



THE JURIDICAL REGIME OF THE SALVAGE AGREEMENT LOF 2000

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Abstract: *Lloyd's Standard Form of Salvage Contract, otherwise known as Lloyd's Open Form (LOF), celebrates its centenary in 2008. After 100 years of use in marine emergencies around the world, LOF remains the most frequently used form of salvage agreement. The International Salvage Union (ISU) represents the global salvage industry. ISU members are responsible for well over 90 per cent of all salvage activity. In 1978 the ISU began to publish annual salvage statistics. In the 1978-2005 period, ISU members performed 5,135 salvage operations – 2,701 of which were carried out under LOF contracts.*

LOF's benefits become clear whenever there is a severe threat to ship, cargo and the environment. Lloyd's administers the contract. The salvor's reward is set to match the nature of the services provided, the risks faced by the casualty and successful outcome in accordance with criteria set out in Article 13 of The Salvage Convention, 1989. Awards are modest when the services are provided on a modest scale. Equally, the Lloyd's Arbitrator will recognise the salvor's achievement when prompt and decisive intervention prevents substantial property loss and environmental damage.

Key words: *salvage, salvage contract, clauses, importance, advantages*

LOF's origins date back to the 1890s and the efforts of Colonel Sir Henry Hozier, then Secretary to Lloyd's, to reach an understanding with salvors in the Dardanelles/Black Sea region. This led to the introduction of a new system allowing the Committee of Lloyd's, or the Committee's appointed arbitrator, to adjust prices agreed for salvage services if the amounts were subsequently considered inappropriate. In this way, the sum could be increased or reduced.

It took almost two decades, however, for the concept of a *standard form* of salvage contract to take hold. LOF's first edition was published in January 1908. Under what eventually became known as Lloyd's Open Form, salvors reported the level of security that they required to Lloyd's upon the completion of services. Regardless of whether or not an agreement provided for a fixed price, the final remuneration payable was determined by the Committee or its appointed arbitrator (unless, upon reflection, all parties were satisfied that the price agreed was fair).

LOF has been revised many times over the past century. This has ensured that the contract remains fresh and fit for purpose. The current edition, LOF 2000, is the tenth since 1908. During discussions leading up to LOF 2000, salvors, P&I Clubs, shipowners and property underwriters sought to avoid the difficulties associated with unwieldy contracts. Consequently, LOF 2000 emerged as a streamlined contract. Lloyd's Standard Salvage Clauses were published in a separate document for the first time. LOF 2000 contains only those key provisions actually required when responding to an emergency.

LOF is a unique contract. It can be agreed by the Master of a ship on behalf of the owner. The Master and owner of the ship have authority to conclude a LOF agreement on behalf of the owners of *all* property on board the vessel.

The agreement of LOF clears the way for a prompt response by the salvor. For many centuries his primary role was to save property – the ship and its cargo. Today, however, in most salvage operations the salvor's most important task (beyond saving life) is the prevention of environmental damage. For this very reason, LOF is more important today than at any time in its long history. Zero tolerance of marine pollution now has a firm hold on public and political opinion. LOF's structure and function, as embodied in LOF 2000, reflects this priority. LOF is agreed, the parties set aside commercial interest and focus entirely on the goal of a successful salvage. In the modern world, of course, a successful salvage tends to be measured in terms of pollution prevention, rather than property recovery [1].

THE ADVANTAGES OF LLOYD'S FORM OF AGREEMENT

Under normal circumstances when Lloyd's Form of Salvage Agreement has been signed, the owners of the salvaged property obtain early release of their property and the Salvor an early deposit of security for his claim, without the necessity of having recourse to the Courts of the country in which the services terminate. In most cases this is a definite advantage, as the procedure for

arresting and releasing a vessel is in some countries a slow process. It also avoids the possibility of the Award having to be decided in a Court with little experience of salvage cases. The panel from which the Committee of Lloyd's select their Arbitrators consists of persons with long experience of salvage matters, and without doubt one of the greatest advantages of the Form is that Lloyd's have a tribunal such as this to decide the amount of Awards, which decision can be obtained at a reasonable cost.

