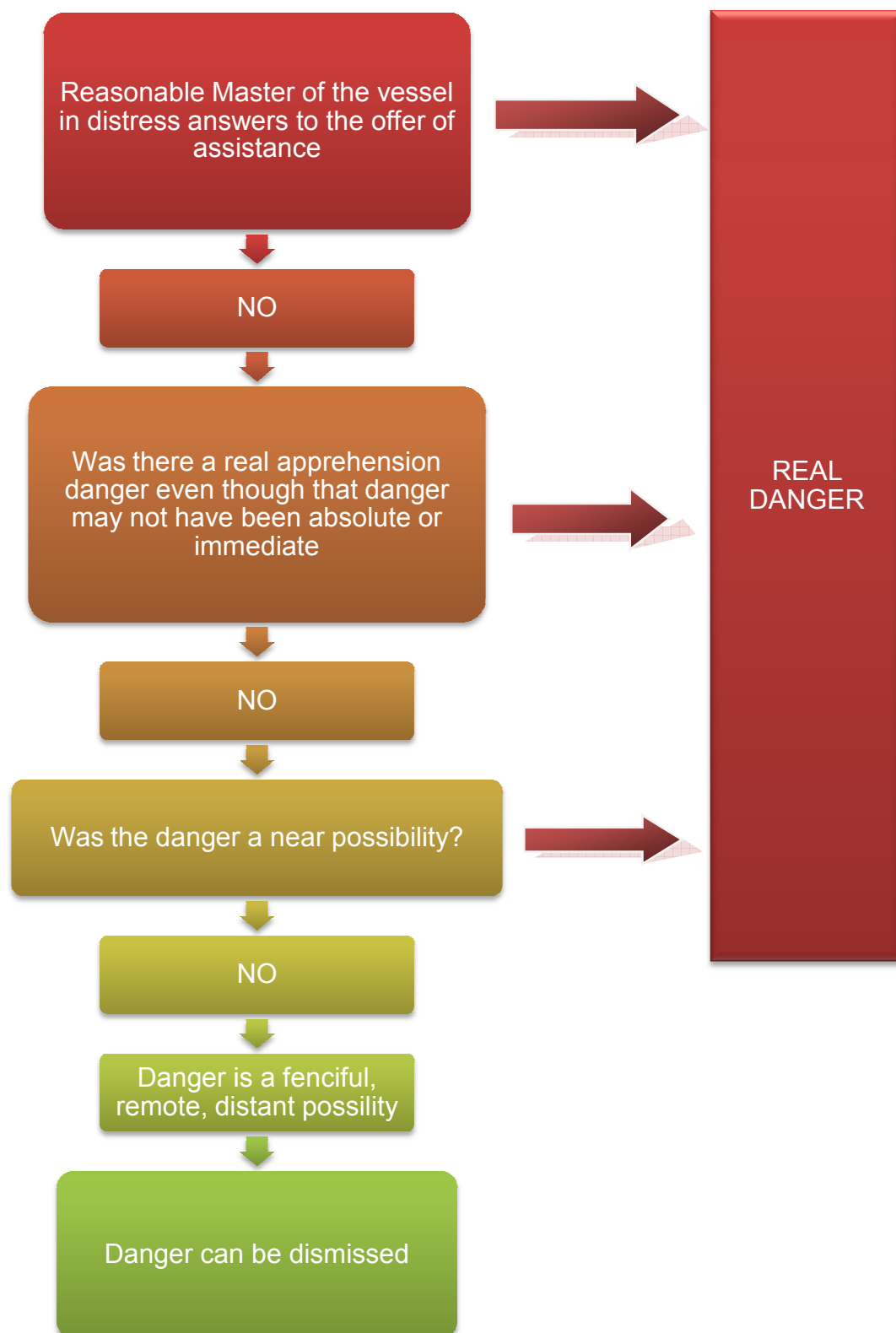


It should also be appreciated that it can be an act of salvage just to set in motion the steps that eventually bring a vessel to safety, such as giving advice, providing gear and equipment, or warning of a developing situation. But in order to claim salvage (or be part of a salvage claim) the vessel must be in an improved and safer situation after the deed than it was before. The advice to sailors always to use their own warps when accepting a tow has come about because it has been held that it is a valid salvage service to supply tackle to a vessel in need of it. To claim salvage, a salvor need not necessarily do anything dangerous like putting out a fire.

Salvage services can include towing, pilotage, navigating or standing by a boat, taking off equipment and, in certain circumstances, transporting passengers and crew to shore. Removing a vessel from an adjacent and dangerous fire could be salvage just as much as putting out the fire in the burning vessel itself. Preventing a vessel from being robbed or pirated might also be considered a salvage operation. The services provided by claiming salvors will be taken into account in assessing salvage rewards<sup>9</sup>.

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<sup>9</sup>Art. 13 of the Salvage Convention 1989.



**Figure 3:** Danger Considerations

### 3. Voluntary Nature

A salvor is a voluntary rescuer who renders his services to maritime property in danger at sea and preserves it or contributes to its preservation<sup>10</sup>. The rendering of such service must be voluntary in the sense of being solely attributable neither to pre-existing contractual or official duty owed to the owner of the salvaged property, nor to the interest of self-preservation.

Salvage is a voluntary service performed by people with no legal, contractual or official duty to do so, when a vessel is in danger at sea, and:

1. Saves the vessel,
2. Contributes to the safety of the vessel, its gear or cargo, or
3. Contributes to the safety of the lives of those aboard.

Who can be salvors?

- The owners of the salvaging vessel. This can include the owners of a sister ship<sup>11</sup>.
- The Master, officers and crew of a salvaging vessel.

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<sup>10</sup>Brice, chapter 7-02.

<sup>11</sup>Art.12 of the Salvage Convention 1989 states *“This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner”*.

- Crew of tugs rendering salvage services. For example: professional salvors such as Smit or Tsavlis<sup>12</sup>, pilots, tug owners, Navy/Coastguards, etc.

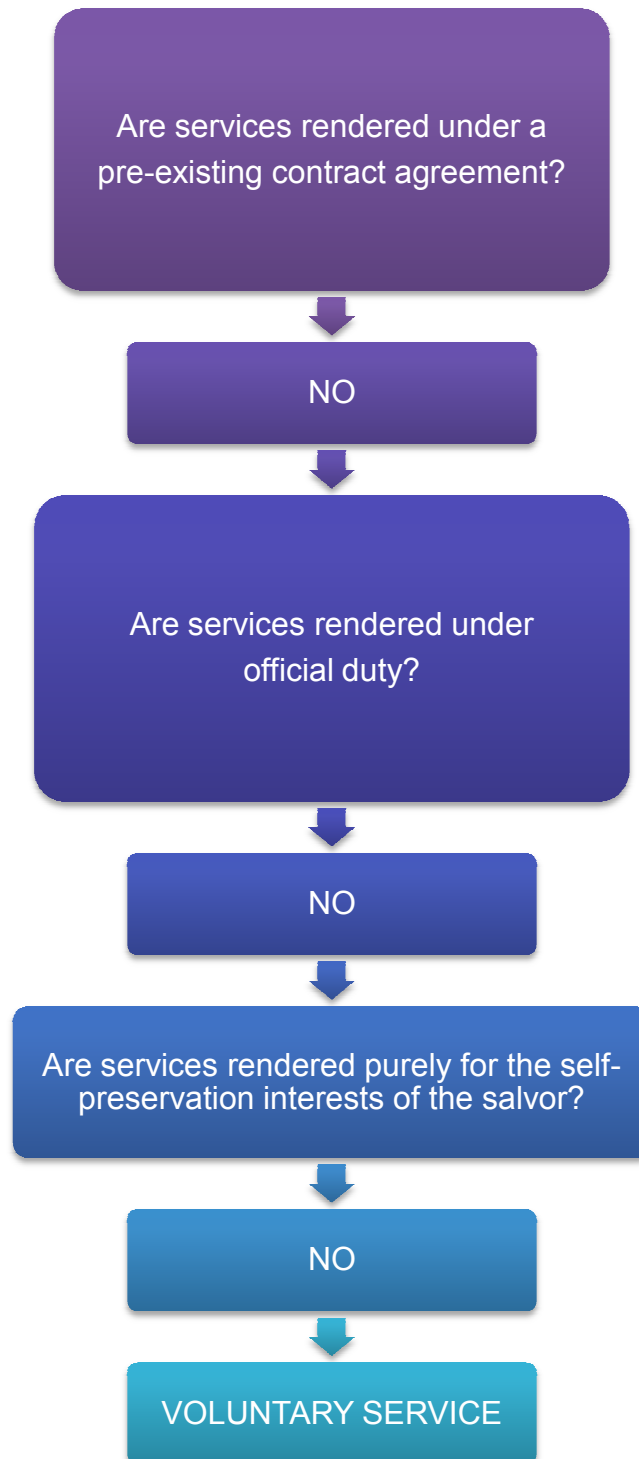
Note that policemen, coastguards and harbourmasters all have a duty to save lives and property, and so can't be deemed to have volunteered their services in a salvage operation. Consequently, they can only claim salvage for work outside their official duties and claims are rarely made. It has also been held in court that state-owned ships have equal entitlement to a fair and reasonable reward for salvage.

Lifesaving charitable organizations such as the RNLI in Britain and Ireland, could claim salvage, but don't as a matter of policy. It is widely accepted that a suitable donation should be made to the service in lieu of them claiming any salvage. The Royal Navy in UK has a duty to defend the country, but not necessarily to protect property in times of peace; they can and do sometimes claim salvage through the Ministry of Defence.

All salvors must be volunteers. For example, to show the importance of being volunteers, the Master and the crew cannot claim salvage while they are on board the vessel because it is their duty to preserve the venture. But if the vessel is abandoned and they then return to salvage the venture, they are treated like any other salvor and are entitled to claim a reward.

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<sup>12</sup> Professional salvors are members of the ISU.



**Figure 4:** Voluntary Service Check

#### 4. Success

Unlike land rescuers, the salvor is paid for his services in the form of reward. That is why salvage must be considered a *sui generis* rescue operation. It is a fundamental concept in salvage law that the salvor should be encouraged by the prospect of an appropriate salvage award to intervene in any casualty situation to save the ship, property and, in particular, to save life and prevent pollution.

The salvor's right to a reward is based on natural equity, which allows the salvor to participate in the benefit conferred to shipowner, the ship itself and the ship's cargo. For a salvage award to be earned there must also be success or meritorious services rendered; also known as a “no cure, no pay” basis<sup>13</sup>. However, in certain circumstances payment for partial success can be granted.

Salvors negligence may have an impact on the salvage award. It has been decided in past cases that the duty of care owed by the salvors in a marine salvage is no different from the duty of care in other areas<sup>14</sup>. The salvor has to show the skill and care which can reasonably be expected from people in their position. It should be remembered that there is a different level of skill expected from a passing ship that just happens to try to help, than from a major professional salvor.

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<sup>13</sup> Art 12 of the Salvage Convention 1989. See part C.

<sup>14</sup> Art 8 of the Salvage Convention 1989. See part C.

In practice the arbitrators and courts have tended to be lenient when dealing with salvors, bearing in mind the public interest in encouraging salvage and taking into account the urgency of some situations. There is no wish to discourage operations which are risky for salvors' health and wealth.

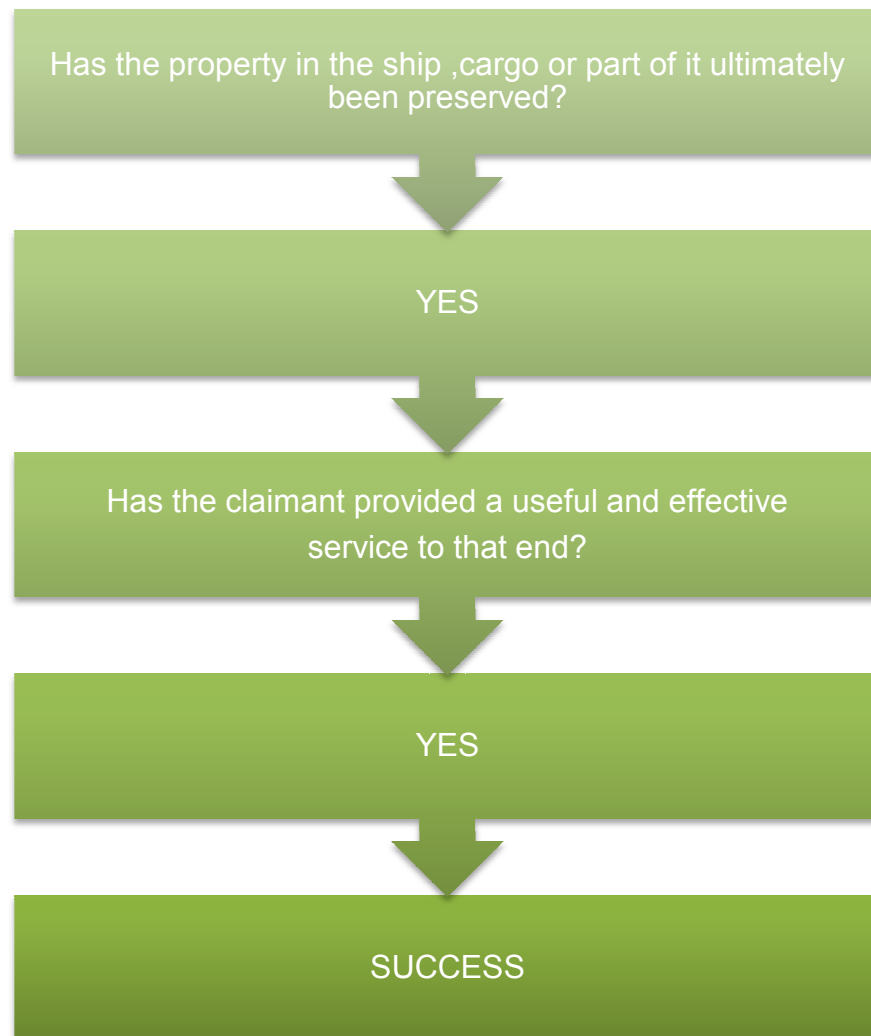
Although salvors negligence claims are not very common, they tend in practice to more frequently result in a reduction in the award, rather than a payment by the salvors. Negligence of the salvors was tested in the highest court in England, the House of Lords, in the case of the *Tojo Maru*. This was a tanker which collided with another vessel, and the engine room and a fuel tank were flooded.

After salvage agreement was signed and the salvors sent a salvage team of 8 people and a tug. The leak into the engine room was stopped, and the water was pumped out<sup>15</sup>. The crude oil cargo was pumped out of the vessel and a large plate 10 metres wide was made, which was going to be bolted to the vessel to cover the hole created in the collision. To bolt the plate, bolts had to be fired from a gun. But before this was done, the tank had to be made gas free. Unfortunately, against orders, one of the salvage team decided to start firing bolts. There was an explosion and a fire which caused a lot of damage. Extra help was required, and the fire was eventually extinguished.

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<sup>15</sup> See the salvage agreement, section II.

The salvors claimed a reward and the ship interests counter-claimed for the damage caused by the negligence. On the facts, the arbitrator found salvors were negligent, and the shipowners could recover losses from the salvors.



**Figure 5:** Success Check



## **C. International Convention on Salvage, 1989**

An international conference in 1989 agreed a new salvage convention which made a profound change in the nature of salvage. The intention of the International Salvage Convention 1989 was to encourage salvors to act in cases where there was a threat to the environment.

### **1. Implementation**

Many countries including UK, USA, China, Spain and Greece are signatories to the Salvage Convention 1989. As of 31<sup>st</sup> March 2012, the number of contracting states is 63, representing around 50% of the world shipping tonnage<sup>16</sup>. It was adopted the 28<sup>th</sup> of April 1989 and entered into force the 14<sup>th</sup> of July 1996. Furthermore, the Merchant Shipping (Salvage and Pollution) Act 1994, adopted the provision of the 1989 Convention into English law.

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<sup>16</sup>Summary of status of conventions. IMO website.

The Convention replaced a convention on the law of salvage adopted in Brussels in 1910 which incorporated the "no cure, no pay" principle under which a salvor is only rewarded for services if the operation is successful. Under this basic philosophy, a salvor who prevented a major pollution incident without saving the ship or cargo would not get a salvage award. Therefore, the 1989 Convention provided articles to increase the incentive salvors in undertaking operations which prevented or minimized environmental damage but had slim chances of success in the salvage of property.

Although nowadays salvage mainly depends upon 1989 International Salvage Convention its interpretation depends upon the national courts thus need the understanding of the interpretation under various jurisdictions, specially the English and the American.

## **2. Content**

The Salvage Convention 1989 provides **34 articles** divided into V Chapters which provide the definitions and principles of salvage law. The most important articles are revised below.

Under **Article 1** there are a set of definitions worth describing:

- a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.*

Although the Salvage Convention provides that any salvage service on any navigable water may give rise to a salvage claim, the UK made a reservation and excluded salvage from inland waters<sup>17</sup>.

*b) Vessel means any ship or craft, or any structure capable of navigation.*

As mentioned earlier in this section, an oil rig fixed to the sea bed for example is not capable of navigation so it cannot be salvaged.

*c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.*

Traditionally, salvage only recognized a vessel, cargo on board, freight payable, and bunkers carried on board as the subject of property in danger. The concept of property was expanded with this definition.

*d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.*

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<sup>17</sup> Inland waters: not including any waters with the ebb and flow of the tide at ordinary spring tides or the waters of any dock which is directly or indirectly connected with such waters.

The Convention 1989 takes into account the pollution in salvage operations with this definition along with Articles 8, 13 & 14. There is a proposal from the International Salvage Union (ISU)<sup>18</sup> as to change the word “*substantial*” to significant and to remove the unnecessary geographical restriction “*in coastal or inland waters*” from this definition.

The position on authority was changed under **Article 6** by which the Master or shipowner could bind the owners of the property on board a vessel to a salvage agreement. This would avoid the endless arguments of shipowners with the representatives of the cargo on board. Traditionally, cargo could not avoid paying under a contract for salvage services in cases where it was not practicable to contact cargo interests for instructions. In these circumstances, the shipowner was an agent of necessity but had a duty to act reasonably<sup>19</sup>. Whether they were agents of necessity depended on the circumstances of the case, in particular who would need to be contacted for cargo and how urgently action needs to be taken. For example, it is obviously easy to contact only one cargo owner on a bulk carrier which is safely aground, but virtually impossible to contact a thousand cargo owners on a container ship which is on fire.

