

Lloyd's Open Form (LOF) and Side Agreements

Dear Sirs,

The Lloyd's Open Form (LOF) salvage agreement based on the principle of "no cure, no pay" compensation to the salvor(s) has been the type of salvage agreement mostly used for more than 100 years. The Special Compensation P&I Club Clause (SCOPIC) was developed and implemented almost 20 years ago to incentivize salvage in situations where the prospects for the salvor to achieve "cure" and therefore "pay" were uncertain; yet it could benefit the owner, insurers and society at large that salvage efforts were made.

Gard P&I is a strong supporter of salvage on standard LOF terms, including SCOPIC. The support is reflected in the Gard Rules for Ships and MOUs (see Rule 42 and Rule 25 respectively) whereby liability is covered for:

- (a) special compensation pursuant to Article 14 of the International Convention on Salvage 1989 as incorporated into LOF (or any other salvage contract approved by the Association), and
- (b) pursuant to SCOPIC as incorporated into LOF (or any other salvage contract approved by the Association).

A standard LOF will be used in most situations where an entered ship is in peril and hence in need of salvage services. However, we are aware that Members (and their Hull insurers) in certain circumstances may choose to vary the standard LOF and/or SCOPIC terms by entering into so-called "side agreements" or "side letters" with a salvor. Special terms could then alter the terms of the LOF and/or SCOPIC. The reasons for doing so may be uncertainty at the time of the request for salvage services as to the nature and degree of peril and/or a desire to better manage increasing exposure to awards under LOF's article 13.

Members are hereby advised that altering the terms of a standard LOF and SCOPIC may cause a change in contractual liabilities and risk allocation. If and to the extent that such a change increases the liabilities of or remuneration payable by the Member in respect of the salvage beyond what would have been the case under a standard LOF with SCOPIC terms had no such changes been agreed, the Association does not cover such increased liabilities or remuneration unless it has first been consulted about and approved the changes. We refer to Rule 55 in the Rules for Ships and Rule 39 in the Rules for MOUs. By way of example, the Association would not without prior approval cover SCOPIC remuneration resulting from "side letter" terms to be paid to a salvor who first endeavors to salvage the ship on "no cure, no pay" terms, but subject a right to "rewind" and reinstate SCOPIC from a time before it was formally invoked.

Members are strongly advised to consult with the Association before entering into side agreements to salvors so as to minimize the risk of jeopardizing their P&I cover by inadvertently assuming liabilities or remuneration obligations that may not be covered under the Rules and terms of entry for the ship. Upon consultation, the Association will advise whether intended terms of agreement may prejudice cover.

Members should also note that the Lloyd's Salvage Arbitration Branch (SAB) is to be notified of such side agreements by the salvor and provided with a copy of it. The SAB will then aim to notify all affected parties of the existence of a side agreement but will not disclose its content.

Any questions regarding the above may be addressed to either your usual contact at Gard, or to [Andreas Brachel](#) or [Nick Platt](#).

Yours faithfully,
GARD AS



Rolf Thore Roppestad
Chief Executive Officer