



KISH P & I LOSS PREVENTION CIRCULAR KPI-LP-28-2012
(Guidelines concerning Salvage Matters & SCOPIC)

I. Salvage Agreement

In case a vessel has experienced problems or has been involved in casualties that require salvors' assistance, a Master usually notifies the situation to owners and asks them to arrange salvors to attend. Then, the owners consult with their Hull & Machinery (H&M) Underwriters to appoint the salvors. Upon making a salvage agreement, the salvors commence a salvage operation.

Whilst there are following three types of salvage agreement, the major one is "No cure-No pay" basis, especially the LOF (Lloyd's Open Form) of Salvage Agreement:

- A. Lump sum: (The amount of salvage charge is fixed in advance)
- B. Daily hire: (The amount of salvage charge will be calculated on a daily hire basis)
- C. No cure-No pay: (The amount of salvage remuneration will be decided after the salvage operation based on the salvaged value (value of the vessel, cargo and other property salvaged, etc.)

The LOF is usually signed by a Salvage Master and the ship Master. The salvage remuneration under the LOF is decided after the salvage operation, taking account of many factors. For instance, salvaged value of the vessel and other property, the skill and efforts of the salvors in preventing or minimizing damage to the environment, the nature and degree of the danger, the skill and efforts of the salvors in saving the vessel, other property and life, the time used and expenses and losses incurred by the salvors and so forth (reference can be made to the Article 13 of the International Convention on Salvage 1989).

The salvage remuneration will be covered by Property (H&M and Cargo) Underwriters, not by P&I Club.

II. Development of Lloyd's Open Form(LOF):

LOF was established in 1908 by Committee of Lloyd's as an international standard salvage agreement. The characteristic of LOF is so called "No cure-No pay." However, to meet with increasing attention to the environmental protection, radical changes Salvage Agreement and SCOPIC have been made to the principle of "No cure-No pay" by the introduction of Safety Net and Special Compensation since the 1980s.

Then, in LOF2000 which came into use on 1 September 2000, the SCOPIC Clause was incorporated.

LOF 1980 : Introduction of Safety Net

LOF 1990 : Incorporation of International Convention on Salvage 1989 Introduction of Special Compensation

LOF 1995 : Revision following the changes of UK Maritime Shipping Act

LOF 2000 : Introduction of SCOPIC Clause

LOF 2011 : The latest version incorporating SCOPIC 2005 & 2007

III. Special Compensation SCOPIC Clause:

The Salvage Convention entered into force in 1996 but had already been introduced into LOF 1990 and LOF 1995 and was therefore being used in most contractual salvages. However, a number of problems arose from the implementation of article 14, causing concern to ship-owners, P&I clubs and salvors. The clubs were worried that the safety net gives the salvor an incentive to extend the work as long as possible,



which in turn allows the property underwriter to delay the decision as to whether the ship will be accepted as a constructive total loss with little that the club or the ship-owner can do to control the situation.

On the other hand salvors were concerned that article 14 only applies if there is a threat to the environment, which has to be proved, and there is also a geographical restriction because article 14 is not relevant outside coastal or inland waters or adjacent areas.

All these issues have led to long and expensive arbitration involving article 14. The Special Compensation P&I Clause (SCOPIC) was agreed after negotiations between the International Salvage Union (ISU), the P&I clubs and property underwriters. SCOPIC provides a simplified framework for special compensation intended to promote a fast response to casualties but reduce the potential for legal disputes. The clause also provides compensation to salvors when the salvage is likely to be unsuccessful to encourage them to take steps to control pollution. It is an alternative to article 14 for dealing with special compensation.

Practical experience of the use of SCOPIC highlighted some areas where clarification was required and led to the introduction of new SCOPIC clauses, known as SCOPIC 2000, SCOPIC 2007 and more recently SCOPIC 2011.

New versions of Lloyds Open Form also came into force in 2000, known as LOF 2000, and more recently LOF 2011 in 2011.

The main provisions of SCOPIC are as follows.