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<sup>18</sup>ISU Position Paper on the 1989 Salvage Convention

<sup>19</sup>The question of authority before the 1989 Salvage Convention was dealt with in the English Court in the case of the *Choko Star*. In this case the vessel had a full cargo for one consignee (only one cargo owner), the ship was in no real danger. So the judgment was that the shipowners could only bind cargo if they were agents of necessity.

Subject to **Article 7** the contract may be annulled or modified if “a) *There was undue influence and the terms are unfair, or b) the payment under the contract is too large or too small for the services actually rendered.*” Therefore, the salvage contract must be reasonable and necessary.

**Article 8** describes the duties of the salvor, the owner and master of the vessel “*to exercise due care to prevent or minimise damage to the environment*” whilst carrying out salvage operations. With this article, the Salvage Convention 1989 imposes internationally a common standard of care on the parties involved in salvage operations and in doing so, it follows a certain extent the common law principles established in the *Tojo Maru*.

**Article 12** describes that the conditions for a reward to salvors are to have a useful result in the salvage operations. It underlines one of the basic principles in salvage law<sup>20</sup>.

The criterion for fixing the reward is found in **Article 13** and consists of 10 factors. The main salvage award is still based on a “no cure no pay” basis taking into account the traditional factors of salvaged value, danger, out of pocket expenses, success, time, and risks incurred in the salvage operation. Additionally, favourable consideration is given to the salvors’ effort to protect the environment from pollution. As stated by this article, the criteria is:

*(a) the salvaged value of the vessel and other property;*

*(b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;*

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<sup>20</sup> See section I, B.4. Success.

- (c) the measure of success obtained by the salvor;*
- (d) the nature and degree of the danger;*
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;*
- (f) the time used and expenses and losses incurred by the salvors;*
- (g) the risk of liability and other risks run by the salvors or their equipment;*
- (h) the promptness of the services rendered;*
- (i) the availability and use of vessels or other equipment intended for salvage operations;*
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.*

**Article 14** of the Convention provides for the salvor to be paid special compensation under specific circumstances where he has rendered services to a vessel which by itself or its cargo threatened damage to the environment and fails to earn a certain minimum amount of award.

The special compensation is based on a varying percentage of its expenses, by which it “*may be increased up to a maximum of 30% of the expenses incurred by the salvor.*” A tribunal may increase that amount “*but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.*” Furthermore in this article (paragraph 5), the salvors negligence in preventing or minimizing damage to the environment is penalized by deprivation of the whole or part of any special compensation.

**Article 18** addresses salvor's misconduct by stating that *"a salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct."*

For example, a salvor has unnecessarily retained possession of a vessel or refused access to the owner, this will be taken into account by the court in assessing the salvage claim, and he may even lose any right to an award.

It is obviously difficult to determine what loss the salvors caused when a casualty is already in a situation where it needs help. One can imagine many scenarios where the salvor will be able to say that even though they were negligent they caused no loss because the ship and cargo would have been a total loss in any case.

As a consequence of the decision in the *Tojo Maru*, salvors were concerned that they could face very large liabilities. Pressure was brought to bear and salvors were given a right to limit liability under the 1976 Limitation Convention. This right permitted salvors to limit liability based on a formula calculated by reference to the vessel tonnage, with a notional tonnage of 1500 tons. This would give a limit of liability of 830,000 SDR or a bit more than US\$1.3m.

**Article 20** ensures the salvor's maritime lien under any national or international laws. Salvors have a lien to enforce their claim against the salvaged property as a reward for their successful intervention, even if the ship undergoes new ownership. To enforce the lien, the ship must be arrested or seized. Apart from the claim against the ship, the salvor has a personal claim against the owner if he is not satisfied from the proceeds of sale of the vessel.

The 1993 International Convention on Maritime Liens and Mortgages in force ratified by few countries re-established that a salvage claim had priority above all other claims since by saving property in danger, the salvors contribute to the benefit of all interested in it. The salvors will decide the amount of security required, which is usually a percentage of the value of the salvaged property. Obviously, when the security of the salvage claim is provided by the party liable for payment the salvor may not enforce his maritime lien anymore.

**Article 21** describes the duty of the owners of the salvaged vessel and other property to provide security. The cargo can be released once the cargo owners provide a satisfactory security for the claim, including salvor's interest and cost. The shipowners' best endeavours are expected to ensure that the cargo owners provide this security<sup>21</sup>. Until the satisfactory security is put up, the salvaged property will not be moved from the port of place at which it has first arrived after the completion of the salvage services without the consent of the salvor.

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<sup>21</sup>Best endeavours: exercising due care in the physical performance.



**Article 23** provides for a two-year limit to commence judicial or arbitration proceedings arising from a salvage claim. The limitation commences on the date on which the salvage operations are terminated during the two-year period, an extension of time can be agreed by parties. An action for indemnity by a person liable may be instituted after the expiration of the limitation period with the assumption that it is brought within the time allowed by the states in which the proceedings are brought. However, if the ship is not saved and the loss was due to salvor's negligence, the time limit to bring action against the salvor will be based on the tort of negligence.

### **3. Denunciation**

**Article 31** provides that any State party may, by the deposit of an instrument of denunciation with the Secretary-General of the IMO, denounce the Convention at any time after the expiry of one year from the date on which the Convention enters into force for that State. A denunciation takes effect one year, or such longer period as may be specified in the instrument of denunciation, after the deposit.



## II. THE SALVAGE AGREEMENT

Salvage is very often carried out under a salvage contract, although this is not a prerequisite.

A salvage agreement involves the salvor bargaining for reward before effecting the salvage.

There are various implied conditions in such an agreement:

- the property is in danger;
- the salvor is not already under a duty arising from another contract such as a towage contract;
- the salvor is not acting in an official position;
- unless there is a term to the contrary in the Agreement, the services must be successful –no cure, no pay;
- the sum agreed must be paid out of the proceeds of the property saved;
- the salvor has lien on such property;
- the agreement is made in good faith, all material facts having been disclosed.

Any salvage agreement, the most commonly used being Lloyd's Open Form (LOF), implies the underlying principles of salvage. By agreeing to a LOF, the captain formally acknowledges that he needs help, is actually being salvaged, and gives the salvor the right to use the salvaged vessel's gear. The captain of the vessel in danger acts as agent of the owner, both under English Common Law and the 1989 Salvage Convention (Art 6).

There are various alternative forms of salvage contract, such as the Japanese Form, Beijing Form, Moscow form and Turkish. They are however national salvage contracts and LOF remains the internationally preferred contract.

### **A. Lloyd's Open Form**

Most salvage services around the world are rendered pursuant to the well-known salvage contract called Lloyd's Open Form (LOF). This salvage agreement incorporated the provisions of the Salvage Convention 1989 to be applied contractually; therefore, even a non-contracting state will abide by the Convention's terms and conditions provided the parties have signed the relevant LOF.

The first modern text of the Lloyd's Form of salvage agreement was adopted in 1892 and was standardized by 1908. Delays in contractual terms negotiations would occur in most salvage operations. As a result, the LOF evolved to allow decisions to be made quicker when a vessel was in a distress situation. This form allows the parties to essentially agree that the operation will go ahead and if they are unable to agree on the appropriate amount of salvage award afterwards then a specialist arbitrator appointed by Lloyds of London shall make the decision.

The salvage contract launched by Lloyds in 1908 was refined over the years, and the latest version is LOF 2011 which came into effect on May 9<sup>th</sup> 2011. This salvage contract continues to evolve to solve arising practical problems and is administered in London by the Lloyds Salvage Arbitration Branch (SAB).

The LOF sets a process through which parties can agree to the amount of salvage security, so that the salvaged property may be released. To ensure that salvage security is provided, the salvor has a lien on the cargo (i.e. a right to detain the property) for his claim for salvage. Security must be lodged at Lloyds to their satisfaction by a UK based guarantor, or in the form of a cash deposit. For this reason, there are salvage claims handling services based in London such as Dolphin Maritime & Aviation Services<sup>22</sup>.

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<sup>22</sup> Dolphin Maritime & Aviation services website

The main changes in LOF 2011 with regards to previous versions relate to<sup>23</sup>:

- The publication of future LOF Awards on the Lloyd's Website, subject to conditions set out in the Lloyd's Standard Salvage Arbitration Clauses.
- A new requirement to notify the Council of Lloyds within 14 days of agreeing LOF.
- A new requirement regarding the provision of security for the fees and expenses of Lloyds and the Arbitrator/Appeal Arbitrator.
- New special provisions dealing with salvaged Container ships in respect of notices to salvaged property, binding unrepresented interests to settlement agreements, and excluding low value cargo from the salvaged fund.

The LOF 2011 form specifies on the first page with a set of 9 boxes<sup>24</sup>:

- The name of the salvage contractors,
- Identifies the property to be salvaged,
- Any agreed place of safety (often this is left blank),
- The currency of the arbitration award (with a default currency of USD),
- The date of the agreement,
- The place the agreement is signed,
- Whether SCOPIC is incorporated, and
- Identifies the person signing on behalf of the salvors and on behalf of the salvaged property (usually the ships' Master).

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<sup>23</sup> SCR DIGEST No. 5

<sup>24</sup> See Appendix A, LOF 2011.

The rights and responsibilities of those signing the LOF 2011 are specified under the boxes by means of clauses (A-L) and important notices (1-4) as follows:

## **1. Main obligations of contractors (salvors)**

Clause A: the salvors have to use their “best endeavours” to save the property and take either take it to the agreed place of safety or to another agreed place.

Clause B: they must also use their best endeavours to prevent or minimise damage to the environment.

## **2. Nature of services contracted**

Clause C: the SCOPIC clause – unless “no” is deleted, the contract will not incorporate SCOPIC. In other words, it must be clear that a decision to incorporate SCOPIC was actively made, it does not happen by default<sup>25</sup>.

Clause D: The salvage services must be rendered upon the “no cure- no pay” principle subject to the provisions of the Salvage Convention 1989.

Clause E: Any services provided by the contractors before the form is signed are covered by the agreement. So the contract goes back in time as well as covering future services.

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<sup>25</sup>See SCOPIC clause, section II.B.

### **3. Duties of property owners**

Clause F: The property owners must co-operate fully with salvors. Particularly, (i) salvors can use any gear and equipment on the vessel free of expense, (ii) salvors will be provided with all information reasonably required provided it is relevant and practical to obtain, and (iii) the owners of the property will co-operate fully in obtaining entry to a place of safety.

### **4. After the salvage operation has ended**

Clause G: If there is no reasonable prospect of a useful result leading to a salvage reward under Salvage Convention Articles 12 and/or 13, either the owners of the vessel or the salvors can give notice to terminate the services.

Clause H: The contract is deemed to be completed when the property is in a safe condition at a place of safety.

Clause I: The salvors reward will be determined by Arbitration in London following the Lloyds Standard Salvage and Arbitration Clauses (LSSA Clauses<sup>26</sup>) and Lloyd's Procedural Rules in force at the date of the signed agreement.

Clause J: The governing law of this agreement and any arbitration is English law. Hereby, the LOF incorporates the provisions of the Salvage Convention 1989.

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<sup>26</sup>See LSSA clauses on section II.C.



## **5. Other clauses and important notices**

Clause K: The Master or person signing the agreement who acts as agent can bind the owners of the property on board to the agreement.

Clause L: Any kind of inducements are prohibited for any party that is part of this agreement.

The important notices after the clauses include (1) the obligation of the owners of the salvaged property to providing salvage security, (2) the incorporated provisions such as the LSSA Clauses, (3) the availability of awards on the Lloyd's website and (4) the obligation of the contractors to notify Lloyd's of their engagement in salvage services within 14 days and forward the signed agreement.

## 6. LOF process



**Figure 6:** LOF Process diagram. Retrieved from LOF Report 2012 on <http://www.lloyds.com/>

## B. LSSA Clauses and Procedural Rules

The LOF allows the parties involved in a salvage to essentially agree that the operation will go ahead and if they are unable to agree on the appropriate amount of salvage award afterwards then a specialist arbitrator appointed by Lloyds of London shall make the decision. The arbitration is subject to the Lloyd's Standard Salvage and Arbitration (LSSA) Clauses and procedural rules<sup>27</sup>.

### 1. L.S.S.A.C

The most important LSSA clauses are described below.

**Clause 2** is an overriding objective provision, which is that whenever any order or award is made, regard must be had to:

- a. promoting safety of life at sea and preservation of property, and during salvage operations to prevent or minimise damage to the environment;
- b. ensuring that the provisions are operated in good faith and in a businesslike manner;
- c. encouraging co-operation between the parties and with the relevant authorities;
- d. ensuring the reasonable expectations of salvors and owners of property are met and
- e. ensuring disputes are dealt with fairly and efficiently within a reasonable time and at reasonable cost.

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<sup>27</sup> See Appendix B: LSSAC

**Clause 4** describes provisions as to security, maritime lien and right to arrest:

- Salvors must notify Lloyds when the salvage services are finished (or before) of the amount of security they require from the owners of the salvaged property.
- The amount of security must be reasonable, and the security must be placed with Lloyds by an acceptable guarantor, in a form approved by Lloyds. The arbitrator has the power to reduce or increase the security at any time.
- The shipowners must use their best endeavours to prevent salvaged property being released before security is provided, and salvors have a maritime lien on the property.
- Salvors are not permitted to arrest or detain the property unless an attempt to remove the property is made, or 21 days have passed from the end of salvage services.

Other clauses include the appointment of arbitrators, arbitration procedure, and representation of parties. One of the parties to the salvage requests Lloyds to appoint an arbitrator. The arbitrator is selected by Lloyds in rotation from a panel of barristers, all of which are highly experienced Q.C.s<sup>28</sup>. The arbitration takes place in London and any party wishing to be heard must have a representative in the United Kingdom.

Under **Clauses 6.6** and **10.8** the arbitrator and appeal arbitrator respectively will be entitled to request security for their fees and expenses from one or more of the parties to the LOF contract.

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<sup>28</sup> Queen's Counsel: jurists with a status conferred by the Crown of England and recognised by courts.

**Clause 10** describes the procedure of appeals and cross appeals. There is a 21 day limit to submit written notice of appeal or cross appeal to the Council of Lloyds.

**Clause 12** simply provides the conditions determining the availability of LOF salvage awards/appeal awards on the Lloyd's Agency website. These will ordinarily be available to be viewed 21 days after the award or appeal award has been formally published to the parties to the contract unless there has been an application to the arbitrator, by any party, requesting that the award is kept private and confidential.

The special provisions refer to container vessels. **Clauses 13, 14 and 15** apply only to casualties involving laden containers and are designed to make the handling of multi-cargo, multi-party cases more streamlined, efficient and cost effective.

## **2. L.P.R.**

As stated by LSSAC 2011, clause 6.1:

*The arbitration shall be conducted in accordance with the Procedural Rules approved by the Council ("Lloyd's Procedural Rules") in force at the date of the LOF agreement.*

Usually the arbitrator will convene a meeting with the represented parties within 6 weeks of being appointed to discuss how the arbitration will be conducted.<sup>29</sup> The arbitrator sets a timetable for the parties to provide information on salvaged values, to exchange evidence on the salvage services, and a date for the hearing is also set.

Therefore, the arbitration process is clarified by means of these rules.

Before the Arbitration, the parties will exchange their evidence as to the salvage services and review this. **Rule 3** provides the order for directions which shall include:

- a) a date for disclosure of documents including witness statements (see Rule 4);*
- b) a date for proof of values;*
- c) a date by which any party must identify any issue(s) in the case which are likely to necessitate the service of pleadings;*
- d) a date for a progress meeting or additional progress meetings unless all represented parties with reasonable notice agree that the same is unnecessary;*
- e) unless agreed by all represented parties to be premature, a date for the hearing and estimates for the time likely to be required by the Arbitrator to read evidence in advance and for the length of the hearing;*
- f) any other matters deemed by the Arbitrator or any party to be appropriate to be included in the initial order*

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<sup>29</sup> Procedural Rules, cl.2

**Rule 4** states the documents that shall be disclosed, unless otherwise agreed, as:

- a) *logs and any other contemporaneous records maintained by the shipowners personnel and personnel employed by the Contractors (including any subcontractors) and their respective surveyors or consultants in attendance during all or part of the salvage services;*
- b) *working charts, photographs, video or film records;*
- c) *contemporaneous reports including telexes, facsimile messages or prints of e- mail messages;*
- d) *survey reports;*
- e) *documents relevant to the proof of:*
  - i out of pocket expenses*
  - ii salved values*
  - iii the particulars and values of all relevant salving tugs or other craft and equipment*
- f) *statements of witnesses of fact or other privileged documents on which the party wishes to rely.*

If there are any experts reports (for example from a fire expert), then these reports will be exchanged with the arbitrator's permission as provided by **Rule 5**. The expert evidence shall only be from one expert in each field that is required. The arbitrator has wide powers to make orders to control the proceedings, to decide what evidence he will admit, and to make whatever orders he sees fit to make the arbitration run smoothly and efficiently.

Other clauses in the procedural rules include the arbitrators powers, mediation, hearing of arbitration and appeals.

## C. Special Compensation P&I Clause (SCOPIC)

In the 1989 Salvage Convention, a new concept of a financial safety net for salvors was introduced. This was Article 14 of the Salvage Convention which provided a safety net for salvors to compensate their efforts if their salvage operation had contributed to protection of the marine environment even though they could not earn full or any salvage award. Salvors would then be able to recover their expenses at a fair rate. Lloyds expressly incorporated this article into the LOF 1990 contract. However, there were some difficulties with the interpretation of this article.

The House of Lords decision in the *Nagasaki Spirit* case, *Semco Salvage and Marine Pte Ltd. v. Lancer Navigation Company Ltd.*, with which the salvage industry became dissatisfied, prompted the creation of the Special Compensation P&I Clause (SCOPIC) incorporated in LOF 2000<sup>30</sup>. This clause is primarily about paying salvors to avoid environmental damage even when there is no value left in the property. In order to claim special compensation, it must be shown that the vessel itself or the cargo threatened damage to the environment.

A salvor can invoke SCOPIC as an alternative to the special compensation regime of the article 14 of the Salvage Convention. It has been invoked in between 10% and 20% of LOF cases in recent years. It is becoming more frequent in some of the very large cases, particularly where there is a very high degree of damage to the ship and cargo.

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<sup>30</sup>See Appendix C: SCOPIC clause



The SCOPIC 2011 agreement came into effect on 1<sup>st</sup> January 2011. There are three Appendices (A, B & C): Tariff rates, SCR and the Special Representatives respectively<sup>31</sup>. In the 2011 version an average 10% increase in the Appendix ‘A’ Tariff Rates<sup>32</sup>. The SCOPIC Committee organizes reviews of the SCOPIC Clause and the Tariff Rates, which will lead to the publication of SCOPIC 2014.

