

30 January 2018

LOF Side Agreements

In July 1999 the Association issued a circular dealing with amendments to Lloyd's Open Form (LOF) and the development of the Special Compensation P&I Club (SCOPIC) Clause. Updates were provided in August 2000 and January 2006. The Association's support for the use of LOF, when responding to a casualty, and the incorporation of the SCOPIC Clause into all LOF contracts continues.

LOF is internationally recognised as the leading salvage agreement which allows a shipowner to contract with a salvor on simple and concise terms in an emergency situation. The salvor is entitled to earn a reward under Article 13, based in part upon the value of property saved, but the incorporation of the SCOPIC Clause provides the salvor with a safety net allowing for the payment of additional compensation where there is no or insufficient Article 13 Award to cover the salvor's expenses as calculated under the SCOPIC Clause. Salvage awards are paid by property interests whereas compensation due under the SCOPIC Clause is payable by the shipowner and the liability to do so is covered by the Association. Therefore, any amendment to the terms of LOF, particularly to the basis on which Article 13 is assessed, has the potential to prejudice the Association.

As has recently been reported in the shipping press, salvors are coming under increasing pressure, from some hull underwriters, to agree to address the unpredictability of Article 13 awards by negotiating side agreements to the LOF. Such side agreements seek to establish an upper limit on the salvaged values or vary the basis for calculating the salvage award by using day rates for equipment and generally are designed to cap or limit the hull underwriters exposure to the Article 13 Award. Whilst these agreements may be drafted with the intention of not adversely impacting upon the operation of the SCOPIC Clause, unfortunately this may be difficult to achieve. Any such variation to the provisions of LOF therefore has the potential to impact upon a Member's P&I cover.

Accordingly, Members should immediately advise the Managers of any proposal to use of a side agreement to any LOF signed in respect of an entered ship so that its content and potential impact upon club cover can be assessed.

The July 1999 circular and subsequent updates are available on the Britannia website:

<https://britanniapandi.com/wp-content/uploads/2018/01/Amendment-to-Lloyds-Open-Form-Special-Compensation-P-and-I-Club-SCOPIC-Clause-07-1999.pdf>