- In a salvage incident, the contracting salvor undertakes the salvage on a 'no cure – no pay' basis. But, under LOF 90, LOF 95, LOF 2000 or LOF 2011, the salvor has the option of invoking the special provisions of the SCOPIC clause at any time, regardless of the circumstances.
- The salvor does not have to prove an environmental threat and there is no geographical restriction. Once notice of invoking the SCOPIC clause has been given, an assessment of the SCOPIC remuneration starts. The salvor cannot make any claims under article 14 once SCOPIC has been invoked.
- Remuneration rates payable under the SCOPIC clause are based on a standard tariff for time equipment and materials used, plus a standard bonus of 25%. The P&I clubs have reached agreement with the ISU on the tariff rates for tugs, personnel and other equipment.
- *Salvage services then continue to be assessed in accordance with article 13, even if the contractor invokes the SCOPIC clause.* If there is no potential article 13 award, for example in an unsuccessful salvage operation, the SCOPIC remuneration is to be paid by the ship-owner. However, if the contractor invokes the SCOPIC clause and then the article 13 award is greater than the SCOPIC remuneration, the article 13 award will be discounted by 25% of the difference between it and the amount of the SCOPIC remuneration that would have been. This is to discourage salvors from invoking SCOPIC unnecessarily.
- A further requirement is that when the SCOPIC clause is invoked, the ship-owner must provide security in an amount of US\$3 million within two working days. The P&I clubs expect to provide security for SCOPIC, but provision is not automatic. If the ship-owner does not provide the security within the two working days required, the contractor can withdraw from the provisions of the SCOPIC clause and revert to its rights under article 14. The amount of security may be adjusted by agreement or arbitration at a later stage.
- The rights of the ship-owner are looked after during the salvage operations by *SCR (Special Casualty Representative)*. The advantages of the SCOPIC clause to ship-owners and P&I clubs is that there should be little need for arbitration on special compensation awards and they have more knowledge and, perhaps, control of the salvage operation.
- As it is no longer necessary to prove an environmental threat and the geographical restriction has been removed; this may be an advantage to salvors and a disadvantage to ship-owners. The provision of security to the salvors is also more certain.



It is recommended that SCOPIC be incorporated into all LOF contracts. The layouts of LOF 2000 and LOF 2011 enable the parties to specify whether SCOPIC forms part of the agreement.

► The upper ceiling of the salvage remuneration will be the salvaged value (value of the vessel, cargo and other properties salvaged). If the salvors save high value vessel and cargo, they will be entitled to a fair amount salvage remuneration. However, if the salvaged value is less than the salvors' costs, they will incur loss.

Accordingly, if the salvors are not confident in receiving sufficient salvage remuneration, they will hesitate to conclude a salvage agreement, which might result in delay of salvage operation and increased risks of environmental damages. Obviously, such situation is not the interest of ship owners, cargo owners, Property Underwriters and P&I Club.

The solution is so called Special Compensation, which was incorporated in LOF 1990. (Reference can be made to the Article 14 of International Convention on Salvage 1989) Under LOF 1990, whilst the salvors have an obligation to make a best endeavour to prevent the environmental damages, they are entitled to receive a fair amount of salvage costs as Special Compensation in case the salvors are unable to receive a sufficient salvage remuneration due to an unsuccessful salvage operation or small value of salvaged properties in spite of the fact that the salvors prevented or minimized the environmental damages.

This is an exception to the principle of "No cure-No pay." Whilst the system of Special Compensation was welcomed and supported by the maritime community, disputes have arisen in calculation of the fair amount of the salvors' costs to be allowed as Special Compensation. As a comprehensive solution, the SCOPIC (Special Compensation of P&I Club) clause was established in 1999 and has been incorporated into LOF 2000.

In brief the main idea of the SCOPIC clause is as follows:

1. A fair amount of salvors' costs is calculated by the agreed tariff (SCOPIC tariff)
2. SCOPIC remuneration means the total of the salvors' costs calculated by the SCOPIC tariff rates plus a standard uplift of 25%.
3. SCOPIC remuneration is calculated after the salvors invoke the SCOPIC clause.
4. If the salvage remuneration is less than the SCOPIC remuneration, the salvors will be entitled to receive the balance from owners.
5. If the salvage remuneration is more than the SCOPIC remuneration, the salvage remuneration in excess of the SCOPIC remuneration will be discounted by 25% as a penalty.
6. Once the salvors invoke the SCOPIC clause, the owners shall provide security (a bank guarantee or P&I Club letter) for US\$3,000,000 to the salvors within two working days.
7. SCOPIC remuneration will be assessed by the SCR (Special Casualty Representative) nominated by owners.

The primary duty of the SCR is the same as the salvors, namely to use his/her best endeavours to assist in the salvage operation preventing and minimizing damage to the environment. Other duties and responsibilities are:

- to report, observe and consult with the Salvage Master.
- to endorse, if appropriate, the Daily Salvage Report of the Salvage Master and transmit its copy to Lloyd's, the owners, Property Underwriters and the owners' P&I Club.
- to produce a dissenting report, if necessary, setting out any objection or contrary view and deliver it to the Salvage Master and transmit it to Lloyd's, the owners, Property Underwriters and the P&I Club.