## **1. Practical difficulties**

Although damage to the environment is more relevant to P&I insurers, in practice this has an effect on property salvage, particularly in cases where salvage would be uneconomic and wreck removal would have otherwise been the usual course of action.

The safety net was welcomed by most people, but it provided practical problems. For example, what is the daily expense of a tug used by salvors for salvage work for say 15 days per year? Is it one fifteenth of the annual running costs? Or should the running costs be divided over the three hundred and sixty five days of the year? And should it include any profit? And what about salvors’ overheads?

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<sup>31</sup> See SCR in section II.D.

<sup>32</sup> See Appendix C: SCOPIC clause.

This was a point that occupied the High Court, the Court of Appeal and the House of Lords in England in the case of the *Nagasaki Spirit*. It kept lawyers and accountants busy for years. The principle issue in this case was concern with the definition of expenses in Article 14(3) and, in particular, that part of it which refers to “*fair rate for equipment and personnel actually and reasonably used in the salvage operation...*”<sup>33</sup>. The question was whether it is permissible to include a market or profitable rate, or whether the salvor was entitled to solely to reimbursement of expenditure. House of Lords delivering the judgment held that fair rate under article 14(3) meant fair rate of expenditure and did not include any element of profits.

Furthermore, although this was supposed to be a safety net, since these cases arose when there was insufficient value left in the salvaged property, the safety net sometimes failed because salvors often were unsecured and had difficulty in getting paid. The problems with article 14 lead to the development of the SCOPIC clause which comes into effect by contractual agreement.

## **2. Forces behind**

SCOPIC arose because of the recognition by both the P&I clubs<sup>34</sup> and salvors alike that the environmental impact of shipping casualties was becoming ever more important.

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<sup>33</sup> International Convention on Salvage 1989, art.14.3.

<sup>34</sup> A P&I club is a mutual insurance association that provides cover for its members, who will typically be shipowners.

There were a number of cases where the extent of the environmental threat and the likely value of salvaged property would be unclear – for example what about an oil tanker that is on fire? Will the whole ship and cargo, worth substantial amounts of money, be saved, and give a large salvaged fund, or will it be totally destroyed and leave the salvors with nothing? A salvor may refuse to help because he may think that, if the oil tanker and cargo is destroyed by fire, he will not be rewarded for his risk and expense.

In any SCOPIC case the P&I Club is at risk and even if only part of the cargo of oil is spilled, a huge clean-up cost will fall upon the P&I Club. For example, Exxon spent more than \$3 billion cleaning up the oil from the *Exxon Valdez* oil spill. Even the fuel oil spilt from a bulk carrier such as the *Selendang Ayu*, which was carrying soya beans, led to oil spill clean-up costs of more than \$100 million.

The *Nagasaki Spirit* case resolution drew strong reaction from the salvors and after lengthy discussions the marine salvage community arrived with the solution. This was a set of clauses giving the basis for calculation of special compensation including bonuses under the guidelines set up by International Salvage Union (ISU) and clarifying other relevant criteria known as Special Compensation and Indemnity Clause (SCOPIC).

The solution provided by SCOPIC is, the parties to a salvage contract may agree to incorporate SCOPIC into any LOF contract by reference, therefore contracting out of Article 14 of the Convention. Such contracting out is allowed under article 6 of the Salvage Convention.

### **3. Invoking & termination**

SCOPIC can be invoked by salvors at any stage in the salvage operation, regardless of the circumstances. There is no need for the salvors to prove an environmental threat. Before SCOPIC is invoked, the salvage would be done on the usual no cure no pay. The Article 14 safety net is, therefore, still present from the start of the salvage until SCOPIC is invoked. However, this clause can only be invoked if it has been incorporated into the agreement.

After SCOPIC is invoked, the shipowners/P&I clubs must provide security for \$3m within two working days. If the amount was considered too high by shipowners, or too low by the salvors, the amount can be adjusted later on. The assessment of SCOPIC remuneration starts from the date invoked.

There is a voluntary code of practice between the main salvors and the International Group of P&I Clubs<sup>35</sup>. The provision of security for SCOPIC is not automatic, although the Club will usually provide it. In the same way, the clubs will often provide security to the port authority if it is required to permit the damaged ship to enter a port of refuge

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<sup>35</sup> See Appendix E: Code of Practice between International Salvage Union and International Group of P&I Clubs.

If SCOPIC security is not provided within two days, then the Salvors may withdraw from SCOPIC. Salvors will then still be able to rely on their article 14 rights. The salvor can still terminate his services if he does not believe that the SCOPIC payment and the value of the property saved, will cover the cost of the services. Shipowners can terminate the obligation to pay SCOPIC by giving a five days' notice to the salvor<sup>36</sup>.

#### **4. Daily rate payments and tariff**

SCOPIC provides for payment on a daily rate basis, with the rates agreed in advance. Because the rates are agreed in advance, this means that the total cost is known quite quickly. The shipowner/P&I Club can appoint a salvage manager, Special Casualty Representative (SCR), who can monitor and influence the operation”<sup>37</sup>.

Any amounts payable under SCOPIC will be reduced by the amounts payable under the normal article 13 award. Any amounts due under SCOPIC will be paid by shipowners within one month.

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<sup>36</sup> SCOPIC 2011, cl.9

<sup>37</sup> See section II.D: SCR

SCOPIC payment operates on a “menu pricing” system. So there are fixed tariffs for equipment and personnel used. These tariffs are agreed by the P&I Clubs with the salvors at rates which are already profitable for salvors. In addition to these rates, there is also a fixed increase on these amounts of 25% to provide salvors with an additional incentive.

There is a cap for portable equipment of 1.875 times the replacement cost of the equipment. If, as sometimes happens, essential equipment has to be contracted in at a price higher than the tariff rate, then the contractor can claim a 10% uplift on that amount.

## **5. Effect on the Article 13 Award**

Special compensation available to salvors under the Salvage Convention 1989 faced problems in practical application. SCOPIC so introduced is a contractual obligation and not a statutory one and the Convention compensation limits to apply if SCOPIC is not agreed. The salvage services would continue to be assessed using the usual criteria to arrive at an award under Article 13.

Although SCOPIC is a safety net for salvors it does not come for free. This is because if the Article 13 award is higher than the SCOPIC amount, then the Article 13 award would be discounted by 25% of the difference between the Article 13 award and the SCOPIC award.

So, for example, if the SCOPIC claim was \$10m but the Article 13 Award is be \$30m, then the difference between the awards is \$20m. Since the Article 13 award was higher than the SCOPIC remuneration, there would be no payment under SCOPIC. Furthermore, because SCOPIC was invoked, salvors would be required to give a discount of 25% of the difference i.e. 25% of US\$ 20m being a reduction of \$5m, thereby, reducing the Article 13 claim to \$25m.

The aim of the discount is to discourage the Salvors from constantly invoking SCOPIC, even when the salved fund is large. The writers' view is that if SCOPIC was to constantly be invoked, it would strike at the heart of the "no cure-no pay" principle on which salvage is based.

## **6. Advantages & disadvantages**

One of the most important objectives of the LOF contract is that it is considered to be likely fair to salvors, property owners and underwriters. However, there are practical problems that cause certain advantages/disadvantages when applying the SCOPIC clause.

The advantages are the following:

➤ For shipowners:

- Much less time and money spent on disputes over how much should be paid;
- Better control over calculating their exposure to Salvors at an early stage;
- Prompt assistance in minimising pollution risks;
- Shipowners can terminate.

➤ For salvors:

- They know quickly how much money they will get;
- The rates are profitable;
- They do not need to spend much time proving how much should be paid;
- They normally will get security quickly.

➤ For cargo owners: they may find that cargo was salvaged as a consequence of a salvage mostly paid for by SCOPIC even though their cargo was worth only a small proportion of the salvage costs. Many cases which previously would probably have been treated as uneconomic for salvors to salvage, and which would have become wreck removals, have instead been resolved under LOF with SCOPIC.



The disadvantages of SCOPIC:

- For shipowners: salvors may recover more money than they would have previously.
- For salvors: if the salvage was successful and the salvaged fund was large, they may have made more money on a straight LOF claim without SCOPIC, because of the 25% discount if the fund is large enough.

## **7. SCOPIC case example**

There was one such case in 2011 where the ship loaded a cargo of muriate of potash at Ventspils in Latvia and left port on the 11<sup>th</sup> of January. The whole cargo was insured by an Indian underwriter and was worth more than \$5million at the start of the voyage.

Although the vessel was bound for India, by the 12<sup>th</sup> January it had returned to Ventspils and was attempting engine repairs. On the 15<sup>th</sup> January there was a storm and the vessel, with insufficient power, went aground on rocks and suffered extensive damage within a kilometre or so from the port at Ventspils. The vessel was in a sensitive position and the local authorities demanded that the shipowners and their P&I Club remove the wreck.

Water entered four of the holds and the cargo was heavily wetted. Although it was a major damage, it still retained some value despite being wet. However to make matters worse, many of the sounding pipes on the vessel were rusty and had holes. The damage to the bottom of the ship allowed water into the fuel tanks, and this forced the fuel up into the sounding pipes, and through the holes and into the cargo.

The oil in the cargo made it worth very little. The cargo could only be sold for \$700,000, and this was the salved value of the cargo. The ship was very heavily damaged and had a salved value of \$100,000. So the total salved value of all of the salvaged property was \$800,000.

The remaining cargo value was too little to pay for a very long and expensive salvage operation to remove the ship. In past times, the shipowner would have abandoned his vessel. There would then be a wreck removal contract, paid for by the P&I Club. Cargo interests would also have to abandon their cargo as well, and would be unlikely to get anything back.

However, as a result of invoking SCOPIC, the salvors had the confidence to continue with the salvage operation. They lightened the cargo into three vessels and managed to refloat the vessel. Their total claim under SCOPIC was about \$8m. Cargo contributed about \$450,000 from their \$700,000 and shipowners contributed \$75,000 to the salvage. So together, ship and cargo contributed about \$500,000. The P&I Club paid the remaining \$7.5m.

Cargo was then left with \$250,000 from the sale of the cargo and shipowners with \$25,000 (\$300,000 salvaged fund). Although the value was very little after the salvage operation, it was definitely better than a total loss, which would normally have been the result.

## **D. Special Representatives**

Special Casualty Representatives (SCR) and Representatives for hull and cargo were introduced and marine property underwriters' access to information about the services was improved. These representatives may be appointed once the SCOPIC clause has been invoked.

SCOPIC 2011, clause 12 states:

*“At any time after the SCOPIC clause has been invoked the Hull and Machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the vessel may each appoint one special representative (hereinafter called respectively the “Special Hull Representative” and the “Special Cargo Representative” and collectively called the “Special Representatives”) at the sole expense of the appoint or to attend the casualty to observe and report upon the salvage operation on the terms and conditions set out in Appendix C hereof. Such Special Representatives shall be technical men and not practising lawyers.”*

The Special Representatives are also addressed in SCOPIC, Appendix C, and the SCR guidelines which state:

*“The Special Representatives have the right to be informed of all material facts concerning the salvage operation as the circumstances reasonably allow” (SCOPIC, Appendix C, paragraph 2). A Special Representative is on board solely to investigate, monitor, ascertain and report on issues relevant to the Salvage operation and the assessment of the salvage award to be made under Article 13 of the Salvage Convention 1989 or SCOPIC remuneration.”*

The Special Casualty Representative is appointed by the shipowners but is an independent person drawn from a list of SCR’s approved by the P&I Clubs. There are now 42 members of the SCR Panel<sup>38</sup>. A set of guidelines for these representatives which describe their role, power and actions can be found along with the SCOPIC clause.

According to SCOPIC, Appendix B, paragraph 2:

*“The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment.”*

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<sup>38</sup> Listings of all Special Casualty Representatives who have been appointed by the SCR Panel.

Furthermore, the SCR's powers are<sup>39</sup>:

*(a) The SCR is obliged to report, observe and consult with the Salvage Master but not to attempt to direct the salvage operation.*

*(b) If the SCR disapproves of the way the salvage operation is being conducted, the type or number of tugs, men and equipment being used, he should inform the Salvage Master in writing as soon as possible and, if not satisfied with the Salvage Master's Daily Salvage Report, publish a dissenting report (see SCOPIC, Appendix B, Paragraph 5(c)(iii))<sup>40</sup>. However the SCR has no power to direct the Salvage Master to employ more or less resources in the salvage operation and this decision must remain at the Salvage Master's discretion.*

*(c) The SCR similarly cannot bind the owners of ship or cargo to any particular course of action. The SCR can contact any interest direct at any time provided all other salvaged interests are copied in.*

*(d) The SCR's powers and duties are limited and he should not be held responsible either civilly or criminally for the acts or omissions of those interested in the salvaged property or the salvors in respect of events which led to or followed the incident giving rise to the salvage services.*

*(e) No decision or viewpoint of the SCR is binding on the parties. Obviously they are influential but if not accepted by one of the parties the final decision is that of the Arbitrator.*

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<sup>39</sup>See Appendix D: Guidelines for SCRs

<sup>40</sup> SCOPIC, Appendix B, Paragraph 5(c)(iii) "setting out any objection or contrary view and deliver it to the Salvage Master and transmit it to Lloyd's, the owners of the vessel, their liability insurers and to any Special Representatives or, if one or both Special Representatives has not been appointed, to the appropriate Known Property Underwriter."

Therefore, the SCR may consult with the salvage master, but is not permitted to direct the salvage operation and cannot bind any party. In practice, his presence means that there is now a better flow of information, and often an exchange of ideas occurs between the SCR and the salvage master.

Once salvage services terminate, the SCR issues a Final Salvage Report setting out<sup>41</sup>:

- *the facts and circumstances of the casualty and the salvage operation insofar as they are known to him.*
- *the tugs, personnel and equipment employed by the Contractor in performing the operation.*
- *A calculation of the SCOPIC remuneration to which the contractor may be entitled by virtue of this*

The SCR is normally appointed by the P&I Club but his reports are usually available to all the parties. The SCR is basically an expert observer and is not allowed to comment on causation. This representative is required to be independent, not beholden to any of the contracting parties, and the timing of demobilisation should be discussed between all of the interested parties<sup>42</sup>. Shipowners and P&I Club should pay all of the SCR's fees and expenses at first instance.

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<sup>41</sup> SCOPIC, Appendix B, paragraph 5(e)

<sup>42</sup> SCR DIGEST No. 5

### III. CASE STUDY SCENARIO

A claim for salvage is an unliquidated monetary claim, the cause of action for which accrues and is complete at the date of termination of the services.

The following case study shows how a salvage claim is assessed based on the circumstances and facts occurred on board the *Dragon Seas*<sup>43</sup> casualty. When the evidence is available it permits UK representatives to use their experience to make a good assessment of the salvage services, and to consider what the arbitrator is likely to award. In most cases parties agree to an amicable settlement at this stage. If the case does not settle, the case proceeds to arbitration.

As mentioned, a salvage claim, in accordance with the terms of the LOF contract, is subject to English law and jurisdiction. In particular, LOF states that the amount which salvors should be paid by the owners of the salvaged property (the ship, cargo, and fuel on board at the time of the salvage operation) is to be assessed by a salvage arbitrator in London. The appointed arbitrator sets the timetable for the arbitration and requests a summary of the case.

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<sup>43</sup> Although facts are based on a true salvage case, *Dragon Seas* is a fictitious name used to protect confidential data.

Before any arbitration hearing takes place, all parties have to disclose all relevant evidence. The evidence in respect of the salvage services performed is for the most part usually in the hands of the salvors and shipowners and this case is no different. Before the disclosure order made by the arbitrator, the salvors provided some limited information concerning the nature of the salvage services. This allowed settlement discussions to commence before disclosure of proof by the shipowners.

The salvage services provided and the equipment used by salvors are summarized in the following section. This is to a large extent based purely on salvors' own evidence and is thus skewed to show their case in the best possible light, as might be expected.



## A. Background

The summaries of the most recent cases and historic Lloyd's Open Form (LOF) cases are found on the Lloyd's SAB website. In particular, the *Dragon Seas* casualty summary is the following:

Vessel type	Bulk Carrier
Flag	Liberia
Tons gross	40,485
Built	2006
Cargo	Canola
Date reported	06 Dec 2010
LOF date	05 Dec 2010
Casualty date	03 Dec 2010
LOF edition	2000
SCOPIC incorporated?	Yes
SCOPIC invoked?	No
SCR	SCOPIC not invoked/no SCR
Region	Pacific Ocean
Casualty details	Suffered malfunction of turbo charger in heavy weather in North Pacific; under tow to Dutch Harbour, Alaska, eta Tuesday 7 December.
Casualty type	Engine breakdown

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From salvors' unpublished evidence, the performing salvage services included:

- Vessel Tor Viking 2: 203mt bollard pull ice capable tug/offshore supply vessel.  
LOA: 83.70m
- Vessel Gyrafalcon, a harbour tug subcontracted by salvors.
- Salvage Equipment: Emergency tow line supplied by USCG.

Tor Viking 2 (TV2), a tug owned by the salvors, was on time charter to Shell when the USCG informed Shell that the *Dragon Seas* was disabled with very limited engine power off the coast of the Aleutian Chain of Islands. TV2 was the only vessel in the area that was suitable for taking a vessel this size in tow. Shell agreed with salvors that they would release the vessel from the charter if they were going to assist.

### **3<sup>rd</sup> December 2010**

TV2 moved to the bunker berth in Dutch Harbour to lift bunkers for the passage to and from the casualty. During meetings held with the USCG information that was passed to the Master of TV2 was that *Dragon Seas* was unable to move under her own power and was drifting onto a lee shore. There had been a catastrophic failure of the turbocharger on the main engine which only allowed the engine to be operated in a very low power band. This also caused auxiliary systems, which are fitted to an engine when operating in this power range for manoeuvring and canal transits, to be operated outside their design limits which in turn placed additional strain on these systems.

The coastguard at this stage estimated that the vessel would be aground within 20 hours. The weather at the vessel's location was reported as 10m seas and 40-60kt winds. The USCG supplied an emergency towing kit they had purchased following the grounding of the *Selendang Ayu* some years ago that could be used with the vessel's own towing equipment. TV2 departed at 16:23. During the passage out, due to the weather, TV2 suffered damage to her life raft.

#### **4<sup>th</sup> December 2010**

The wind was constant throughout the day at NW'ly 9 and with 10m seas. *Dragon Seas* now had greater engine power and had succeeded in turning her head out of the wind but she was unable to prevent her drift back towards the lee shore distant about 25 miles.