THE ORIGINS OF LLOYD'S FORM

The bottom left hand corner of every Lloyd's Form (LOF) lists dates on which previous editions of the form have been published. The earliest date is January 15, 1908, but several forms of salvage agreement acceptable to Lloyd's had been in existence for many years previously. By 1908, a significant number of salvage claims had been resolved by arbitration, either by the Committee of Lloyd's or by an arbitrator appointed by the Committee [2].

The story of LOF began in April 1890 when, in response to concern regarding the activities of certain salvors in the Dardanelles and Black Sea regions, Colonel Sir Henry Hozier, the Secretary to Lloyd's, visited Vincent Grech, the most prominent salvor in the area. There had been complaints from Masters of unreasonable behaviour by salvors. Invariably, the Master was compelled to sign a contract for payment of a lump sum frequently regarded as grossly excessive.

Lloyd's succeeded in persuading Mr Grech to agree that, in future, he would perform salvage services on the terms of a lump sum contract which, however, gave the Committee or its appointed arbitrator the right to review the agreed figure and to alter it - upwards or downwards - if the figure was considered inappropriate.

Documents in the possession of Lloyd's Salvage Arbitration Branch indicate that this arrangement was soon brought into effect. Following the successful salvage by Mr Grech of the vessel *Helen Otto*, the underwriters concerned objected to the fixed price of £950 stated in the contract. In November 1890, the dispute was referred to two members of the Committee but they upheld the agreed figure.

By this time, Lloyd's had made a similar approach to Perim, the other leading salvor in the Dardanelles region. Perim was prepared to use a form of contract very similar to that negotiated with Grech, but the company declined to give any assurance that it would use that form of contract in all cases. Nevertheless, Perim did use the Lloyd's contract form later in 1890, when providing salvage assistance to the P&O vessel *Hong Kong*, which had stranded. The contract provided for the payment of a lump sum of £30,000 on completion of the services - a considerable sum in those days. P&O objected and, on this occasion, the Committee decided not to act as arbitrators but to appoint a lawyer in that capacity. They chose William Walton (later Sir William), who had recently retired as a partner in *Waltons Bubb & Johnson* - the Committee's solicitors. Mr Walton was appointed arbitrator on January 7, 1891. He decided that £30,000 was excessive and reduced the amount to £12,000. Thereafter, it became the Committee's



practice to appoint Mr Walton or a senior member of the Admiralty Bar as sole arbitrator in all cases.

Subsequently, Lloyd's approached salvors in other areas, in the hope of concluding appropriate agreements. One audience was the International Salvage Union of Copenhagen, which comprised A/S E.Z. Svitzer, the Neptun company and Nordischer Bergungs of Hamburg. However, Lloyd's proved unable to conclude an agreement with the ISU on a standard salvage contract.

Nevertheless, in January 1891 further support for arbitration by or on behalf of the Committee of Lloyd's was received from the General Shipowners' Society, which called on Lloyd's to prepare a standard form of salvage agreement in terms which might receive universal support.

Lloyd's adopted this suggestion and a draft contract was prepared by Waltons. Whilst modeled on the agreement negotiated with Grech, it differed in one important respect. Instead of providing that the fixed price should be paid to the salvor on completion of the services, it stated that the amount should be paid to Lloyd's in cash, where it would be held on deposit pending the outcome of arbitration. The draft was approved by Lloyd's Agency Committee on July 28, 1891.

Progress had been made, but the fact that it had not been possible to achieve a form of contract acceptable to all was recognised as unsatisfactory.

Accordingly, during 1892, various amendments were made to the July 1891 draft, in the hope that this would improve the form's acceptability. Unfortunately, this produced complaints from Grech and others, who felt that the form had become too lengthy. Waltons responded with a shortened form and both long and short versions were published in "Lloyd's Seaman's Almanac". Yet Lloyd's remained keen to pursue the goal of one standard form and Waltons prepared the first so-called "Lloyd's salvage agreement" in November 1892. Its material provisions are set out in the report of the Court of Appeal's decision in "The City of Calcutta" (1898) 8 Asp. 442 - the first case to come before the courts involving a "Lloyd's salvage agreement."

