

## Salvage Contracts & SCOPIC

*Some marine incidents become complex and complicated and often require quick decisions as they happen suddenly and unexpectedly. That is why, the shipowners should prepare emergency plans that will ensure a coordinated, rapid, and effective response in the event of a potential emergency and ensure that the ship's personnel are adapted to these plans.*

*In this circular, we will talk about the salvage, one of the important issues that can be encountered at sea.*



### What is Salvage?

The action taken to rescue a vessel, her crew and cargo from hazard and danger at sea is called salvage. To establish a valid salvage claim, the following issues are considered.

#### ❖ Existence of marine peril, e.g.

- Capsizing
- Sinking
- Collision
- Grounding
- Fire
- Engine Failure
- Heavy weather damage

- Providing a salvage service voluntarily and not because of an existing contract or duty,

- Partial or complete success of the salvage service

A formal contract is not necessarily required in a salvage attempt. Because the assumption here is that a prudent shipowner, who is in danger of losing his ship and his cargo, will accept the salvage terms offered even if time does not allow the negotiation of the above situations. In other words, a salvage is the request of the third party who voluntarily helps to rescue the ship and cargo from a danger. However, the shipowner still has the right to reject any offer of assistance and can make an arrangement with a professional salvor of his own choosing.



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The salvage situation starts with acceptance of the salvage offer of the salvor by the shipowner whose vessel is in distress and in this context, the arrangement is contractual. In other words, the salvage agreement is not a contract for the services with a pre-agreed fee. Instead, it requires a court or arbitrator to decide regarding the award to be paid to the salvor upon completion of the service by considering the followings:

- The extent of success of the salvage
- The value of the rescued property
- Whether a reasonable effort was made to protect the environment
- The extent of potential danger faced by the salvor during salvage service
- Whether the salvage was completed within a reasonable time frame
- Sea and weather conditions
- Whether there were other alternative salvors around
- What can happen to the rescued ship if she is not saved
- All the articles listed within the relevant sections of the 1989 Salvage Convention.

#### ❖ Important 2 Articles of the 1989 Salvage Convention.

##### • Article 13 – Salvage Award

A Salvage Award is paid by both the ship and the cargo interests pro rata to the salvaged value and is insured by their property insurers, the H&M and cargo underwriters, respectively. The amount of the award cannot exceed the salvaged value of the vessel and other property. If there is no value saved, there is no payment. The "no cure no pay" principle. This clause is applied to prevent salvors from partially recovering the wreck and then claiming the full award.

##### • Article 14 – Special Compensation

The impracticability of the "no cure no pay" principle has been realized, especially after the increase in oil transportation and marine pollutions causing environmental disasters. This clause is primarily concerned with paying salvors even if there is no property left to be salvaged in order to prevent environmental damage. To claim a special compensation, it must also be proven that the ship itself or its cargo is threatening to damage the environment.

However, this article caused some uncertainties as follows.

- The lack of compensation was unsatisfactory from the salvor's point of view when intervention was made to rescue a ship in open sea that had no threat of environmental damage to the seas.
- Shipowners and P&I insurers are faced with the obligation to pay special compensation more often than expected, as salvors are deemed sufficient to apply Article 14 regardless of the extent to which the threat to the environment is protected, even in the case of a relatively low pollution risk or a relatively minor pollution.
- All parties were also disturbed by the uncertainty in the evaluation of special compensation and the assessment of the "fair rate" amount to be paid for the service of the salvor.

#### ❖ The SCOPIC Clause ( Special Compensation P & I Club Clause)

Due to the aforementioned uncertainties, the SCOPIC clause was agreed in 1999 as an alternative instrument to Article 14 of the 1989 Salvage Convention.

Basically, SCOPIC is based on the principle of setting a fee on the tariff as compensation for the salvage services performed and the salvor's costs in operation. In other words, SCOPIC clause is the method of determining the special

compensation to be paid to the salvor. If this clause is included in the LOF contract, the salvor cannot claim the provision of Article 14 in this case and the fee is determined under SCOPIC clause. Services performed after incorporation of the SCOPIC clause are evaluated based on the SCOPIC tariff, and the services performed before incorporation of the clause are evaluated within the scope of Article 13.

#### ❖ The Lloyd's Open Form (LOF)

Lloyd's Open Form, officially "Lloyd's Standard Salvage Agreement Form" and commonly referred to as LOF, is an important contract used in salvage operations. This form, officially starting in 1908 and published by Lloyd's of London, is standard and is called "open" because it does not specify a specific sum for the salvage service. As we mentioned above, "salvage" is not a service contract, it is an agreement to provide a service with the hope of "award" and it works with the principle of "no cure no pay".

As time progressed, studies were carried out considering the changing conditions and developing sensitivities, and a simpler new version of the form was published in 2000. LOF 2020 is currently in use and the contract is subject to English Law.

The primary role of the salvors for centuries was to save property, the ship and its cargo. However, today, the most important task of salvors in salvage operation (beyond saving lives) is to prevent environmental damage.

#### ❖ Role of H&M and P&I Insurers in the Salvage Process

H&M insurers monitor the salvage process because they will usually be responsible for compensating the shipowners. The liability of the (P&I) insurers will arise in the presence of the potential claims against the shipowner by the third parties during the salvage process. (for example, sea pollution). If the incident is a salvage situation, it is the H&M insurer who is liable, while the incident turns out to be a wreck it is the P&I insurer who is liable for the cost of wreck removal.

For contracts where the SCOPIC clause is incorporated, the shipowners or their P&I insurers must provide \$ 3 million security in the form of bank or Club letter within 2 business days. If the amount of the security is considered too high by the ship's interests or too low by the salvor, the amount can be decided later. If the letter of guarantee cannot be delivered to the salvor within the specified period, the salvor has the right to withdraw from SCOPIC remuneration and to continue the salvage operation under LOF as though SCOPIC had not existed.

We would like to draw your attention to a point that P&I insurers may refuse to issue a security in case of non-payment of calls, breach of warranty rules or other breach. After all, it is agreed that the payment any SCOPIC remuneration is a potential liability of the shipowners and subject to the terms and conditions of the P&I insurer.

Unfortunately, accidents do not only happen to others, and our advice to shipowners is to always be ready and prepared for possible situations.