By turning out of the wind she was able to maintain a course closing on the lee shore but at a much slower rate. The LOF was entered into in London around 16:30 Alaskan time although the document is dated the following day having been signed in London and Greece.

TV2 arrived on scene at 16:55 and steamed around the vessel to observe the conditions. The casualty's Master informed TV2 that he did not think he would be able to keep his head to wind during the connection process. Weather and sea conditions made the connection very difficult and especially the use of the line throwing apparatus, combined with the fact that the two ships had to manoeuvre within 20-30m of each other in the very heavy sea conditions. At 19:38 the connection was made and weight was put on the tow line. *Dragon Seas* was asked

to maintain slow ahead and keep the courses given to her by TV2. Reportedly, her Master was not sure how long he would be able to maintain power or steerage.

#### **5<sup>th</sup> December 2010**

There was a marginal improvement in the weather and the tow proceeded at 7 knots towards Dutch Harbour. Once in the lee of the land the wind died to a NE'ly force 8 and the seas dropped to 4m easing significantly the load on *Dragon Seas* engine.

#### **6<sup>th</sup> December 2010**

The tow proceeded at 9 or 10 knots in much improved weather conditions to the South of the island chain. The Master of *Dragon Seas* said that he required a tug for the stern of his vessel as he was not confident with the level of power that could be supplied by the main engine. This was organised by the Salvors and harbour tug Gyrafalcon employed.

#### **7<sup>th</sup> December 2010**

The tow was slowed very slightly so arrival at the anchorage would be in daylight. At around 10:00 the tug was connected to *Dragon Seas* stern and by 13:00 the vessel was brought up to her anchor. At 13:25 the vessel was redelivered by salvors and the LOF was terminated.

## B. Providing Security

Salvage is a claim brought by a third party volunteer who has assisted the ship and cargo to save it from a peril. Salvors have a lien to enforce their claim against the salvaged property as a reward for their successful intervention. Once the salvage services are terminated, the salvors require security to be lodged with, and to the satisfaction of, the Council of Lloyd's. The Salvage Arbitration Branch administers Lloyd's Open Form of Salvage Agreement ("LOF") and monitors the process of providing security in LOF salvage cases.

LSSAC 2011, clause 4.1 provides that:

*"The Contractors shall immediately after the termination of the services or sooner notify the Council of Lloyd's and where practicable the owners of the amount for which they demand salvage security (inclusive of costs expenses and interest) from each of the respective owners."*

The salvors will decide the amount of security required, which is usually a percentage of the value of the salvaged property. Salvage security must be lodged to the satisfaction of Lloyd's for this amount to release the salvaged property. This security must come from a UK based guarantor in a form acceptable to Lloyd's or by cash, but can also be on such other terms or means as Salvors find acceptable. For example in the case of cargo, it is fairly common for a first class cargo or hull insurer to provide a corporate guarantee on the ISU 1 form and these are often accepted by Salvors as good security. Additionally, underwriters may have to pay a charge for the provision/insurance of guarantees provided by parties in London.

The salvage guarantees are signed by owners of the salvaged property or their UK reps and are addressed to the Council of Lloyd's and the salvors (contractors). There are a number of possible guarantee forms in use, depending on the status of the guarantor (insured or uninsured) and the requirements of the salvors<sup>44</sup>. The International Group of P&I clubs agreed through a code of conduct to provide financial security required for SCOPIC compensation by a standard guarantee form known as ISU 5<sup>45 46</sup>.

In order to identify the cargo, especially in multi-cargo casualties, it is necessary for cargo insurers to provide along with the guarantee:

- a copy of the Bill of Lading (B/L)
- a copy of the commercial invoice

If the invoice is not on CIF terms, they need to provide appropriate freight and insurance amounts to be able to calculate the CIF values. The original documentation might be required depending on the cargo insurers' credit ratings and salvors requests. If a personal guarantee is requested due to a low credit rating, UK reps will require insurers a counter-security by way of a standard letter of indemnity (LOI).

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<sup>44</sup> See Appendix F for the LOF form of an insured salvage guarantee.

<sup>45</sup> See Appendix E: Code of Practice between International Salvage Union and International Group of P&I Clubs.

<sup>46</sup> See Appendix G: Salvage Guarantee for ISU 5.

Once the security is accepted by Lloyds the cargo is then released. Cargo representatives then assess salved values, taking into account any damaged or lost cargo. The salvage claim can then be settled by UK representatives, either by negotiation or arbitration.

### **C. Basis of likely Salvage Award**

As mentioned, the LOF contract is subject to English law and thus the provisions of the Salvage Convention will apply. The criteria that should be taken into account to assess the amount that salvors are to be paid is set out by Article 13 of the 1989 Salvage Convention.

A salvage arbitrator is obliged to award salvors an amount that encourages the provision of salvage services for the benefit of all those with property at risk at sea. At the same time, the award must not be disproportionate to the benefit that has actually been given so that the owners/insurers of the property rescued do not find themselves unfairly treated.

As mentioned, Article 13 sets out the criteria that must be taken into account. The various factors involved in this case are dealt with below from the property owners' point of view. The two most important factors are generally the value of the salved property (a) and the nature and degree of danger (d).

*a) the salved value of the vessel and other property;*

The *Dragon Seas* is a case where the value of the property (the “salved fund”) is very substantial and this will have an important role to play in any award or settlement. The issue of values are discussed in greater detail below but it is clear that the total value of the salved property would be in the region of US\$70M. This includes ship, cargo and bunkers.<sup>47</sup>

What this means is that any award the arbitrator is minded to make is not in any way constrained by the size of the contributing fund. Thus, we would expect an award in this case that would be very much different than would be seen if the salved fund had a total value of, say US\$3M, even if the same salvage services had been performed. This is an important aspect of the case that is very much in salvors’ favour. Having said that, this does not mean that the award can be disproportionate to the service that was actually provided, merely that there are no constraints on the arbitrator from the perspective of values involved.

*b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;*

Environmental damage most usually means the threat of pollution, whether by bunkers, oil/chemical cargo or other hazardous substance on board the vessel.

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<sup>47</sup> See section D: Contributory values/ saved fund



Salvors pointed to the US Coast Guard's fears concerning the potential possible pollution off the coast of Alaska, and particularly the potential political impact of a further pollution incident following the *Selendang Ayu* a few years ago and, before that, the *Exxon Valdez*, albeit that any pollution from *Dragon Seas* would inevitably have been on a smaller scale than with a tanker loss.

If the arbitrator should find that the salvors were instrumental in preventing pollution then this would enhance any award. It is likely that the arbitrator would find that there was a pollution risk, but this was of a relatively low order. It was possible that environmental damage would have arisen if salvors wouldn't have intervened, but that this was not inevitable or, indeed, particularly likely.

*c) the measure of success obtained by the salvor;*

Both the ship and the cargo were salvaged to a place of safety with only relatively minor damage. There was some seawater damage to the cargo, although it is possible that this was caused or at least aggravated by the heavy seas experienced later in the voyage after the ship had been repaired. Thus, this is in salvors' favour.

*d) the nature and degree of the danger;*

This, combined with the value of the salvaged property, is by far the most important factor in this case.

Briefly put, it is the salvors' case that the vessel was effectively immobilised at the time the salvage services were requested. Had the services not been provided, the vessel would have been blown aground leading to a far more costly salvage operation or, at worst, total loss of the ship and cargo. The coast line in the area would not have allowed the ship to drop anchor even in calm seas. Salvors acknowledge that, by the time the tow was connected, the vessel was capable of making way but on greatly reduced power because of the loss of the turbo charger. The vessel was in fact using her auxiliary blowers to provide extra power to the engine but, the salvors will state, this state of affairs in heavy seas meant severe strain on the engine with the possibility of engine failure as a result. This is at the heart of salvors' case.

Despite the number of potential salvage tugs and other equipment working and stationed around Alaska and the west coast of Canada, it does seem that the TV2 was best placed, geographically, to assist. However, details of alternative salvage resources in the area would be used in discussions with salvors' lawyers to reduce the award.

It is our case that the vessel, whilst there was some initial concern from her Master, was, by the time the tow was connected, in no real peril at all and could have made her way, in what were improving conditions, without assistance to Dutch Harbour. Shipowners dismiss any argument that the strain placed on the engine was likely to lead to engine failure and argue that the likelihood of engine failure was in practice not significantly greater than engine failure in normal conditions.

*e) the skill and efforts of the salvors in salving the vessel, other property and life;*

The salvage services provided have been summarised above. The operation did not require the application of a broad set of salvage skills. For example, there was no serious water ingress to prevent or relieve, no fire to extinguish, no cargo to lighten on to other vessel, etc. The operation was essentially just a towage operation and we have argued this point. In salvors' favour, the tow connection did have to be made in very difficult weather and sea conditions.

*f) the time used and expenses and losses incurred by the salvors;*

The salvage operation took five days. This was a short service by salvage standards. The expenses incurred amounted to fuel used, repair to the lifeboat and the loss of hire because of interruption of the contract with Shell, this last item being the most significant in financial terms. The total cost, or "out of pockets", was about US\$420,000, mainly for loss of hire.

*g) the risk of liability and other risks run by the salvors or their equipment;*

Salvors took some risk of physical damage to their equipment, especially during the early stages of the operation. But the risks run were of a relatively low order and, as indicated above, the operation did not involve some of the risks that might be associated with more complex and multi-faceted salvage operations.

*h) the promptness of the services rendered;*

Salvors in this case were contacted by the Coast Guard because they were, at least in the view of the Coast Guard, the only party with a tug of sufficient power to provide assistance in the necessary time frame i.e. on the incorrect assumption that the vessel was entirely without power. No criticism can of course be levelled at the salvors in this respect. In this particular case this factor is of minor importance.

*i) the availability and use of vessels or other equipment intended for salvage operations;*  
*and*

*j) the state of readiness and efficiency of the salvor's equipment and the value thereof.*

These two articles are practically inseparable insofar as concerns the claim in question and we therefore deal with them together. They are intended to allow an arbitrator to acknowledge and reward salvors for prior investment in the provision of salvage services. This is in accordance with the arbitrator's primary concern to encourage the provision of salvage services both by the salvor in question and more generally.

All other things being equal, a salvor that invests time and money (in equipment, personnel, training, etc) in the provision of salvage services will always receive a higher, and sometimes very substantially higher, reward than does an operator that makes no such investment. In the case of the *Dragon Seas*, this is certainly a weakness in salvors' case and owners of salvaged property would make this point strongly. There has been no previous investment in the provision of salvage services and neither is any future investment planned, at least so far as we know.

The salvors' contract with Shell contained a break clause allowing TV2 to perform salvage operations but this is a fairly common contractual provision and carries little weight in this case. On the positive side from salvors' perspective, TV2 is a large and powerful tug and some credit may be given for that.

#### **D. Contributory values/ salvaged fund**

The contribution to salvage will be based on the value of the property at the termination of the salvage operation. The parties will also calculate their own salvaged values, taking into account any deductions from the sound value. For example, deductions from the sound value can be made for the damage to the property, or for any additional freight that may be required to be paid if the voyage is terminated short of destination. For the calculation of cargo values, the CIF value needs to be determined. The CIF term includes the cost, insurance premium and freight of the cargo.

It is the value at the end of the salvage operation that is relevant (post-casualty value). In the *Dragon Seas* case, the ship in sound condition was valued by salvors at US\$37M. Owners stated a value of US\$35M. As, unlike with cargo, a vessel is not usually sold at or near the end of a salvage operation, values are used based upon the opinion of a shipbroker. When there is a difference of opinion, as there usually is since valuing a ship is not an exact science, it is common for an average of two or more values to be agreed.

If cargo owners wanted their own valuation on their behalf it would cost about US\$1000. If a higher value was given then cargo representatives could argue for a higher ship value which in turn would mean a lower value, proportionately, for cargo. That said, given that the two values already obtained are relatively close together, it is likely that a significantly higher value would be have little credibility and, on balance, it would probably be better to try to agree on the basis of the average value of US\$36M, less deductions. Also, it is possible of course that a third valuation would give a lower value and, if that happened, we would simply not disclose the valuation although, of course, the valuation fee would still have to be paid.

It is important to mention at this point that the total salved value, around US\$70M, is so significant that a difference in total values of US\$1M or US\$2M is of no concern to salvors because it would have no bearing on the total figure that salvors would be awarded; it would only influence in what proportion that total figure is shared between ship and cargo interests. So, any debate on the issue of ship and cargo values would be one that did not concern salvors.

Turning again to ship salved value, and although no evidence had been provided at this stage to support these figures, Owners stated repair costs, and associated expenses, totalling US\$624,729.86, comprising mainly the cost of the replacement turbocharger parts and port disbursements. So, on Owners' values, this gives a salved value for the vessel of US\$34,375,270. On salvors' valuation this would be US\$36,375,270 with a midway point therefore being US\$35,375,270.

The cargo had a CFR value of US\$36,667,643.76 i.e. the FOB invoice value of US\$34,144,822.16 plus freight at US\$41.50 per ton. The freight was at risk of the cargo when salved and thus forms part of the cargo value.

At discharge the cargo was found to be water damaged. That loss amounted, after salvage sale, to US\$108,511.52. Cargo representatives submitted that as a deduction from the value of the cargo in respect of the salvage claim although it should be noted that the survey report from discharge is not evidence of value at the end of the salvage services which of course terminated at Dutch Harbour. During the voyage the vessel experienced two periods of heavy seas/weather and it is reasonable to conclude that the damage occurred at these times. It is only the damage that occurred prior to the end of the salvage operation that would form a deduction from value but, nevertheless, cargo representatives included the whole amount.

Overall, the best tactic is to reach a compromise on the ship and cargos salved values and in due course agree on a final figure that all parties can recommend. Any liability will be split roughly equally between ship and cargo.

There were also bunkers on board the vessel at the end of the salvage services with a value of about US\$879,000.00. These were owned separately and therefore contributed separately to settle the salvage claim.

## **E. Settlement Discussion**

Concerning this salvage claim, the meetings of cargo representatives with salvors' and owners' respective lawyers in London gave way to the settlement recommendations. At this stage, the property representatives remained on the view that the claim could be settled at significantly less than the security figure.

Of central importance in this case would be the opinion formed by the arbitrator on the risk that there would have been engine failure had the vessel had to try to reach Dutch Harbour under her own power. Largely, this would be an issue for expert engineering advice. By this time, shipowners already had an expert ready to use which, they said supported their argument that the vessel would not have suffered an engine failure. At this time, cargo reps would be obtaining an order and pressing ship owners' lawyers to confirm arrangements to survey the engine parts.

On the other hand, salvors' position would be that, whilst an engine failure was not inevitable, it was a real possibility and that the arbitrator would recognise this and would, it follows, find a risk of grounding. At this time, cargo representatives would ask for cargo owner's authority to negotiate settlement on best possible terms.



## **F. Open Offer**

Since the salvaged property is of necessity the paying party, the costs of the arbitration before the original arbitrator will ordinarily be borne by them. To enable the salvaged property to protect its position and avoid the cost of arbitration where the contractor's demands for settlement are excessive, a practice of recognising a sealed offer has developed. If the respondents make a firm offer in settlement of the contractor's claim which is not subject to conditions, it is customary to treat such an offer as equivalent to a payment into court.

The open offer is sent nowadays by email from the representatives of the owners of salvaged property to the contractors' representatives. This email is written on a without prejudice basis and contractors must consider its terms in respect of the salvage services rendered. Originally, the letter making such an offer was enclosed in an envelope, together with any other material correspondence emanating from either party, which is sealed. This offer must not be disclosed at the arbitration hearing nor may reference to its terms be made. The envelope is handed to the arbitrator's clerk by the respondents' solicitors at the conclusion of the arbitration, and the arbitrator's attention is drawn to this fact during the closing speech of the respondent's counsel.

When the arbitrator has decided the amount of his award but before he makes any order as to costs, he opens the envelope and reads its contents. The costs are in the discretion of the arbitrator. But, if the parties interested in the salvaged property have offered to pay a sum equal to or exceeding that which he has decided to be the salvor's remuneration, the arbitrator will

most likely direct the salvor to pay the costs of the arbitration and the costs incurred by the salvees after the date by the offer ought to have been accepted.

The offer usually remains open for acceptance by the contractors on for 21 days after the offer was made. The Appeal Arbitrator has directed that, to be effective, a sealed offer must deal expressly with (a) salvage remuneration, (b) interest and (c) costs. A sealed offer of even a single lump sum greater than the total amounts actually rewarded will not necessarily affect the incidence of costs.

Since the *Dragon Seas* case didn't settle at this stage, it proceeded to arbitration.

## **G. Arbitration**

Lloyd's Form provides for the determination of salvage claims by arbitration. By entering into a LOF contract, it is clear that the parties are agreeing to a salvage service. The arbitrator is then basically left with the task of assessing and apportioning the salvage award in light of the facts of each individual case. The resulting awards are confidential to the parties and unpublished.

Other matters, such as the amount of security, may be solved in arbitration as well and are resolved by the arbitrator in accordance with the law of salvage.

Lloyd's Procedural Rules state in clause 7.a :

*“In fixing or agreeing to a date for the hearing of an arbitration, the Arbitrator shall not unless agreed by all represented parties fix or accept a date unless the Arbitrator can allow time to read the principal evidence in advance, hear the arbitration and produce the award to the Council for publication in not more than 1 month from conclusion of the hearing.”*

As mentioned in section II, the LSSAC and procedural rules set the procedure and conduct of the arbitration. At the hearing itself, the representatives of the salvaged property attend and set out their views on the salvage services, covering the positive and negative points. Any party to the Agreement who wishes to be heard or to adduce evidence shall appoint an agent or representative based in the United Kingdom<sup>48</sup>.

Following, sometime after the hearing, the arbitrator will issue his salvage award. Often this takes a couple of months, although the rules state it should be one month, but can take longer depending on the size of the award. The award will take into account the criteria in clause 13.1 of the Salvage Convention to fix a fair award. If any party does not agree with the arbitrator's findings of the salvaged value or the grounds upon which the award has been given, a notice of appeal will be given within 21 days.

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<sup>48</sup> LSSAC cl.7

## H. Appeal Award

The contractor's grounds for appeal in the case of the *Dragon. Seas* were presented to the Lloyds Open Form appeal arbitrator and were the following<sup>49</sup>:

1. *Having accepted that on arrival at Dutch Harbour sludge was found in the scavenge space and that a number of the piston rings were found to be sluggish, the arbitrator wrongly concluded that there was no risk of a fire in the scavenge space or exhaust manifold during the relevant period.*
2. *The arbitrator wrongly concluded that nothing the Claimants did in fact prevented or minimised damage to the environment.*
3. *The arbitrator wrongly concluded that the USCG vessel "Alex Haley" had the capability to tow the vessel.*
4. *Having correctly concluded that the Contractors are entitled to a generous level of encouragement, the arbitrator wholly failed to make an encouraging award.*
5. *The award is in any event unjustly low.*

Finally, the Appeal Arbitrator would consider these grounds of appeal to conduct an appeal arbitration if necessary. After this, he would give his conclusions with the final award.