In that case [3], the salvors had chosen to sue for salvage in the Admiralty Court, despite the arbitration provisions in the salvage agreement. The shipowners applied for a stay of the Court action. This was refused by the Admiralty Court and the owners appealed. However, they were also unsuccessful in the Court of Appeal (which had "grave doubt" that the Master had authority to bind his owners to arbitration). Moreover, the ISU were probably encouraged by the finding that salvors should not be compelled to go to arbitration under an agreement which enabled the Committee to object to a fixed price as being too large and then to act as arbitrators - when they would be "judges in their own cause".

By 1898, however, the contract wording of November 1892 had gained widespread support, except from the ISU of Copenhagen and Berging Maatschappij, which continued to use the separate forms agreed with them in 1891.

However, in 1897 Lloyd's made a further bid to bring the ISU into the fold. They proposed an amendment to the arbitration clause, allowing the salvor the option either of accepting arbitration by the Committee or its arbitrator or to have the remuneration assessed by a panel comprising arbitrators appointed by the salvors and shipowners respectively, with an umpire to be appointed by the Committee if those two arbitrators could not agree. Unfortunately, these suggestions did not prove acceptable to the ISU.

It was not until 1907 that Lloyd's and the ISU positions were reconciled. Matters came to a head on June 3, 1907, when a meeting with ISU representatives took place at Lloyd's. This was held in the context of a suggestion that "a permanent Court of arbitration" should be established (possibly in Hamburg) to resolve salvage claims involving Lloyd's and other marine underwriters in London. It was envisaged that this Court would consist of a tribunal comprising: a technical expert, such as a surveyor; an average adjuster; and a Chairman with power to call for any assistance

which might be required from a lawyer, an independent shipowner or merchant.

During this meeting, the ISU representatives indicated that they were prepared to disregard the proposal to create an arbitration Court if the standard form of salvage agreement, which Lloyd's were promoting, could be amended to meet their concerns on arbitration.

This became the first Lloyd's Standard Form of Salvage Agreement, published in January 1908. This agreement provided that, whether or not the contract stipulated for the payment of a lump sum, the salvors were required to notify Lloyd's, on completion of the services, of the amount for which they required security. This reflected the objective that, regardless of whether or not the agreement was a fixed price contract, the final remuneration payable should be determined by arbitration by the Committee or its appointed arbitrator unless, following a period for reflection, all parties were satisfied that any price agreed was fair.

THE CHALLENGES OF LOF

The International Salvage Union's membership is engaged in commercial salvage. The services provided include marine casualty response and pollution prevention. These activities are increasingly exposed to political pressures. This largely reflects the high level of concern over the environmental damage arising from shipping accidents, especially those involving large, laden oil tankers.

LOF is a no cure – no pay contract. In the traditional manner, the salvor is rewarded with a share of "salvaged value" (the value of ship and cargo). This system operates on the principle of natural equity – first established in a marine salvage context over 2,000 years ago, in Classical Greece.

In recent decades governments have shown growing reluctance to rely solely on the commercial no cure – no pay contract for salvage and pollution prevention. As a commercial contractor, the salvor has the freedom to decide not to intervene if the financial risks are judged unacceptable under all-or-nothing, no cure – no pay terms. Governments came to recognise that the salvor needs an additional incentive, to moderate the full rigour of the traditional no cure – no pay system, in cases where there is a high risk of failure and/or little salvaged value. This led to the introduction of "safety nets" in various forms – all designed to protect the salvor from financial loss, and to encourage him to respond to *all* pollution threats, not just those casualties promising a satisfactory Salvage Award. With this in mind, the more recent LOF editions – beginning with LOF 80 – included safety net mechanisms guaranteeing the salvor his expenses and providing for a degree of uplift on expenses, to reward success in preventing pollution.