- to produce the Final Salvage Report setting out a calculation of the SCOPIC remuneration.

IV. P&I Insurance:

P&I Club shall not cover the salvage remuneration but it will be covered by Property Underwriters. On the other hand, the Special Compensation and payment to the salvors under the SCOPIC clause (the SCOPIC remuneration which exceeds the Salvage Agreement and SCOPIC salvage remuneration) shall be covered by the P&I Club.

If the SCOPIC remuneration is less than the salvage remuneration, there will be no payment of the SCOPIC remuneration to the salvors.

- Salvage remuneration: Covered by Property Underwriters
- Special Compensation: Covered by the P&I Club
- SCOPIC remuneration in excess of the salvage remuneration: Covered by the P&I Club

V. Steps to be taken when the SCOPIC clause is invoked:

1. Occurrence of marine casualty:

- The Master notifies the owners of the incidents.
- The owners consult with H&M Underwriters and appoint salvors.

2. Conclusion of salvage agreement with LOF 2000 or 2011 incorporating the SCOPIC Clause:

- Box 7 of LOF 2000 asks "Is the SCOPIC Clause incorporated into this agreement? State alternative: Yes/No." *If the word "No" in Box 7 has been deleted the SCOPIC clause is incorporated.*
- *If "No" in Box 7 has not been deleted, the SCOPIC clause is not incorporated in the agreement and does not consist of the agreement.*

3. SCOPIC clause is invoked by the salvors:

- If the SCOPIC clause has been incorporated in the agreement, the salvors can invoke the SCOPIC clause at any time by notifying the owners in writing.

4. Submission of security:

- After receiving the written notice from the salvors invoking the SCOPIC clause, the owners shall provide security (a bank guarantee or P&I Club letter) in the sum of US\$3,000,000 as security for SCOPIC remuneration payable to salvors within two working days.
- Unless the security is provided within the two working days, the salvors may give notice to the owners to be entitled to withdraw from all the provisions of the SCOPIC clause and revert to their rights of Special Compensation.
- The amount of the letter of guarantee can be increased or decreased to a reasonable level.

5. Appointment of SCR:

- Once the SCOPIC clause has been invoked, the owners will consult with their P&I Club and consider appointing an SCR to attend the salvage operation.

6. Appointment of Special Representative:

- Property Underwriters have also a right to appoint Special Representative to observe and report upon the salvage operation.



7. Completion of the salvage operation and redelivery of the vessel and cargo:

- Upon completion of the salvage operation the vessel and cargo will be redelivered at a safe place in exchange for Salvage Security issued by the H&M and Cargo Underwriters.

8. Payment of remunerations

- Salvage remuneration will be paid by the H&M and Cargo Underwriters.

- SCOPIC remuneration payable to the salvors will be paid by the P&I Club.

VI. Additional Remarks about Salvage:

1. Review of the contents of the salvage agreement:

- In marine casualties such as stranding, collision fire and engine trouble which require the salvors' assistance, there are some occasions where the salvors have come first to the scene, and offer their help to the Master. In case of emergency, the Master may decide to ask the first available salvors to assist. However, it is necessary for the Master to review the contents of the salvage agreement carefully before signing it.

- Once the salvage agreement is signed, send its copy to the owners.

- The verbal request for salvors' assistance demands a lot of attention. Though the Master might have thought that the work ordered was simple towage, salvors might allege that it was salvage. There are reported cases in which salvors demanded payment of unreasonable amount of salvage charges after the vessel was towed to the safe place and that the vessel had been arrested by the salvors when the Master refused to pay such amount.

2. Collection and preservation of records and evidences:

- Time and circumstances of the accident, sea and weather conditions, the vessel's condition and remedies taken should be recorded and all the evidences should be preserved.

- The cause of the accident should not be disclosed to those other than owners, their lawyers, P&I correspondents and P&I surveyors.

3. Cooperation with local authorities:

- Statement should be honest and limited to facts.

- Report to the owners about the details of the authorities' questions and your answers.

4. Cooperation with the SCR:

- The SCR is a representative for the owners, cargo owners, Property Underwriters and P&I Club. He is in a position to assist the Salvage Master so as to save the vessel and property on board. Please cooperate with SCR. If you have comments and advices on the salvage operation, please advise the SCR on your ideas.

5. Cautions for interviews:

- If you are requested to be interviewed, check the identity of the interviewers.

- If the interviewers represent the owners' side (lawyers, P&I correspondents and P&I surveyors), cooperate with them. If they represent other side, on the other hand, you should not accept their interview unless it is approved by the court.

KPI Loss Prevention Team

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