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<sup>49</sup> From unpublished internal case correspondence.

## CONCLUSIONS

Salvage is assistance to a maritime venture provided by a third party volunteer. Salvage is the term used in maritime law to refer to the process whereby a third party rescues a vessel from a danger which would have likely destroyed it by sinking, breaking it up or otherwise.

The four main elements in salvage are: recognized subject matter, real danger, voluntary service and success. In other words, first a recognized subject of salvage must be exposed to an element of danger. Secondly, salvors must offer services voluntarily and not due to a pre-existing legal obligation to assist nor solely for the interests of the salvor. Finally, services must normally be at least partly successful, so that preservation of some value of the vessel, cargo or environment.

There are myriad laws around the world concerning salvage and each situation will turn on the particular laws and contracts that apply, as well as the court which has jurisdiction, however, modern principles of maritime salvage law were established in 1989 by the International Convention on Salvage.

Although there are a number of different forms of salvage contract in use worldwide, by far the most common is the Lloyd's form of salvage "no cure, no pay", the Lloyd's Open Form, the current edition is LOF 2011. The great advantage of the LOF agreement, along with its predecessors, is that it prevents disputes about remuneration at the scene of the casualty and enables salvage assistance to be given straight away. The Form is accompanied by the Lloyd's Standard Salvage and Arbitration (LSSA) Clauses and procedural rules. The LOF Arbitration Rules state the arbitration is to be held in London before a sole Arbitrator.

After the completion of the services, the remuneration to be paid to the salvors will be determined by settlement or arbitration taking into consideration all the relevant factors of the case in hand. In all cases, salvage remuneration remains initially to be determined in accordance with the Salvage Convention 1989, art. 13. The most valued factors are the value of the property and the degree of risk salvors have taken. The other factors to be considered are the skills of the salvor, the peril to which the salvaged property was exposed, the amount of time and money expended in the salvage operation etc.

Under the LOF contracts, if parties don't agree to settlement they submit to the jurisdiction of a Lloyd's arbitrator to determine the amount of award. This is why the representatives of the salvaged property assess the factors on a case by case basis and try to determine what the arbitrator is likely to award. Predicting the award requires experience since there is no scientific formula.

In signing an LOF the contract becomes binding on all the interests concerned, i.e. ship, cargo, bunkers, freight, stores, etc. Each interest is severally (not jointly) liable to the salvage contractor for the performance of the LOF contract. The salvor will exercise his lien on the property until he gets satisfactory security. The salvaged values usually determine the quantum of the security.

In the absence of contrary agreement, in appropriate cases, special compensation is also payable under Article 14 of the Convention. However, if two conditions are satisfied (SCOPIC incorporated & its terms invoked by written notice), the SCOPIC provisions will apply. When SCOPIC is successfully invoked, Article 14 of the Convention is excluded and remuneration is payable according to a detailed scheme set out in Appendix A to the clause. SCOPIC remuneration is supplementary to that due under Article 13, in which case the Article 13 remuneration is discounted by 25 per cent.

SCOPIC is not merely a substitute for the special compensation provisions of Article 14, but applies more widely and in a carefully structured way. Nonetheless, it has in practice become a standard method of determining remuneration for environmental services.

There is a lot to learn from any salvage case, with all their different circumstances. It may be quite a subjective topic unlike other marine claims such as recoveries. An arbitrator might give an award that is completely different in values to what another arbitrator may award. The appeal arbitration, therefore, has the purpose to balance the differences that may arise in the previous arbitration ruling.

Not many cases reach arbitration and even less reach an appeal arbitration since they usually settle. The *Dragon Seas* case analyzed in this paper was picked on purpose to show the longest salvage arbitration process arising from the use of the Lloyd's Form.

This Master's thesis is, therefore, a practical introduction guide to salvage claims handling.



## APPENDICES

### Appendix A – LOF 2011

#### LOF 2011



### LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

#### NO CURE - NO PAY

1. Name of the salvage Contractors:  (referred to in this agreement as "the Contractors")	2. Property to be saved:  The vessel:  her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew  (referred to in this agreement as "the property")
3. Agreed place of safety:	4. Agreed currency of any arbitral award and security (if other than United States dollars)
5. Date of this agreement	6. Place of agreement
7. Is the Scopic Clause incorporated into this agreement? State alternative : Yes/No	
8. Person signing for and on behalf of the Contractors  Signature:	9. Captain  or other person signing for and on behalf of the property  Signature:

**A Contractors' basic obligation:** The Contractors identified in Box 1 hereby agree to use their best endeavours to save the property specified in Box 2 and to take the property to the place stated in Box 3 or to such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property to a place of safety.

**B Environmental protection:** While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

**C Scopic Clause:** Unless the word "No" in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Scopic Clause is not incorporated and forms no part of this agreement. If the word "No" is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scopic Clause within the meaning of sub-clause 2 thereof.

- D Effect of other remedies:** Subject to the provisions of the International Convention on Salvage 1989 as incorporated into English law ("the Convention") relating to special compensation and to the Scopic Clause if incorporated the Contractors services shall be rendered and accepted as salvage services upon the principle of "no cure - no pay" and any salvage remuneration to which the Contractors become entitled shall not be diminished by reason of the exception to the principle of "no cure - no pay" in the form of special compensation or remuneration payable to the Contractors under a Scopic Clause.
- E Prior services:** Any salvage services rendered by the Contractors to the property before and up to the date of this agreement shall be deemed to be covered by this agreement.
- F Duties of property owners:** Each of the owners of the property shall cooperate fully with the Contractors. In particular:
- (i) the Contractors may make reasonable use of the vessel's machinery gear and equipment free of expense provided that the Contractors shall not unnecessarily damage abandon or sacrifice any property on board;
  - (ii) the Contractors shall be entitled to all such information as they may reasonably require relating to the vessel or the remainder of the property provided such information is relevant to the performance of the services and is capable of being provided without undue difficulty or delay;
  - (iii) the owners of the property shall co-operate fully with the Contractors in obtaining entry to the place of safety stated in Box 3 or agreed or determined in accordance with Clause A.
- G Rights of termination:** When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Articles 12 and/or 13 either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other.
- H Deemed performance:** The Contractors' services shall be deemed to have been performed when the property is in a safe condition in the place of safety stated in Box 3 or agreed or determined in accordance with clause A. For the purpose of this provision the property shall be regarded as being in safe condition notwithstanding that the property (or part thereof) is damaged or in need of maintenance if (i) the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or harbour authority, governmental agency or similar authority and (ii) the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.
- I Arbitration and the LSSA Clauses:** The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA Clauses") and Lloyd's Procedural Rules in force at the date of this agreement. The provisions of the said LSSA Clauses and Lloyd's Procedural Rules are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in the same way.
- J Governing law:** This agreement and any arbitration hereunder shall be governed by English law.
- K Scope of authority:** The Master or other person signing this agreement on behalf of the property identified in Box 2 enters into this agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.
- L Inducements prohibited:** No person signing this agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into this agreement.

#### IMPORTANT NOTICES

- 1 Salvage security.** As soon as possible the owners of the vessel should notify the owners of other property on board that this agreement has been made. If the Contractors are successful the owners of such property should note that it will become necessary to provide the Contractors with salvage security promptly in accordance with Clause 4 of the LSSA Clauses referred to in Clause I. The provision of General Average security does not relieve the salvaged interests of their separate obligation to provide salvage security to the Contractors.
- 2 Incorporated provisions.** Copies of the applicable Scopic Clause, the LSSA Clauses and Lloyd's Procedural Rules in force at the date of this agreement may be obtained from (i) the Contractors or (ii) the Salvage Arbitration Branch at Lloyd's, One Lime Street, London EC3M 7HA.
- 3 Awards.** The Council of Lloyd's is entitled to make available the Award, Appeal Award and Reasons on [www.lloydsagency.com](http://www.lloydsagency.com) (the website) subject to the conditions set out in Clause 12 of the LSSA Clauses.
- 4 Notification to Lloyd's.** The Contractors shall within 14 days of their engagement to render services under this agreement notify the Council of Lloyd's of their engagement and forward the signed agreement or a true copy thereof to the Council as soon as possible. The Council will not charge for such notification.

Tel.No. + 44(0)20 7327 5408/5407  
 Fax No. +44(0)20 7327 6827  
 E-mail: [lloyds-salvage@lloyds.com](mailto:lloyds-salvage@lloyds.com)  
[www.lloydsagency.com](http://www.lloydsagency.com)

## Appendix B – LSSA clauses and Procedural Rules



# LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

## LLOYD'S STANDARD SALVAGE AND ARBITRATION CLAUSES

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### 1 Introduction

- 1.1 These clauses ("the LSSA Clauses") or any revision thereof which may be published with the approval of the Council of Lloyd's are incorporated into and form an integral part of every contract for the performance of salvage services undertaken on the terms of Lloyd's Standard Form of Salvage Agreement as published by the Council of Lloyd's and known as LOF 2011 (or its predecessor LOF 2000) ("the Agreement" which expression includes the LSSA clauses and Lloyd's Procedural Rules referred to in Clause 6).

- 1.2 All notices communications and other documents required to be sent to the Council of Lloyd's should be sent to:

Salvage Arbitration Branch  
Lloyd's  
One Lime Street  
London EC3M 7HA

Tel: +44 (0) 20 7327 5408/5407  
Fax: +44 (0) 20 7327 6827  
E-mail: [lloyds-salvage@lloyds.com](mailto:lloyds-salvage@lloyds.com)

### 2 Overriding Objective

In construing the Agreement or on the making of any arbitral order or award regard shall be had to the overriding purposes of the Agreement namely:

- a to seek to promote safety of life at sea and the preservation of property at sea and during the salvage operations to prevent or minimise damage to the environment;
- b to ensure that its provisions are operated in good faith and that it is read and understood to operate in a reasonably businesslike manner;
- c to encourage cooperation between the parties and with relevant authorities;
- d to ensure that the reasonable expectations of salvors and owners of salvaged property are met and
- e to ensure that it leads to a fair and efficient disposal of disputes between the parties whether amicably, by mediation or by arbitration within a reasonable time and at a reasonable cost.

### 3 Definitions

In the Agreement and unless there is an express provision to the contrary:

- 3.1 "Award" includes an interim or provisional Award and "Appeal Award" means any Award including any interim or provisional Award made by the Appeal Arbitrator appointed under clause 10.2.
- 3.2 "personal effects or baggage" as referred to in Box 2 of the Agreement means those which the passenger, Master and crew member have in their cabin or are otherwise in their possession, custody or control and shall include any private motor vehicle accompanying a passenger and any personal effects or baggage in or on such vehicle.
- 3.3 "Convention" means the International Convention on Salvage 1989 as enacted by section 224, Schedule II of the Merchant Shipping Act 1995 (and any amendment of either) and any term or expression in the Convention has the same meaning when used in the Agreement.

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- 3.4 "Council" means the Council of Lloyd's
- 3.5 "days" means calendar days
- 3.6 "Owners" means the owners of the property referred to in box 2 of the Agreement
- 3.7 "owners of the vessel" includes the demise or bareboat charterers of that vessel.
- 3.8 "special compensation" refers to the compensation payable to salvors under Article 14 of the Convention.
- 3.9 "Scopic Clause" refers to the agreement made between (1) members of the International Salvage Union (2) the International Group of P&I Clubs and (3) certain property underwriters which first became effective on 1st August 1999 and includes any replacement or revision thereof. All references to the Scopic Clause in the Agreement shall be deemed to refer to the version of the Scopic Clause current at the date the Agreement is made.

#### **4 Provisions as to Security, Maritime Lien and Right to Arrest**

- 4.1 The Contractors shall immediately after the termination of the services or sooner notify the Council and where practicable the Owners of the amount for which they demand salvage security (inclusive of costs expenses and interest) from each of the respective Owners.
- 4.2 Where a claim is made or may be made for special compensation the owners of the vessel shall on the demand of the Contractors whenever made provide security for the Contractors' claim for special compensation provided always that such demand is made within 2 years of the date of termination of the services.
- 4.3 The security referred to in clauses 4.1. and 4.2. above shall be demanded and provided in the currency specified in Box 4 or in United States Dollars if no such alternative currency has been agreed.
- 4.4 The amount of any such security shall be reasonable in the light of the knowledge available to the Contractors at the time when the demand is made and any further facts which come to the Contractors' attention before security is provided. The arbitrator appointed under clause 5 hereof may, at any stage of the proceedings, order that the amount of security be reduced or increased as the case may be.
- 4.5 Unless otherwise agreed such security shall be provided (i) to the Council (ii) in a form approved by the Council and (iii) by persons firms or corporations either acceptable to the Contractors or resident in the United Kingdom and acceptable to the Council. The Council shall not be responsible for the sufficiency (whether in amount or otherwise) of any security which shall be provided nor the default or insolvency of any person firm or corporation providing the same.
- 4.6 The owners of the vessel including their servants and agents shall use their best endeavours to ensure that none of the property salvaged is released until security has been provided in respect of that property in accordance with clause 4.5.
- 4.7 Until security has been provided as aforesaid the Contractors shall have a maritime lien on the property salvaged for their remuneration.
- 4.8 Until security has been provided the property salvaged shall not without the consent in writing of the Contractors (which shall not be unreasonably withheld) be removed from the place to which it has been taken by the Contractors under clause A. Where such consent is given by the Contractors on condition that they are provided with temporary security pending completion of the voyage the Contractors' maritime lien on the property salvaged shall remain in force to the extent necessary to enable the Contractors to compel the provision of security in accordance with clause 4.5.
- 4.9 The Contractors shall not arrest or detain the property salvaged unless:
  - (i) security is not provided within 21 days after the date of the termination of the services or
  - (ii) they have reason to believe that the removal of the property salvaged is contemplated contrary to clause 4.8. or
  - (iii) any attempt is made to remove the property salvaged contrary to clause 4.8.

#### **5 Appointment of Arbitrators**

- 5.1 Whether or not security has been provided (and always subject to Clause 6.6 and 10.8 below) the Council shall appoint an arbitrator ("the Arbitrator") upon receipt of a written request provided that any party requesting such appointment shall if required by the Council undertake to the Council's reasonable satisfaction to pay the reasonable fees and expenses of the Council and those of the Arbitrator and the Appeal Arbitrator.
- 5.2 The Arbitrator, the Appeal Arbitrator and the Council may charge reasonable fees and expenses for their services whether the arbitration proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the arbitration.

#### **6 Arbitration Procedure and Arbitrators Powers**

- 6.1 The arbitration shall be conducted in accordance with the Procedural Rules approved by the Council ("Lloyd's Procedural Rules") in force at the date of the LOF agreement.
- 6.2 The arbitration shall take place in London unless (i) all represented parties agree to some other place for the whole or part of the arbitration and (ii) any such agreement is approved by the Arbitrator on such terms as to the payment of the Arbitrator's travel and accommodation expenses as he may see fit to impose.

- 6.3 The Arbitrator shall have power in his absolute discretion to include in the amount awarded to the Contractors the whole or part of any expenses reasonably incurred by the Contractors in:
- (i) ascertaining demanding and obtaining the amount of security reasonably required in accordance with clause 4.5
  - (ii) enforcing and/or protecting by insurance or otherwise or taking reasonable steps to enforce and/or protect their lien
- 6.4 The Arbitrator shall have power to make but shall not be bound to make a consent award between such parties as so consent with or without full arbitral reasons
- 6.5 The Arbitrator shall have power to make a provisional or interim award or awards including payments on account on such terms as may be fair and just
- 6.6 The Arbitrator shall be entitled to satisfactory security for his reasonable fees and expenses, whether such fees and expenses have been incurred already or are reasonably anticipated. The Arbitrator shall have the power to order one or more of the parties to provide such security in a sum or sums and in a form to be determined by the Arbitrator. The said power may be exercised from time to time as the Arbitrator considers appropriate.
- 6.7 Awards in respect of salvage remuneration or special compensation (including payments on account) shall be made in the currency specified in Box 4 or in United States dollars if no such alternative currency has been agreed.
- 6.8 The Arbitrator's Award shall (subject to appeal as provided in clause 10) be final and binding on all the parties concerned whether they were represented at the arbitration or not and shall be published by the Council in London.

## **7 Representation of Parties**

- 7.1 Any party to the Agreement who wishes to be heard or to adduce evidence shall appoint an agent or representative ordinarily resident in the United Kingdom to receive correspondence and notices for and on behalf of that party and shall give written notice of such appointment to the Council.
- 7.2 Service on such agent or representative by letter, e-mail or facsimile shall be deemed to be good service on the party which has appointed that agent or representative.
- 7.3 Any party who fails to appoint an agent or representative as aforesaid shall be deemed to have renounced his right to be heard or adduce evidence.

## **8 Interest**

- 8.1 Unless the Arbitrator in his discretion otherwise decides the Contractors shall be entitled to interest on any sums awarded in respect of salvage remuneration or special compensation (after taking into consideration any sums already paid to the Contractors on account) from the date of termination of the services until the date on which the Award is published by the Council and at a rate to be determined by the Arbitrator.
- 8.2 In ordinary circumstances the Contractors' interest entitlement shall be limited to simple interest but the Arbitrator may exercise his statutory power to make an award of compound interest if the Contractors have been deprived of their salvage remuneration or special compensation for an excessive period as a result of the Owners' gross misconduct or in other exceptional circumstances.
- 8.3 If the sum(s) awarded to the Contractors (including the fees and expenses referred to in clause 5.2) are not paid to the Contractors or to the Council by the payment date specified in clause 11.1 the Contractors shall be entitled to additional interest on such outstanding sums from the payment date until the date payment is received by the Contractors or the Council both dates inclusive and at a rate which the Arbitrator shall in his absolute discretion determine in his Award.

## **9 Currency Correction**

In considering what sums of money have been expended by the Contractors in rendering the services and/or in fixing the amount of the Award and/or Appeal Award the Arbitrator or Appeal Arbitrator shall to such an extent and insofar as it may be fair and just in all the circumstances give effect to the consequences of any change or changes in the relevant rates of exchange which may have occurred between the date of termination of the services and the date on which the Award or Appeal Award is made.