LOF 2000, the latest edition, went further. It includes a new remuneration system for the one-in-five cases where a satisfactory, property-based Salvage Award is unlikely to materialise. This system, known as the SCOPIC Clause [4], rewards the salvor on the basis of pre-agreed tariff rates for salvage tugs and other craft, portable salvage equipment and salvage personnel. Any long-term solution must recognise, in some way, the environmental benefit of salvage services. Pollution prevention is more important than ever. This holds the key to the continuity of salvage and pollution prevention services in future years. It makes good sense to place a much greater financial value on spill prevention services, within a new system of "parallel remuneration". Under such a system the salvor would continue to receive a Salvage Award for success in recovering property but, in addition, he would also receive a distinct Environmental Salvage Award for his success in preventing or minimising pollution damage.

Article 8(1) (a) of the 1989 Convention provides that the salvor shall carry out the salvage operations „with due care“. „Salvage operations“ means any act undertaken to assist a vessel or any other property in danger in any waters whatsoever (Article 1). However, the 1995 Act provides that the Convention shall not apply where the salvage operation takes place in inland waters of the United Kingdom and the



vessels involved are of inland navigation, or no vessel is involved [5].

Where the salvor requires assistance he may sub-contract, often on the terms of the contract published by the International Salvage Union, the ISU Sub-contract (Award Sharing) 1991, which sets out the obligations of the parties as well as the entitlement of the su-contractor to share in the award.

LOF: THE NEXT 100 YEARS

There is a strong case for a new revision of LOF, to take full account of society's zero tolerance of marine pollution. This is the obvious first step in preparing Lloyd's Open Form for the future. The ISU has proposed that Environmental Salvage Awards should be introduced through a new LOF. Given goodwill on all sides, it should be possible to reach agreement in this area within a three-year timeframe, to allow the adoption of "LOF 2010".

Work should also begin on a revision of The Salvage Convention, 1989. The ISU has called on the Comité Maritime International (CMI) to begin drafting a new convention. Inevitably, this will take longer than the introduction of a new LOF – even allowing for the innovation of a dual-track Salvage/Environmental Salvage Awards system.

THE NEW VERSION OF THE LLOYD'S STANDARD FORM OF AGREEMENT

The maritime sector has been very effective in devising industry agreements concerned with the environment. It would have taken many years (possibly decades) to introduce these measures through the vehicle of international conventions.

Outstanding examples of such agreements include the tanker shipping/oil industry "TOVALOP" and "CRISTAL" arrangements, together with the more recent "STOPIA" and "TOPIA". In effect, these systems self-regulate the balance of responsibility for spill compensation between shipowners and oil receivers.

LOF has performed a somewhat similar role in salvage and spill prevention. In 1990, for example, a new LOF edition gave immediate effect to Article 14 Special Compensation, introduced by The Salvage Convention, 1989. This avoided any delay in giving effect to the wishes of International Maritime Organization member governments. Inclusion of Article 14 within a new LOF avoided years of waiting, until the entry into force conditions of The Salvage Convention were fulfilled.

In a similar way LOF was used to introduce the industry's more effective successor to Article 14: SCOPIC remuneration. SCOPIC is the latest form of "safety net". LOF 2000 allows the salvor to invoke SCOPIC at any time.

In the same way, a LOF 2010 contract could be used to introduce Environmental Salvage Awards many years before such change could take effect through a new Salvage Convention.

A MORE EFFICIENT LOF

LOF is a remarkably efficient contract. [6] Nevertheless, there is still scope for improvement. In the area of education and awareness, for example, salvors and their industry partners should do more to promote a greater understanding of LOF, its function and benefits.

It is also important to ensure that Salvage Awards are perceived to be fair, if confidence in the LOF system is to be maintained. Unfortunately, a view has taken hold – in some sectors of the industry – that LOF involves excessive costs. This reflects a misunderstanding of how LOF works.

