



Key Issues

Salvage and Lloyd's Open Form

The professional salvage industry provides a vital service to ships in need of assistance in emergency situations. Salvors also assist in less urgent wreck removal and towage operations.

In their role as emergency responders, traditionally salvors have been entitled to a generous reward when the ship and other property has been saved (payable by commercial marine property underwriters). In more recent times, salvors have also been entitled to receive special compensation for rendering assistance to ships that threaten damage to the environment (payable by shipowners' liability insurers). This is to encourage salvage operations, even in cases which might otherwise be uneconomic, and promote a viable and sustainable salvage industry.

The Lloyd's Open Form (LOF) is a long-standing standard form of salvage agreement, which provides for the salvor's remuneration to be settled later by agreement or arbitration. Special compensation may be awarded in accordance with the terms of an industry agreement – "SCOPIIC" – when incorporated in LOF by agreement.

SCOPIIC is a carefully balanced package, the result of negotiations in which all interests were represented. SCOPIIC can be invoked by the salvor at any stage of the salvage operation regardless of the circumstances and whether or not there is a threat of damage to the environment. SCOPIIC remuneration is assessed by reference to an agreed tariff of rates for equipment and personnel, and salvors receive a bonus of 25% of the tariff rate remuneration in all cases where SCOPIIC is invoked. The salvor nevertheless runs a commercial risk by invoking SCOPIIC, in that if the traditional reward exceeds the SCOPIIC remuneration, the reward will be discounted by 25% of the amount by which it exceeds the SCOPIIC remuneration.

The LOF regime is administered by the Lloyd's Salvage Arbitration Branch, and kept under review by the Lloyd's Salvage Group (LSG) in which ICS participates along with representatives of all interests in the LOF regime – shipowners, salvors, marine property underwriters, and liability insurers.

Over the years, concerns have been raised in the LSG about a decline in the use of LOF. More recently the discussions have focused on the use of side-agreements to LOF that undermine the LOF regime. The terms of the side-agreements reportedly vary from case-to-case. Some of them have sought to activate SCOPIIC earlier or to extend the time for SCOPIIC rates without the prior knowledge or approval of the P&I Club. The International Group of

P&I Clubs has previously warned that such agreements concerning SCOPIIC may be invalid and, if agreed without the P&I Club's consent, such agreements may also prejudice the shipowner's P&I cover.

Other side-agreements, however, are reportedly directed at the salvor's traditional reward for saving the ship and other property rather than SCOPIIC. Generally, such side-agreements have been aimed at amending the LOF to a fixed costs contract whereby marine property underwriters have sought to avoid the potential uncertainty associated with the reward determined after the event by arbitration. Reportedly, salvors are under pressure to accept such side-agreements in a difficult market.

ICS continues to be a strong supporter of LOF, which, with its standard agreed terms, avoids the need to negotiate in emergency situations. In addition, it is in shipowners' interests for salvors to be encouraged and for the salvage industry to remain viable and competitive. Accordingly, it is considered important that LOF remains the default contract for use in genuine emergency situations when time is of the essence so that the provision of salvage services is not delayed. A new iteration of LOF is expected to be published in 2019 and will include a requirement for side-agreements to be notified to Lloyd's.