## **10 Appeals and Cross Appeals**

- 10.1 Any party may appeal from an Award by giving written Notice of Appeal to the Council provided such notice is received by the Council no later than 21 days after the date on which the Award was published by the Council.
- 10.2 On receipt of a Notice of Appeal the Council shall refer the appeal to the hearing and determination of an appeal arbitrator of its choice ("the Appeal Arbitrator").
- 10.3 Any party who has not already given Notice of Appeal under clause 10.1 may give a Notice of Cross Appeal to the Council within 21 days of that party having been notified that the Council has received Notice of Appeal from another party.
- 10.4 Notice of Appeal or Cross Appeal shall be given to the Council by letter, e-mail or facsimile.

- 10.5 If any Notice of Appeal or Notice of Cross Appeal is withdrawn prior to the hearing of the appeal arbitration, that appeal arbitration shall nevertheless proceed for the purpose of determining any matters which remain outstanding.
- 10.6 The Appeal Arbitrator shall conduct the appeal arbitration in accordance with Lloyd's Procedural Rules so far as applicable to an appeal.
- 10.7 In addition to the powers conferred on the Arbitrator by English law and the Agreement, the Appeal Arbitrator shall have power to:
- (i) admit the evidence or information which was before the Arbitrator together with the Arbitrator's Notes and Reasons for his Award, any transcript of evidence and such additional evidence or information as he may think fit;
  - (ii) confirm increase or reduce the sum(s) awarded by the Arbitrator and to make such order as to the payment of interest on such sum(s) as he may think fit;
  - (iii) confirm revoke or vary any order and/or declaratory award made by the Arbitrator;
  - (iv) award interest on any fees and expenses charged under clause 10.8 from the expiration of 28 days after the date of publication by the Council of the Appeal Arbitrator's Award until the date payment is received by the Council both dates inclusive.
- 10.8 The Appeal Arbitrator shall be entitled to satisfactory security for his reasonable fees and expenses, whether such fees and expenses have been incurred already or are reasonably anticipated. The Appeal Arbitrator shall have the power to order one or more of the parties to provide such security in a sum or sums and in a form to be determined by the Appeal Arbitrator. The said power may be exercised from time to time as the Appeal Arbitrator considers appropriate.
- 10.9 The Appeal Arbitrator's Award shall be published by the Council in London.

## **11 Provisions as to Payment**

- 11.1 When publishing the Award the Council shall call upon the party or parties concerned to pay all sums due from them which are quantified in the Award (including the fees and expenses referred to in clause 5.2) not later than 28 days after the date of publication of the Award ("the payment date")
- 11.2 If the sums referred to in clause 11.1 (or any part thereof) are not paid within 56 days after the date of publication of the Award (or such longer period as the Contractors may allow) and provided the Council has not received Notice of Appeal or Notice of Cross Appeal the Council shall realise or enforce the security given to the Council under clause 4.5 by or on behalf of the defaulting party or parties subject to the Contractors' providing the Council with any indemnity the Council may require in respect of the costs the Council may incur in that regard.
- 11.3 In the event of an appeal and upon publication by the Council of the Appeal Award the Council shall call upon the party or parties concerned to pay the sum(s) awarded. In the event of non-payment and subject to the Contractors providing the Council with any costs indemnity required as referred to in clause 11.2 the Council shall realise or enforce the security given to the Council under clause 4.5 by or on behalf of the defaulting party.
- 11.4 If any sum(s) shall become payable to the Contractors in respect of salvage remuneration or special compensation (including interest and/or costs) as the result of an agreement made between the Contractors and the Owners or any of them, the Council shall, if called upon to do so and subject to the Contractors providing to the Council any costs indemnity required as referred to in clause 11.2 realise or enforce the security given to the Council under clause 4.5 by or on behalf of that party.
- 11.5 Where (i) no security has been provided to the Council in accordance with clause 4.5 or (ii) no Award is made by the Arbitrator or the Appeal Arbitrator (as the case may be) because the parties have been able to settle all matters in issue between them by agreement the Contractors shall be responsible for payment of the fees and expenses referred to in clause 5.2. Payment of such fees and expenses shall be made to the Council within 28 days of the Contractors or their representatives receiving the Council's invoice failing which the Council shall be entitled to interest on any sum outstanding at UK Base Rate prevailing on the date of the invoice plus 2% per annum until payment is received by the Council.
- 11.6 If an Award or Appeal Award directs the Contractors to pay any sum to any other party or parties including the whole or any part of the costs of the arbitration and/or appeal arbitration the Council may deduct from sums received by the Council on behalf of the Contractors the amount(s) so payable by the Contractors unless the Contractors provide the Council with satisfactory security to meet their liability.
- 11.7 Save as aforesaid every sum received by the Council pursuant to this clause shall be paid by the Council to the Contractors or their representatives whose receipt shall be a good discharge for it.
- 11.8 Without prejudice to the provisions of clause 4.5 the liability of the Council shall be limited to the amount of security provided to it.

## **12 Awards**

- 12.1 The Council will ordinarily make available the Award or Appeal Award and Reasons on [www.lloydsagency.com](http://www.lloydsagency.com) (the website) except where the Arbitrator or Appeal Arbitrator has ordered, in response to representations by any party to the Award or Appeal Award, that there is a good reason for deferring or withholding them. Any party may make such representations to the Arbitrator provided a written notice of its intention to do so is received by the Council no later than 21 days after the date on which the Award or Appeal Award was published by the Council and the representations themselves are submitted in writing to the Arbitrator or Appeal Arbitrator within 21 days of the date of the notice of intention.



- 12.2 Subject to any order of the Arbitrator or Appeal Arbitrator, the Award, or Appeal Award, and Reasons will be made available on the website as soon as practicable after expiry of the 21 day period referred to in clause 12.1.
- 12.3 In the event of an appeal being entered against an Award, the Award and Reasons shall not be made available on the website until either the Appeal Arbitrator has issued his Appeal Award or the Notice of Appeal is withdrawn subject always to any order being made in accordance with clause 12.1.

### **Special Provisions**

These Special Provisions shall apply to salvaged cargo insofar as it consists of laden containers.

- 13 The parties agree that any correspondence or notices in respect of salvaged cargo which is not the subject of representation in accordance with Clause 7 of these Rules may be sent to the party or parties who have provided salvage security in respect of that property and that this shall be deemed to constitute proper notification to the owners of such property.
- 14 Subject to the express approval of the Arbitrator, where an agreement is reached between the Contractors and the owners of salvaged cargo comprising at least 75% by value of salvaged cargo represented in accordance with Clause 7 of these Rules, the same agreement shall be binding on the owners of all salvaged cargo who were not represented at the time of the said approval.
- 15 Subject to the express approval of the Arbitrator, any salvaged cargo with a value below an agreed figure may be omitted from the salvaged fund and excused from liability for salvage where the cost of including such cargo in the process is likely to be disproportionate to its liability for salvage.

### **General Provisions**

- 16 **Lloyd's documents:** Any Award notice authority order or other document signed by the Chairman of Lloyd's or any person authorised by the Council for the purpose shall be deemed to have been duly made or given by the Council and shall have the same force and effect in all respects as if it had been signed by every member of the Council.
- 17 **Contractors' personnel and subcontractors**
- 17.1 The Contractors may claim salvage on behalf of their employees and any other servants or agents who participate in the services and shall upon request provide the Owners with a reasonably satisfactory indemnity against all claims by or liabilities to such employees servants or agents.
- 17.2 The Contractors may engage the services of subcontractors for the purpose of fulfilling their obligations under clauses A and B of the Agreement but the Contractors shall nevertheless remain liable to the Owners for the due performance of those obligations.
- 17.3 In the event that subcontractors are engaged as aforesaid the Contractors may claim salvage on behalf of the subcontractors including their employees servants or agents and shall, if called upon so to do provide the Owners with a reasonably satisfactory indemnity against all claims by or liabilities to such subcontractors their employees servants or agents.
- 18 **Disputes under Scopic Clause**
- Any dispute arising out of the Scopic Clause (including as to its incorporation or invocation) or the operations thereunder shall be referred for determination to the Arbitrator appointed under clause 5 hereof whose Award shall be final and binding subject to appeal as provided in clause 10 hereof.
- 19 **Lloyd's Publications**
- Any guidance published by or on behalf of the Council relating to matters such as the Convention the workings and implementation of the Agreement is for information only and forms no part of the Agreement.



# LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT

(Approved and Published by the Council of Lloyd's)

## PROCEDURAL RULES

(pursuant to Clause I of LOF 2000)

### 1 Arbitrators Powers

In addition to all powers conferred by the Arbitration Act 1996 (or any amendment thereof) the Arbitrator shall have power:

- a to admit such oral or documentary evidence or information as he may think fit;
- b to conduct the arbitration in such manner in all respects as he may think fit subject to these Procedural Rules and any amendments thereto as may from time to time be approved by the Council of Lloyd's ("the Council");
- c to make such orders as to costs, fees and expenses including those of the Council charged under clauses 5.2 and 10.8 of the Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA clauses") as may be fair and just;
- d to direct that the recoverable costs of the arbitration or of any part of the proceedings shall be limited to a specified amount;
- e to make any orders required to ensure that the arbitration is conducted in a fair and efficient manner consistent with the aim to minimise delay and expense and to arrange such meetings and determine all applications made by the parties as may be necessary for that purpose;
- f to conduct all such meetings by means of a conference telephone call if the parties agree;
- g on his own initiative or on the application of a party to correct any award (whether interim provisional or final) or to make an additional award in order to rectify any mistake error or omission provided that (i) any such correction is made within 28 days of the date of publication of the relevant award by the Council (ii) any additional award required is made within 56 days of the said date of publication or, in either case, such longer period as the Arbitrator may in his discretion allow.

### 2 Preliminary Meeting

- a Within 6 weeks of being appointed or so soon thereafter as may be reasonable in the circumstances, the Arbitrator shall convene a preliminary meeting with the represented parties for the purpose of giving directions as to the manner in which the arbitration is to be conducted.
- b The Arbitrator may dispense with the requirement for a preliminary meeting if the represented parties agree a consent order for directions which the Arbitrator is willing to approve. For the purpose of obtaining such approval, the Arbitrator must be provided by the contractors or their representatives with a brief summary of the case in the form of a check list, any other party providing such comments as they deem appropriate so that the Arbitrator is placed in a position to decide whether to approve the consent order.
- c In determining the manner in which the arbitration is to be conducted, the Arbitrator shall have regard to:
  - i the interests of unrepresented parties;
  - ii whether some form of shortened and/or simplified procedure is appropriate including whether the arbitration may be conducted on documents only with concise written submissions;
  - iii the overriding objectives set out in clause 2 of the LSSA clauses.

### 3 Order for Directions

Unless there are special reasons, the initial order for directions shall include:-

- a a date for disclosure of documents including witness statements (see Rule 4);
- b a date for proof of values;
- c a date by which any party must identify any issue(s) in the case which are likely to necessitate the service of pleadings;
- d a date for a progress meeting or additional progress meetings unless all represented parties with reasonable notice agree that the same is unnecessary;



- e unless agreed by all represented parties to be premature, a date for the hearing and estimates for the time likely to be required by the Arbitrator to read evidence in advance and for the length of the hearing;
- f any other matters deemed by the Arbitrator or any party to be appropriate to be included in the initial order.

#### **4 Disclosure of documents**

Unless otherwise agreed or ordered, disclosure shall be limited to the following classes of document:

- a logs and any other contemporaneous records maintained by the shipowners personnel and personnel employed by the Contractors (including any subcontractors) and their respective surveyors or consultants in attendance during all or part of the salvage services;
- b working charts, photographs, video or film records;
- c contemporaneous reports including telexes, facsimile messages or prints of e- mail messages;
- d survey reports;
- e documents relevant to the proof of:
  - i out of pocket expenses
  - ii salved values
  - iii the particulars and values of all relevant salving tugs or other craft and equipment
- f statements of witnesses of fact or other privileged documents on which the party wishes to rely.

#### **5 Expert Evidence**

- a No expert evidence shall be adduced in the arbitration without the Arbitrators permission.
- b The Arbitrator shall not give such permission unless satisfied that expert evidence is reasonably necessary for the proper determination of an issue arising in the arbitration.
- c No party shall be given permission to adduce evidence from more than one expert in each field requiring expert evidence save in exceptional circumstances.
- d Any application for permission to adduce expert evidence must be made at the latest within 14 days after disclosure of relevant documents has been effected.

#### **6 Mediation**

The Arbitrator shall ensure that in all cases the represented parties are informed of the benefit which might be derived from the use of mediation.

#### **7 Hearing of Arbitration**

- a In fixing or agreeing to a date for the hearing of an arbitration, the Arbitrator shall not unless agreed by all represented parties fix or accept a date unless the Arbitrator can allow time to read the principal evidence in advance, hear the arbitration and produce the award to the Council for publication in not more than 1 month from conclusion of the hearing.
- b The date fixed for the hearing shall be maintained unless application to alter the date is made to the Arbitrator within 14 days of the completion of discovery or unless the Arbitrator in the exercise of his discretion determines at a later time that an adjournment is necessary or desirable in the interests of justice or fairness.
- c Unless all parties represented in the arbitration agree otherwise the Arbitrator shall relinquish his appointment if a hearing date cannot be agreed, fixed or maintained in accordance with rule 7(a) and/or (b) above due to the Arbitrator's commitments. In that event the Council shall appoint in his stead another arbitrator who is able to meet the requirements of those rules.

#### **8 Appeals**

- a All references in these Rules to the Arbitrator shall include the Arbitrator on Appeal where the circumstances so permit.
- b In any case in which a party giving notice of appeal intends to contend that the Arbitrator's findings on the salved value of all or any of the salved property were erroneous, or that the Arbitrator has erred in any finding as to the person whose property was at risk, a statement of such grounds of appeal shall be given in or accompanying the notice of appeal.
- c In all cases grounds of appeal or cross-appeal will be given to the Arbitrator on Appeal within 21 days of the notice of appeal or cross- appeal unless an extension of time is agreed.
- d Any respondent to an appeal who intends to contend that the award of the Original Arbitrator should be affirmed on grounds other than those relied upon by the Original Arbitrator shall give notice to that effect specifying the grounds of his contention within 14 days of receipt of the grounds of appeal mentioned in (c) above unless an extension of time is agreed.

# Appendix C –SCOPIC Clause

## SCOPIC 2011

### SCOPIC CLAUSE

#### 1. General

This SCOPIC clause is supplementary to any Lloyd's Form Salvage Agreement "No Cure - No Pay" ("Main Agreement") which incorporates the provisions of Article 14 of the International Convention on Salvage 1989 ("Article 14"). The definitions in the Main Agreement are incorporated into this SCOPIC clause. If the SCOPIC clause is inconsistent with any provisions of the Main Agreement or inconsistent with the law applicable hereto, the SCOPIC clause, once invoked under sub-clause 2 hereof, shall override such other provisions to the extent necessary to give business efficacy to the agreement. Subject to the provisions of sub-clause 4 hereof, the method of assessing Special Compensation under Convention Article 14(1) to 14(4) inclusive shall be substituted by the method of assessment set out hereinafter. If this SCOPIC clause has been incorporated into the Main Agreement the Contractor may make no claim pursuant to Article 14 except in the circumstances described in sub-clause 4 hereof. For the purposes of liens and time limits the services hereunder will be treated in the same manner as salvage.

#### 2. Invoking the SCOPIC Clause

The Contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstances and, in particular, regardless of whether or not there is a "threat of damage to the environment". The assessment of SCOPIC remuneration shall commence from the time the written notice is given to the owners of the vessel and services rendered before the said written notice shall not be remunerated under this SCOPIC clause at all but in accordance with Convention Article 13 as incorporated into the Main Agreement ("Article 13").

#### 3. Security for SCOPIC Remuneration

- (i) The owners of the vessel shall provide to the Contractor within 2 working days (excluding Saturdays and Sundays and holidays usually observed at Lloyd's) after receiving written notice from the contractor invoking the SCOPIC clause, a bank guarantee or P&I Club letter (hereinafter called "the Initial Security") in a form reasonably satisfactory to the Contractor providing security for his claim for SCOPIC remuneration in the sum of US\$3 million, inclusive of interest and costs.
- (ii) If, at any time after the provision of the Initial Security the owners of the vessel reasonably assess the SCOPIC remuneration plus interest and costs due hereunder to be less than the security in place, the owners of the vessel shall be entitled to require the Contractor to reduce the security to a reasonable sum and the Contractor shall be obliged to do so once a reasonable sum has been agreed.
- (iii) If at any time after the provision of the Initial Security the Contractor reasonably assesses the SCOPIC remuneration plus interest and costs due hereunder to be greater than the security in place, the Contractor shall be entitled to require the owners of the vessel to increase the security to a reasonable sum and the owners of the vessel shall be obliged to do so once a reasonable sum has been agreed.
- (iv) In the absence of agreement, any dispute concerning the proposed Guarantor, the form of the security or the amount of any reduction or increase in the security in place shall be resolved by the Arbitrator.

#### 4. Withdrawal

If the owners of the vessel do not provide the Initial Security within the said 2 working days, the Contractor, at his option, and on giving notice to the owners of the vessel, shall be entitled to withdraw from all the provisions of the SCOPIC clause and revert to his rights under the Main Agreement including Article 14 which shall apply as if the SCOPIC clause had not existed. PROVIDED THAT this right of withdrawal may only be exercised if, at the time of giving the said notice of withdrawal the owners of the vessel have still not provided the Initial Security or any alternative security which the owners of the vessel and the Contractor may agree will be sufficient.

#### 5. Tariff Rates

- (i) SCOPIC remuneration shall mean the total of the tariff rates of personnel; tugs and other craft; portable salvage equipment; out of pocket expenses; and bonus due.
- (ii) SCOPIC remuneration in respect of all personnel; tugs and other craft; and portable salvage equipment shall be assessed on a time and materials basis in accordance with the Tariff set out in Appendix "A". This tariff will apply until reviewed and amended by the SCOPIC Committee in accordance with Appendix B(1)(b). The tariff rates which will be used to calculate SCOPIC remuneration are those in force at the time the salvage services take place.
- (iii) "Out of pocket" expenses shall mean all those monies reasonably paid by or for and on behalf of the Contractor to any third party and in particular includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation. They will be agreed at cost, PROVIDED THAT:
  - (a) If the expenses relate to the hire of men, tugs, other craft and equipment from another ISU member or their affiliate(s), the amount due will be calculated on the tariff rates set out in Appendix "A" regardless of the actual cost.
  - (b) If men, tugs, other craft and equipment are hired from any party who is not an ISU member and the hire rate is greater than the tariff rates referred to in Appendix "A" the actual cost will be allowed in full, subject to the Special Casualty Representative ("SCR") being satisfied that in the particular circumstances of the case, it was reasonable for the Contractor to hire such items at that cost. If an SCR is not appointed or if there is a dispute, then the Arbitrator shall decide whether the expense was reasonable in all in the circumstances.
  - (c) Any out of pocket expense incurred during the course of the service in a currency other than US dollars shall for the purpose of the SCOPIC clause be converted to US dollars at the rate prevailing at the termination of the services.
- (iv) In addition to the rates set out above and any out of pocket expenses, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses described in sub-paragraph 5(iii)(b) exceed the applicable tariff rates in Appendix "A" the Contractor shall be entitled to a bonus such that he shall receive in total
  - (a) The actual cost of such men, tugs, other craft and equipment plus 10% of the cost, or
  - (b) The tariff rate for such men, tugs, other craft and equipment plus 25% of the tariff rate whichever is the greater.