Most LOF cases are settled amicably. Around 30 per cent go to arbitration in London. Arbitrations are heard by a single Arbitrator from a small group of highly experienced Salvage Arbitrators, who are appointed by Lloyd's. Should a settlement evade the parties, the commercial issues will be resolved by the Arbitrator (or Appeal Arbitrator).

The Arbitrator ensures that the Salvage Award matches the scale and complexity of the service provided. This point is at

the very heart of the LOF system. Indeed, it was the reason why the contract was devised in the first place a century ago.

It should be recognised that, even in a major case with a potential for catastrophic pollution, the salvor's reward will be minor in relation to the huge costs of clean-up and compensation, had a spill occurred. At the other extreme, a brief, straightforward salvage service will result in an Award reflecting the minor character of the service provided.

ISU members have agreed that expectations should accurately reflect the level of service provided. In 2006 ISU members adopted a Resolution emphasising that salvage security demands should be realistic, as should settlement/Award expectations.

There have been recent innovations in the administration of LOF, with the aim of enhancing the contract's cost-effectiveness. For example, Lloyd's has introduced a new "short form" of arbitration. This is a fixed cost procedure for the smaller cases, where the total security is not more than USD 1 million. The ISU has proposed that the current threshold for the Fixed Cost Arbitration Procedure should double to USD 2 million, in order to encourage greater use of this cost-effective form of arbitration.

TOWARDS A NEW SALVAGE CONVENTION

In May 2007 IMO member governments adopted a new International Convention on Wreck Removal. Eighteen years previously, they adopted The Salvage Convention, 1989.

It can take many years to introduce a new convention. By way of example, The Salvage Convention, 1989, replaced The Salvage Convention, 1910. Hopefully, the 1989 Convention will be revised over a shorter timescale, perhaps during the next decade.

Revision of The Salvage Convention, 1989, would provide an opportunity to recognise the dramatic changes seen over the past two decades, including the replacement of Article 14 Special Compensation with the more workable SCOPIC arrangements developed by industry [7]. There would also be an opportunity to establish an inter-governmental framework for Environmental Salvage Awards. For example, this might involve the establishment of an International Environmental Salvage Fund, with contributions from Coastal States – who are the ultimate beneficiaries of the salvors' spill prevention services.

A revised Salvage Convention should include a new Article 14, providing for Environmental Salvage Awards in parallel with the traditional, Article 13 Salvage Awards for property recovery. This concept should be readily accepted by the international community, on grounds of its sheer cost-effectiveness. Payments for prevention are always much lower than the costs associated with clean-up and compensation, whenever a spill occurs.

NEW LOF 2010 PROPOSAL

Specifically, the proposal is to develop a new LOF 2010 edition that would treat environment-oriented salvage independently from property-related salvage and thus provide remuneration of an "environmental salvage award" in parallel to the traditional salvage award for property recovery, whether or not the actual salvaged value generated from recovered property effectively may amount to very little or nothing at all. In other words, the proposal is to ensure that the essence of the original LOF agreement is preserved for the future: to encourage salvors to respond to all mishaps and casualties without delay, regardless of the risk of failure, by granting them basic protection from financial loss. With this mind, the Comité Maritime International, which has a long-established track record in drafting texts for legal conventions of the IMO, has been invited to begin drafting a new Salvage Convention that would include a new Article 14 providing for environmental salvage awards in parallel with the property salvage awards regulated under existing Article 13.

The professional salvage sector believes that a system of "parallel" or "dual track" remuneration" under a more immediate LOF revision is also the best, and most expeditious, way forward to help ensure that its marine salvage capability



remains fit-for-purpose into the future. The question is whether the P&I Clubs, which take responsibility for pollution liability and compensation payments on behalf of their shipowner members, can be persuaded to come on board.

The Clubs already face unprecedented increases in their claims costs in general, with resulting stiff call charges on their members and hefty increases in their reinsurance premiums. These woes are exacerbated by an unsatisfactory track record of matching underwriting revenues to the level of risks covered, forcing the Clubs to rely on investment income to fill the gaps - a difficult task in itself, especially when the world's financial markets are in turmoil as is the case at present. Nevertheless, experience shows that a salvage situation with a potential for catastrophic pollution costs far less when the award earned by the salvor is compared with the huge costs of clean-up and compensation payments to victims, not to mention the vast amounts of money spent on prolonged litigation of which the outcome can never be predicted.