#### 6. Article 13 Award

- (i) The salvage services under the Main Agreement shall continue to be assessed in accordance with Article 13, even if the Contractor has invoked the SCOPIC clause, SCOPIC remuneration as assessed under sub-clause 5 above will be payable only by the owners of the vessel and only to the extent that it exceeds the total Article 13 Award (or, if none, any potential Article 13 Award) payable by all salvaged interests (including cargo, bunkers, lubricating oil and stores) before currency adjustment and before interest and costs even if the Article 13 Award or any part of it is not recovered.
- (ii) In the event of the Article 13 Award or settlement being in a currency other than United States dollars it shall, for the purposes of the SCOPIC clause, be exchanged at the rate of exchange prevailing at the termination of the services under the Main Agreement.

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- (iii) The salvage Award under Article 13 shall not be diminished by reason of the exception to the principle of "No Cure - No Pay" in the form of SCOPIC remuneration.
7. **Discount**  
If the SCOPIC clause is invoked under sub-clause 2 hereof and the Article 13 Award or settlement (before currency adjustment and before interest and costs) under the Main Agreement is greater than the assessed SCOPIC remuneration then, notwithstanding the actual date on which the SCOPIC remuneration provisions were invoked, the said Article 13 Award or settlement shall be discounted by 25% of the difference between the said Article 13 Award or settlement and the amount of SCOPIC remuneration that would have been assessed had the SCOPIC remuneration provisions been invoked on the first day of the services.
8. **Payment of SCOPIC Remuneration**  
(i) The date for payment of any SCOPIC remuneration which may be due hereunder will vary according to the circumstances.  
(a) If there is no potential salvage award within the meaning of Article 13 as incorporated into the Main Agreement then, subject to Appendix B(5)(c)(iv), the undisputed amount of SCOPIC remuneration due hereunder will be paid by the owners of the vessel within 1 month of the presentation of the claim. Interest on sums due will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.  
(b) If there is a claim for an Article 13 salvage award as well as a claim for SCOPIC remuneration, subject to Appendix B(5)(c)(iv), 75% of the amount by which the assessed SCOPIC remuneration exceeds the total Article 13 security demanded from ship and cargo will be paid by the owners of the vessel within 1 month and any undisputed balance paid when the Article 13 salvage award has been assessed and falls due. Interest will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.  
(ii) The Contractor hereby agrees to give an indemnity in a form acceptable to the owners of the vessel in respect of any overpayment in the event that the SCOPIC remuneration due ultimately proves to be less than the sum paid on account.
9. **Termination**  
(i) The Contractor shall be entitled to terminate the services under the SCOPIC clause and the Main Agreement by written notice to owners of the vessel with a copy to the SCR (if any) and any Special Representative appointed if the total cost of his services to date and the services that will be needed to fulfil his obligations hereunder to the property (calculated by means of the tariff rate but before the bonus conferred by sub-clause 5(iii) hereof) will exceed the sum of:  
(a) The value of the property capable of being salvaged; and  
(b) All sums to which he will be entitled as SCOPIC remuneration  
(ii) The owners of the vessel may at any time terminate the obligation to pay SCOPIC remuneration after the SCOPIC clause has been invoked under sub-clause 2 hereof provided that the Contractor shall be entitled to at least 5 clear days' notice of such termination. In the event of such termination the assessment of SCOPIC remuneration shall take into account all monies due under the tariff rates set out in Appendix A hereof including time for demobilisation to the extent that such time did reasonably exceed the 5 days' notice of termination.  
(iii) The termination provisions contained in sub-clause 9(i) and 9(ii) above shall only apply if the Contractor is not restrained from demobilising his equipment by Government, Local or Port Authorities or any other officially recognised body having jurisdiction over the area where the services are being rendered.
10. **Duties of Contractor**  
The duties and liabilities of the Contractor shall remain the same as under the Main Agreement, namely to use his best endeavours to save the vessel and property thereon and in so doing to prevent or minimise damage to the environment.
11. **Article 18 – 1989 Salvage Convention**  
The Contractor may be deprived of the whole or part of the payment due under the SCOPIC clause to the extent that the salvage operations thereunder have become necessary or more difficult or more prolonged or the salvaged fund has been reduced or extinguished because of fault or neglect on its part or if the Contractor has been guilty of fraud or other dishonest conduct.
12. **Special Casualty Representative ("SCR")**  
Once this SCOPIC clause has been invoked in accordance with sub-clause 2 hereof the owners of the vessel may at their sole option appoint an SCR to attend the salvage operation in accordance with the terms and conditions set out in Appendix B. Any SCR so appointed shall not be called upon by any of the parties hereto to give evidence relating to non-salvage issues.
13. **Special Representatives**  
At any time after the SCOPIC clause has been invoked the Hull and Machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the vessel may each appoint one special representative (hereinafter called respectively the "Special Hull Representative" and the "Special Cargo Representative" and collectively called the "Special Representatives") at the sole expense of the appointor to attend the casualty to observe and report upon the salvage operation on the terms and conditions set out in Appendix C hereof. Such Special Representatives shall be technical men and not practising lawyers.
14. **Pollution Prevention**  
The assessment of SCOPIC remuneration shall include the prevention of pollution as well as the removal of pollution in the immediate vicinity of the vessel insofar as this is necessary for the proper execution of the salvage but not otherwise.
15. **General Average**  
SCOPIC remuneration shall not be a General Average expense to the extent that it exceeds the Article 13 Award; any liability to pay such SCOPIC remuneration shall be that of the Shipowner alone and no claim whether direct, indirect, by way of indemnity or recourse or otherwise relating to SCOPIC remuneration in excess of the Article 13 Award shall be made in General Average or under the vessel's Hull and Machinery Policy by the owners of the vessel.
16. Any dispute arising out of this SCOPIC clause or the operations thereunder shall be referred to Arbitration as provided for under the Main Agreement.

**APPENDIX A (SCOPIC)****1. PERSONNEL**

- (a) The daily tariff rate, or pro rata for part thereof, for personnel reasonably engaged on the contract, including any necessary time in proceeding to and returning from the casualty, shall be as follows:

Office administration, including communications	US\$1,275
Salvage Master	US\$1,900
Naval Architect or Salvage Officer/Engineer	US\$1,585
Assistant Salvage Officer/Engineer	US\$1,270
Diving Supervisor	US\$1,270
HSE qualified diver or his equivalent but excluding saturation or mixed gas divers (whose rate should be agreed with the SCR or determined by the Arbitrator)	US\$1,140
Salvage Foreman	US\$ 950
Riggers, Fitters, Equipment Operators	US\$ 760
Specialist Advisors – Fire Fighters, Chemicals, Pollution Control	US\$1,275

- (b) The crews of tugs, and other craft, normally aboard that tug or craft for the purpose of its customary work are included in the tariff rate for that tug or craft but when because of the nature and/or location of the services to be rendered, it is a legal requirement for an additional crew member or members to be aboard the tug or craft, the cost of such additional crew will be paid.
- (c) The rates for any personnel not set out above shall be agreed with the SCR or, failing agreement, be determined by the Arbitrator.
- (d) For the avoidance of doubt, personnel are "reasonably engaged on the contract" within the meaning of Appendix A sub-clause 1(a) hereof if, in addition to working, they are eating, sleeping or otherwise resting on site or travelling to or from the site; personnel who fall ill or are injured while reasonably engaged on the contract shall be charged for at the appropriate daily tariff rate until they are demobilised but only if it was reasonable to mobilise them in the first place.
- (e) SCOPIC remuneration shall cease to accrue in respect of personnel who die on site from the date of death.

**2. TUGS AND OTHER CRAFT**

- (a) (i) Tugs, which shall include salvage tugs, harbour tugs, anchor handling tugs, coastal/ocean towing tugs, off-shore support craft, and any other work boat in excess of 500 b.h.p., shall be charged at the following rates, exclusive of fuel or lubricating oil, for each day, or pro rata for part thereof, that they are reasonably engaged in the services, including proceeding towards the casualty from the tugs location when SCOPIC is invoked or when the tugs are mobilised (whichever is the later) and from the tugs position when their involvement in the services terminates to a reasonable location having due regard to their employment immediately prior to their involvement in the services and standing by on the basis of their certificated b.h.p.:
- |  |          |
|--|----------|
| For each b.h.p. up to 5,000 b.h.p.             | US\$2.80 |
| For each b.h.p. between 5,001 & 12,000 b.h.p.  | US\$2.00 |
| For each b.h.p. between 12,001 & 20,000 b.h.p. | US\$1.40 |
| For each b.h.p. over 20,000 b.h.p.             | US\$0.70 |
- (ii) Any tug which has aboard certified fire fighting equipment shall, in addition to the above rates, be paid:
- |   |
|---|
| US\$690 per day, or pro rata for part thereof, if equipped with Fi Fi 0.5   |
| US\$1,375 per day, or pro rata for part thereof, if equipped with Fi Fi 1.0 |
- for that period in which the tug is engaged in fire fighting necessitating the use of the certified fire fighting equipment.
- (iii) Any tug which is certified as "Ice Class" shall, in addition to the above, be paid US\$1,375 per day, or pro rata for part thereof, when forcing or breaking ice during the course of services including proceeding to and returning from the casualty.
- (iv) For the purposes of paragraph 2(a)(i) hereof tugs shall be remunerated for any reasonable delay or deviation for the purposes of taking on board essential salvage equipment, provisions or personnel which the Contractor reasonably anticipates he shall require in rendering the services which would not normally be found on vessels of the tugs size and type.
- (b) Any launch or work boat of less than 500 b.h.p. shall, exclusive of fuel and lubricating oil, be charged at a rate of US\$4.15 for each b.h.p.
- (c) Any other craft, not falling within the above definitions, shall be charged out at a market rate for that craft, exclusive of fuel and lubricating oil, such rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.
- (d) All fuel and lubricating oil consumed during the services shall be paid at cost of replacement and shall be treated as an out of pocket expense.
- (e) For the avoidance of doubt, the above rates shall not include any portable salvage equipment normally aboard the tug or craft and such equipment shall be treated in the same manner as portable salvage equipment and the Contractors shall be reimbursed in respect thereof in accordance with Appendix A paragraphs 3 and 4(i) and (ii) hereof.
- (f) SCOPIC remuneration shall cease to accrue in respect of tugs and other craft which become a commercial total loss from the date they stop being engaged in the services plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises whilst engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

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## **PORTABLE SALVAGE EQUIPMENT**

- (a) The daily tariff, or pro rata for part thereof, for all portable salvage equipment reasonably engaged during the services, including any time necessary for mobilisation and demobilisation, shall be as follows:

<u>Equipment</u>	<u>Rate – US\$</u>	<u>Equipment</u>	<u>Rate – US\$</u>
<b><u>Generators</u></b>		<b><u>Protective Clothing/Safety Equipment</u></b>	
Up to 50 kW	75	Breathing Gear	64
51 to 120 kW	158	Hazardous Environment Suit	126
121 to 300 kW	253	Cooler; Evaporative; 36", 9800 Cfm, 110v	100
Over 301 kW	443	Heater 55,000/110,000 Btu	250
<b><u>Compressors</u></b>		Gas Monitor; Four Gas Types	175
185 Cfm	190	Nitrogen Generator – 1500 SCFH @ 96%, 220v	2,450
600 Cfm	317	PPE; Ascending/Descending package: 4 Man	350
1200 Cfm	506	PPE; Bunker Gear Pkg: 1 Man	125
Air Manifold	13	PPE; Chemical Suit Pkg: Class A: 1 Man	145
Blower; 1,500m³/min.	1,076	PPE; Chemical Suit Pkg: Class B: 1 Man	25
<b><u>Distribution Boards</u></b>		PPE; Cold Weather 1 <sup>st</sup> Response Kit	35
Up to 50 kW	75	PPE; Confined Space Entry 2 Man package, with Communications	525
51 to 120 kW	158	PPE; Survival Suit, Immersion	10
121 to 300 kW	253	Ventilation Pkg: Vane Axial: 1,500 Cfm	100
Over 301 kW	443	Ventilation Pkg: Venturi Type: 4,000 Cfm	115
<b><u>Hoses: Per 6 Metres or 20 Feet</u></b>		<b><u>Pollution Control Equipment</u></b>	
<u>Air Hose</u>		Hot Tap Machine, including support equipment	1,265
¾"	5	Oil Boom, 24", per 10 metres	39
2"	10	Oil Boom, 36", per 10 metres	126
<u>Layflat</u>		Oil Boom, 48", per 10 metres	246
2"	14	Ballast/Fuel storage Bins upto 10,000 litres	75
4"	19	Ballast/Fuel storage Bins 10,000 to 25,000 litres	100
6"	25	Ballast/Fuel storage Bins 25,000 to 50,000 litres	126
<u>Rigid</u>		<b><u>Pumping Equipment</u></b>	
2"	19	<u>Air</u>	
3"	22	1"	65
4"	25	2"	95
6"	32	3"	110
8"	38	<u>Diesel</u>	
<b><u>Miscellaneous Equipment</u></b>		2"	64
Air Bags, less than 5 tons lift	50	4"	114
Air Bags 5 to 15 tons lift	253	6"	152
Air Lift 4"	126	<u>Electrical Submersible</u>	
Air Lift 6"	253	2"	64
Air Lift 8"	379	4"	190
Air Tugger, up to 3 tons	95	6"	759
Chain Saw	25	<u>Hydraulic</u>	
Container handling package	200	3"	500
Communications package	200	6"	759
Damage Stability Computer and Software	315	8"	1,265
Echo Sounder, portable	32	<b><u>Lighting Systems</u></b>	
Extension Ladder	25	Halogen system	100
Hydraulic Jack, up to 50 tons	50	Lighting String, per 50 feet	32
Hydraulic Jack, up to 120 tons	95	Light Tower	64
Hydraulic Powerpack up to 40kW	60	Underwater Lighting System, 1,000 watts	95
Hydraulic Powerpack 75kW	95	<b><u>Winches</u></b>	
Pressure washer, water	316	Up to 5 tons, including 50 metres of wire	150
Pressure washer, steam	570	Up to 10 tons, including 50 metres of wire	175
Rigging Package, heavy	506	Up to 20 tons, including 50 metres of wire	250
Rigging Package, light	253	<b><u>Fenders</u></b>	
Steel band Saw	25	<u>Yokohama</u>	
Tirfors, up to 5 tonnes	14	1.00m. x 2.00m.	95
Thermal Imaging Camera	316	2.50m. x 5.50m.	190
Tool Package, per set	220	3.50m. x 6.50m.	317
Ventilation Package	25	<u>Low Pressure Inflatable</u>	
VHF Radio	14	3 metres	89
Z Boat, including outboard up to 14 feet	253	6 metres	89
Z Boat, including outboard over 14 feet	443	9 metres	190
<b><u>Diving Equipment</u></b>		12 metres	316
High Pressure Compressor 3500 psi/17 Cfm	200	16 metres	316
High Pressure Compressor 5500 psi/5 Cfm	115	<b><u>Shackles</u></b>	
Decompression Chamber with Medical Lock	325	Up to 50 tonnes	13
Decompression Chamber: Two Man, including compressor	632	51 to 120 tonnes	25
Decompression Chamber: Four Man, including compressor	885	121 to 200 tonnes	39
Hot Water Diving Assembly	316	Over 200 tonnes	64
Underwater Magnets	25		
Underwater Drill	25		
Shallow Water Dive Spread	285		

<u>Equipment</u>	<u>Rate – US\$</u>	<u>Equipment</u>	<u>Rate – US\$</u>
<b><u>Welding &amp; Cutting Equipment</u></b>		<b><u>Storage Equipment</u></b>	
Bolt Gun	380	12' Container	32
Oxy-acetylene Surface Cutting Gear	32	20' Container	50
Underwater Cutting Gear	64		
Underwater Welding Kit	64		
250 Amp Welder	190		
400 Amp Welder	253		

- (b) Any portable salvage equipment engaged but not set out above shall be charged at a rate to be agreed with the SCR or, failing agreement, determined by the Arbitrator.
- (c) The total charge (before bonus) for each item of portable salvage equipment, owned by the contractor, shall not exceed the manufacturer's recommended retail price on the last day of the services multiplied by 2.0.
- (d) Compensation for any portable salvage equipment lost or destroyed during the services shall be paid at the replacement cost. (Provided that the total of such compensation and the daily tariff rate (before bonus) in respect of that item does not exceed the actual cost of replacing the item at the Contractor's base with the most similar equivalent new item multiplied by 2.5.)
- (e) All consumables such as welding rods, boiler suits, small ropes etc. shall be charged at cost and shall be treated as an out of pocket expense.
- (f) The Contractor shall be entitled to remuneration at a stand-by rate of 50% of the full tariff rate plus bonus for any portable salvage equipment reasonably mobilised but not used during the salvage operation provided
- (i) It has been mobilised with the prior agreement of the owner of the vessel or its mobilisation was reasonable in the circumstances of the casualty, or
- (ii) It comprises portable salvage equipment normally aboard the tug or craft that would have been reasonably mobilised had it not already been aboard the tug or craft.
- (g) SCOPIC remuneration shall cease to accrue in respect of portable salvage equipment which becomes a commercial total loss from the date it ceases to be useable plus a reasonable period for demobilisation (if appropriate) PROVIDED that such SCOPIC remuneration in respect of demobilisation shall only be payable if the commercial total loss arises while it is engaged in the services and through no fault of the Contractors, their servants, agents or sub-contractors.

#### **DOWNTIME**

If a tug or piece of portable salvage equipment breaks down or is damaged without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services it should be paid for during the repair while on site at the stand-by rate of 50% of the tariff rate plus uplift pursuant to sub-clause 5(iv) of the SCOPIC clause.

If a tug or piece of portable salvage equipment breaks down or otherwise becomes inoperable without fault on the part of the Contractor, his servants, agents or sub-contractors and as a direct result of performing the services and cannot be repaired on site then:

- (i) If it is not used thereafter but remains on site then no SCOPIC remuneration is payable in respect of that tug or piece of portable salvage equipment from the time of the breakdown.
- (ii) If it is removed from site, repaired and reasonably returned to the site for use SCOPIC remuneration at the standby rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause shall be payable from the breakdown to the date it is returned to the site.
- (iii) If it is removed from the site and not returned SCOPIC remuneration ceases from the breakdown but is, in addition, payable for the period that it takes to return it directly to base at the stand-by rate of 50% of the tariff rate plus bonus pursuant to sub-clause 5(iv) of the SCOPIC clause.

## Appendix D – Guidelines for SDRs

### **GUIDELINES FOR SPECIAL CASUALTY REPRESENTATIVES**

#### **1. Introduction**

With effect from 1st August 1999 the SCOPIC clause was formally approved for use in conjunction with Salvage Agreements under Lloyd's Open Form of Salvage Agreement "No Cure - No Pay". Article 14 of the 1989 Salvage Convention provided that salvors could receive special compensation in certain circumstances where the salvaged fund was insufficient to allow them to recover their expenses and a fair rate for tugs and equipment used in salvage operations. The SCOPIC clause endorsed this concept but introduced a tariff to calculate the Salvors' special compensation together with an uplift fixed at 25%. Although appointed by the Shipowners, the Special Casualty Representative ("SCR") perform his functions under the SCOPIC clause on behalf of all parties and their insurers. His role is to monitor the salvage services and liabilities and provide a Final Salvage Report which forms the basis for the settlement of any claim for SCOPIC remuneration which the salvor might have against the shipowner. SCR's are chosen by the shipowner from a Panel ("the SCR Panel") the members of which are chosen by a group consisting of representatives of the International Group of P&I Clubs, the International Salvage Union, the International Union of Marine Insurers and the International Chamber of Shipping (called the "SCR Committee"). The SCR Committee has promulgated the following guidelines to SCR's to assist them in performing their function as SCR's in the collection of evidence, the monitoring of the salvage operation and compilation of the Final Salvage Report (including the provisional calculation of SCOPIC remuneration)

#### **2. The SCR's duty**

- (a) Appendix B paragraph 2 of SCOPIC states:-

"The Salvage Master shall at all times remain in overall charge of the operation, make all final decisions as to what he thinks is best and remain responsible for the operation".

- (b) Appendix B paragraph 2 of SCOPIC states:-

"The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment".

- (c) The SCR has a duty to report, observe and consult with the Salvage Master and produce Dissenting Reports (if necessary) and the Final Salvage Report (SCOPIC, Appendix B, paragraphs 5(d) and (e)).

- (d) The SCR has a duty, if appropriate, to endorse and in any case to circulate the Daily Salvage Reports of the Salvage Master to interested parties (see SCOPIC, Appendix B, paragraph 5(c)(i) and (ii)).

### **3. The SCR's Powers**

- (a) The SCR is obliged to report, observe and consult with the Salvage Master but not to attempt to direct the salvage operation.
- (b) If the SCR disapproves of the way the salvage operation is being conducted, the type or number of tugs, men and equipment being used, he should inform the Salvage Master in writing as soon as possible and, if not satisfied with the Salvage Master's Daily Salvage Report, publish a dissenting report (see SCOPIC, Appendix B, Paragraph 5(c)(iii)). However the SCR has no power to direct the Salvage Master to employ more or less resources in the salvage operation and this decision must remain at the Salvage Master's discretion.
- (c) The SCR similarly cannot bind the owners of ship or cargo to any particular course of action. The SCR can contact any interest direct at any time provided all other salvaged interests are copied in.
- (d) The SCR's powers and duties are limited and he should not be held responsible either civilly or criminally for the acts or omissions of those interested in the salvaged property or the salvors in respect of events which led to or followed the incident giving rise to the salvage services (however see 8 below).
- (e) No decision or viewpoint of the SCR is binding on the parties. Obviously they are influential but if not accepted by one of the parties the final decision is that of the Arbitrator.

### **4. Special Representatives and the SCR**

- (a) The Special Representatives have the right to be informed of all material facts concerning the salvage operation as the circumstances reasonably allow (SCOPIC, Appendix C, paragraph 2). A Special Representative is on board solely to investigate, monitor, ascertain and report on issues relevant to the Salvage operation and the assessment of the salvage award to be made under Article 13 of the Salvage Convention 1989 or SCOPIC remuneration.
- (b) The SCR shall co-operate with the Special Representatives and he and shipowners and salvors shall jointly permit the Special Representatives to have "full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation". (SCOPIC, Appendix C, paragraph 1).



- (c) The SCR is obliged to provide any Special Representative with the Salvage Master's Daily Salvage Reports and any Dissenting Report as soon as possible after he receives or issues them or the Special Representative is appointed, whichever is the later (SCOPIC, Appendix C, paragraph 3).
- (d) To ease the burden on the Salvage Master the route of communication with the Salvage Master to which a Special Representative is entitled is through the SCR (if there is one readily available). This does not prevent the Salvage Master talking to the Special Representatives should he wish to do so.
- (e) It is not the SCR's function to police the Special Representatives even if he suspects the Special Representatives are not acting properly within the scope of their powers. In such circumstances he may notify all parties and it is for the Shipowner to decide what action should be taken.

#### 5. **The Salvage Master and the SCR**

- (a) As stated in Paragraphs 2(a) and (b) above the Salvage Master remains in overall charge of the salvage operation and the SCR (like the Salvage Master) is under a duty to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment.
- (b) By virtue of SCOPIC, Appendix B, paragraph 4, the SCR is entitled:-
  - ◆ To be kept informed by or on behalf of the Salvage Master or the Principal Contractor's Representative on site; and
  - ◆ To be consulted by the Salvage Master during the operation if circumstances allow; and
  - ◆ Once on site the SCR shall be entitled to offer the Salvage Master advice (which the Salvage Master may or may not accept at his sole discretion).
- (c) The Salvage Master's Daily Salvage Report must be given to the SCR and should include the information in Appendix B, paragraph 5(a). The SCR should check the accuracy and sufficiency of the Daily Salvage Reports and, if he disagrees issue a Dissenting Report. Any Dissenting Report is to be delivered to the Salvage Master and the other parties mentioned in SCOPIC, Appendix B, paragraph 5(c)(iii) by the quickest method reasonably available. All Reports should be made in writing if practicable. The Salvage Master should be encouraged to submit his reports in the form of Appendix 1 hereto and the SCR should try to complete and append a Costs Schedule in the form of Appendix 2 hereto to each Daily Salvage Report.

- (d) It is the SCR's duty to obtain sufficient information from the Salvage Master, the Master of the vessel and others to enable him to calculate SCOPIC remuneration from the commencement of the salvage services (rather than just from the date on which SCOPIC was invoked). This should facilitate the assessment (where necessary) of any discount to be made from the Article 13 Salvage Convention 1989 Salvage Award pursuant to Clause 7 of the SCOPIC clause. The Salvors and the vessel's Master and Owners should co-operate with the SCR in this exercise and, in particular, should provide the SCR with copies of all Daily Salvage Reports from the commencement of the services, photocopies of the Deck Logs of the tugs and other craft involved in the operation and the casualty itself and any other documents which the SCR may reasonably require for this purpose.

## **6. The SCR's Final Salvage Report**

- (a) SCOPIC, Appendix B, paragraph 5(e) states:-

"As soon as reasonably possible after the salvage services terminate, the SCR shall issue a report (hereinafter called the "SCR's Final Salvage Report") setting out:-

- ◆ the facts and circumstances of the casualty and the salvage operation insofar as they are known to him.
- ◆ The tugs, personnel and equipment employed by the Contractor in performing the operation.
- ◆ A calculation of the SCOPIC remuneration to which the Contractor may be entitled by virtue of this SCOPIC clause.

The SCR's Final Salvage Report shall be sent to the owners of the vessel and their liability insurers and to Lloyd's who shall forthwith distribute it to the Interested Persons".

- (b) The SCR's description of the facts and circumstances of the casualty and the salvage operation should be limited to fact rather than opinion and should confine itself to a brief description of the situation e.g. the fact that the vessel has broken down, rather than conjecture as to cause e.g. poor maintenance of the propulsive machinery".
- (c) The Final Salvage Report should also (where a liability to pay an Article 13 award might arise) include the SCR's calculation of SCOPIC remuneration from the commencement of the services for the purposes of assessing any SCOPIC Article 7 discount of the Convention Article 13 award. A liability to pay an Article 13 award might arise whenever value remains in the salvaged property on the termination of the services.

- (d) A proforma SCR's Final Salvage Report may be found in Appendix 3 to these Guidelines. Proformas may be downloaded from [www.lloyds.com/agencysalvage/scopic](http://www.lloyds.com/agencysalvage/scopic).
- (e)
  - (i) The SCR's Final Salvage Report should be issued by the SCR as quickly as possible following the termination of the salvage services. For this reason as much work as practicable should be carried out by the SCR on his Final Salvage Report on site.
  - (ii) If information from the Salvors, their sub-contractors or others is delaying production of the SCR's Final Salvage Report the SCR should produce an Interim Final Salvage Report while awaiting this information stating in the said report:-
    - ◆ Such information in Appendix B paragraph 5(e) as he has; and
    - ◆ That it is only an interim report; and
    - ◆ What information is awaited and approximately how much it represents in financial terms.
  - (iii) The SCR's Final Salvage Report or interim Final Salvage Report should be issued and sent to the Owners of the vessel, Lloyd's and the Shipowner's liability insurers no later than one month after the termination of the salvage services or sooner if possible.

## **7. Unresolved Issues on the calculation of SCOPIC remuneration**

If the parties cannot agree as to how SCOPIC remuneration should be calculated in any particular case, the SCR should publish his report omitting the disputed item(s) with a footnote dealing with any unresolved issues and leave one or both of the parties to apply to the Arbitrator for a decision on the point.

## **8. Liability Insurance**

The SCR shall exercise reasonable care to avoid and minimise injury and damage to himself or his property while performing his functions on site and neither Lloyd's nor the SCR Committee nor those interested in the ship, cargo, bunkers or stores or their insurers nor the salvors can accept any liability in respect of such injury, damage or loss however caused (with or without the negligence or gross negligence of any party). If any liability does arise or if he suffers any injury, damage or loss the SCR should bear in mind that it is his responsibility. He is on site at his own risk.

It is strongly recommended that the SCR shall have continuing insurance in adequate amounts for

- (a) Personal injury, accident, death or disability.
- (b) Third Party Liability.
- (c) Professional Liability.

## Appendix E – Code of Practice between ISU and International group of P&I clubs

### **CODE OF PRACTICE BETWEEN INTERNATIONAL SALVAGE UNION AND INTERNATIONAL GROUP OF P&I CLUBS**

In the spirit of co-operation, the following Code of Practice is agreed between the International Salvage Union and the International Group of P&I Clubs in relation to all future salvage services to which Article 14 of the 1989 Salvage Convention is applicable or under Lloyd's Form where the Special Compensation P&I Club's (SCOPIC) Clause has been invoked by the Contractor.

1. The salvor will advise the relevant P&I Club at the commencement of the salvage services, or as soon thereafter as is practicable, if they consider that there is a possibility of a Special Compensation claim arising.
2. In the event of the SCR not being appointed under the SCOPIC clause, the P&I Club may appoint an observer to attend the salvage and the salvors agree to keep him and/or the P&I Club fully informed of the salvage activities and their plans. However, any decision on the conduct of the salvage services remains with the salvor.
3. The P&I Club, when reasonably requested by the salvor, will immediately advise the salvor whether the particular Member is covered, subject to the Rules of the P&I Club, for any liability which he may have for Special Compensation or SCOPIC Remuneration.
4. The P&I Clubs confirm that, whilst they expect to provide security in the form of a Club Letter either in respect of claims for special compensation (under Article 14 of the 1989 Salvage Convention) or SCOPIC remuneration (under the SCOPIC Clause), as appropriate, it is not automatic. Specific reasons for refusal to give security to the Contractor will be non-payment of calls, breach of warranty rules relating to classification and flag state requirements or any other breach of the rules allowing the Club to deny cover. The Clubs will not refuse to give security solely because the Contractors cannot obtain security in any other way.
5. In the event that security is required by a port authority or other competent authority for potential P&I liabilities in order to permit the ship to enter a port of refuge or other place of safety, the P&I Clubs confirm that they would be willing to consider the provision of such security subject to the aforementioned provisos referred to in para. 4 above and subject to the reasonableness of the demand.
6. The Contractors will accept security for either special compensation or SCOPIC remuneration by way of a P&I Club letter of undertaking in the attached form - "Salvage Guarantee form – ISU 5" - and they will not insist on the provision of security at Lloyd's.
7. The P&I Club concerned will reply to any request by the salvors regarding security as quickly as reasonably possible. In the event that salvage services are being performed under Lloyd's Form incorporating the SCOPIC clause, the P&I Club concerned will advise the Contractor within two (2) working days of his invoking the SCOPIC Clause whether or not they will provide security to the Contractor by way of a Club Letter referred to in para. 6 above.
8. In the event that salvage services are being performed under Lloyd's Form incorporating the SCOPIC clause, the P&I Clubs will advise the owners of the vessel not to exercise the right to terminate the contract under SCOPIC Clause 9(ii) without reasonable cause.
9. It is recognised that any liability to pay SCOPIC remuneration is a potential liability of the shipowner and covered by his liability insurers subject to the Club Rules and terms of entry. Accordingly, in the event of such payment of SCOPIC remuneration in excess of the Article 13 award, neither the shipowner nor his liability insurers will seek to make a claim in General Average against the other interests to the common maritime adventure whether in their own name or otherwise and whether directly or by way of recourse or indemnity or in any other manner whatsoever.
10. The P&I Clubs, if consulted, and the ISU will recommend to their respective Members the incorporation of the SCOPIC clause in any LOF.
11. The P&I Clubs and the ISU will not agree to any variation of the terms, including the tariff rates, of the SCOPIC Clause except in accordance with the provisions of the SCOPIC Clause itself, particularly Appendix B.
12. This is a Code of Practice which the ISU and the International Group of P&I Clubs will recommend to their Members and it is not intended that it should have any legal effect.

1.8.1999  
1.9.2000  
1.1.2005  
22.6.2005

## Appendix F – LOF Salvage Guarantee



For a Single Guarantor

### **GUARANTEE TO THE COUNCIL OF LLOYD'S AND TO THE CONTRACTORS**

In connection with a

### **SALVAGE AGREEMENT ON LLOYD'S FORM**

1. Name of Vessel	
2. Date of Salvage Agreement	(the "Agreement")
3. Remuneration to which this Guarantee relates	Salvage*/Special Compensation under Convention Article 14* * delete as applicable
4. Total liability not to exceed	

Property to which this guarantee relates ("The Property"):

continue overleaf if necessary

In consideration of the Contractors refraining from arresting the property or taking any other action to secure their claim under the Agreement against the property WE, the undersigned guarantors

Name and Addresses of Guarantor	
---------------------------------	--

hereby guarantee the due payment of all sums payable by the owners of the property ("the owners") to the Council of Lloyd's ("the Council") and/or the Contractors in accordance with any arbitration award or appeal award made pursuant to the Agreement, any settlement agreement made between the owners and the Contractors relating to the claim or which may otherwise be due from the owners under the Agreement.

Provided always that our total liability hereunder inclusive of any liability for costs expenses and interest shall in no event exceed in aggregate the amount stated in box 4 above.

Subject as aforesaid we also agree that:

- 1 we shall pay on demand all sums so payable as if we were the principal debtor and a letter of demand signed by any person authorised by the Council specifying the sums to be paid shall be conclusive evidence of the sums so payable by the owners;
- 2 payment will be effected in the currency or currencies in which the owners obligations ought to have been or ought to be discharged;
- 3 insurance has been effected in accordance with the Council's requirements indemnifying the Council and/or the Contractors against any failure on our part to perform our obligations hereunder and that as soon as possible we shall provide to the Salvage Arbitration Branch at Lloyd's the duly stamped policy or other instrument issued;
- 4 this guarantee shall not be affected by any time or other indulgence given to the owners;
- 5 in the event that the total of the sums payable by the owners as aforesaid exceeds the limit stated in box 4 any sum paid by us hereunder shall first be appropriated to discharge the owners liabilities to the Council in respect of fees and expenses including any interest due thereon;
- 6 this guarantee may be enforced in the name of The Corporation of Lloyd's or the Contractors or in their joint names.
- 7 this guarantee shall be governed by and construed according to English law and the courts of England shall have exclusive jurisdiction to adjudicate on any and all claims directly or indirectly relating to this guarantee.

The ..... day of ..... 20 .....

## Appendix G – Salvage Guarantee Form ISU 5

### **SALVAGE GUARANTEE FORM ISU 5 (SCOPIC REMUNERATION)**

To:

Dear Sirs,

**“.....” Salvage  
Lloyd’s Form of Salvage Agreement incorporating the  
SCOPIC Clause dated..... (the “LOF”)**

1. In consideration of, and upon condition that, you refrain from arresting or otherwise detaining the “.....” or any other ship or property in the same beneficial or associated ownership or management in connection with your claim for SCOPIC remuneration for services rendered to the “.....” under the terms of the LOF, we hereby undertake to pay to you on demand any liability on the part of the owners for SCOPIC remuneration, to the extent that it exceeds any actual or potential Article 13 award, together with interest and costs in relation thereto, which may be due to you whether by final unappealable award or judgement or by written agreement between you, the undersigned and the owners of the m.v. “.....”.
2. Any monies paid by the undersigned hereunder shall be deemed to have been paid by the undersigned as surety for the party or parties hereby guaranteed, provided that, notwithstanding anything hereinbefore contained, the liability of the undersigned as between the undersigned on the one hand and you on the other hand shall be that of principal debtor, and the undersigned shall not be released by time being given or other indulgence shown to the party or parties hereby guaranteed or by any other act, matter or thing whereby the undersigned, if liable as a surety only, would or might have been released.
3. This undertaking shall be governed by and construed in accordance with English law and we undertake, when called upon to do so, to give irrevocable instructions to English solicitors to accept service of proceedings issued by you against us in relation to this undertaking.
4. Provided always that our liability hereunder shall not in any circumstances exceed (including interest and costs) the sum of US\$.....

Signed this.....day of .....20

By.....

Authorised signatory of.....

**SEE OVER FOR NOTES ON COMPLETION OF THIS GUARANTEE FORM**  
01.08.99  
12.06.01





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