Seen in this light, the question boils down to what price the Clubs are prepared to place on securing the benefit of predictability of costs. However, pro-active thinking is not the traditional way of "P&I" thinking, which operates primarily on the basis of retroactive pay-outs (the "pay to be paid" principle that is inherent in Protection & Indemnity).

CONCLUSIONS

Juridical conclusions

As shown is the first chapter, the maritime salvage is a maritime event based on solidarity.

Excluding the case of the compulsory salvage (the salvage of human life), all the other actions of maritime help are performed, or should be performed in a contractual frame. Because these actions of help have different nature, not any action of this kind can have the characteristics of a salvage operation; and even though a offer (request) for salvage is accepted, this fact doesn't necessary give the salvor the right to reward and indemnisation for the eventual expenses unless his performance is proved to be at least partially useful to the vessel in distress. In such case, the maritime law will be applied and, in consequence, it will be a cause of maritime salvage, if certain conditions are fulfilled.

As long as the parties involved – the salvor and the saved – have agreed that an action of maritime aid will be clasified as an act of salvage or they haven't agree to anything

REFERENCES

- [1] BUNDOCK, Michael, *Shipping law handbook*, 2nd Edition, LLP, London, 2000
- [2] CHORLEY și O.C. Giles, *Shipping law*, Sir Isaac Pitman and sons, London, 1963
- [3] DUCKWORTH L., *The principles of marine law, third edition*, Sir Isaac Pitman and sons, Ltd., London, 2001
- [4] MANOLACHE Octavian, *Contractul de salvare maritimă*, Ed. ALL BECK, București, 2001;
- [5] RAINEY Simon, *The law of tug and tow*, 2nd Edition, LLP, London, 2002
- [6] REDDING Tony, *Best endeavours. Inside the world of marine salvage*, Bradford on Avon, England, 2004

yet, following that the law would respect their will, it can be said that we are in the presence of a maritime salvage contract, different of any other common type of agreement.

The most used type of contract is „Lloyd's Standard Form of Salvage Agreement” – the last form appeared in 2000 – which enters in force through the simple signing by the interested parties; in practice, by the master of the vessel in distress and the master of the salvor.

In essence, LOF's success story derives from the simple fact that its contractual rights and obligations together help to ensure the provision of a sufficient financial incentive for salvors to engage in even the most difficult salvage cases.

The shape and content of this LOF agreement are presented in the Appendixes section. In time, LOF has been used in different forms, like LOF 80, LOF 90, LOF 95, LOF 2000 and now a new version is in making. There have been recent innovations in the administration of LOF, with the aim of enhancing the contract's cost-effectiveness. For example, Lloyd's has introduced a new "short form" of arbitration. This is a fixed cost procedure for the smaller cases, where the total security is not more than USD 1 million.

Economical conclusions

According to this form of Lloyd's contract the payable amount is established by simple agreement after the salvage operations end, and if there are any disputes, these will be settled in arbitraj. The right to salvage remuneration exists whether a contract exists or not, its presence being determined strictly by the existance of the elements „danger” and „useful result”, this because the notion of „salvage of goods” itself necessarily implies the existance of a danger which the goods would be saved from and the useful result as economical purpose. In most cases the salvage agreements are signed with the condition „no cure – no pay”.

The LOF 2000 edition of the Salvage Agreement allows the salvor to invoke SCOPIC at any time during the actual salvage operation. However, although the uptake of SCOPIC has been encouraging, professional salvors believe that more is needed to maintain their confidence that it is worth their while, financially, to engage in complex salvage cases with a severe environmental risk, especially when considering that the risk of pollution increases with increasing ship sizes and that public scrutiny is reaching new heights as evidenced by the mounting litigious appetite of port and coastal state authorities.