

Amendments to Lloyd's Standard Form of Salvage Agreement (LOF) and Lloyd's Standard Salvage and Arbitration (LSSA) Clauses

Following lengthy, open and constructive debate at the Lloyd's Salvage Group (LSG) meetings in 2010 and March 2011, the following amendments to LOF2000 and the LSSA Clauses have been agreed. The new LOF will be known as LOF2011.

LOF2011

Two new clauses, details of which appear below, have been added to LOF. They appear on page 2 under IMPORTANT NOTICES and are numbered 3 and 4 respectively.

Details of LOF Awards on Lloyd's web-site

- 3** ***Awards.** The Council of Lloyd's is entitled to make available the Award, Appeal Award and Reasons on www.lloydsagency.com (the website) subject to the conditions set out in Clause 12 of the LSSA Clauses.*

LOF Awards, Appeal Awards and Reasons have traditionally been confidential to the parties involved. However, the LSG was unanimous in agreement that the Arbitrator's Award (and where applicable, the Appeal Award) should be made more widely accessible. It was further agreed that such access will be via subscription to the appropriate area of Lloyd's website at www.lloydsagency.com.

This amendment to LOF is in line with other recent changes, including the new system for appointments to the LOF Panel of Arbitrators, designed to make the LOF process a more transparent and inclusive one.

The conditions governing the making available of Awards, etc, are set out in a new LSSA Clause 12, which is referred to separately below.

Details of how to apply for subscription to the website can be obtained from the Salvage Arbitration Branch (SAB) (see contact details below).

Notification of LOFs to Lloyd's

- 4** ***Notification to Lloyd's.** The Contractors shall within 14 days of their engagement to render services under this agreement notify the Council of Lloyd's of their engagement and forward the original agreement or a true copy thereof to the Council as soon as possible. The Council will not charge for such notification.*

It has always been the case that LOFs have been agreed and services successfully rendered without the matter being notified to Lloyd's. In most cases this was because the salvors and salvaged interests were able to reach a quick, amicable settlement and therefore did not require the services of the SAB and the LOF arbitration system.

However, it would appear that the number of these cases has increased over recent years and it has become very difficult to gauge the actual level of use of LOF. The salvors are now being asked to report all LOFs to Lloyd's within 14 days of their engagement. It is, of course, a requirement that attracts no charge from Lloyd's.

LSSA Clauses

Security for Arbitrator's and Appeal Arbitrator's Fees

The following new Clauses have been introduced to the LSSA Clauses:

- 6.6 *The Arbitrator shall be entitled to satisfactory security for his reasonable fees and expenses, whether such fees and expenses have been incurred already or are reasonably anticipated. The Arbitrator shall have the power to order one or more of the parties to provide security in a sum or sums and in a form to be determined by the Arbitrator. The said power may be exercised from time to time as the Arbitrator considers appropriate.*

It happens from time-to-time that an Arbitrator is appointed to a particular matter in which the salvage security, which traditionally covers the fees and/or costs of the Arbitrator as well as Lloyd's, has either been provided direct to the salvors in a form that is not acceptable to Lloyd's or has not been provided at all.

The Arbitrators have become increasingly concerned at the level of their exposure to the potential non-payment of their fees. This clause gives them power to order the provision of security, for sum or sums determined by them, in respect of their reasonable fees and expenses.

- 10.8 *The Appeal Arbitrator shall be entitled to satisfactory security for his reasonable fees and expenses, whether such fees and expenses have been incurred already or are reasonably anticipated. The Appeal Arbitrator shall have the power to order one or more of the parties to provide security in a sum or sums and in a form to be determined by the Appeal Arbitrator. The said power may be exercised from time to time as the Appeal Arbitrator considers appropriate.*

This clause gives the same powers to the Appeal Arbitrator as those invested in the first instance Arbitrators set out in Clause 6.6 above.

Details of LOF Awards on Lloyd's web-site

12 Awards

- 12.1 *The Council will ordinarily make available the Award, or Appeal Award, and Reasons on www.lloydsagency.com (the website) except where the Arbitrator or Appeal Arbitrator has ordered, in response to representations by any party to the Award or Appeal Award, that there is a good reason for deferring or withholding them. Any party may make such representations to the Arbitrator provided a written notice of its intention to do so is received by the Council no later than 21 days after the date on which the Award or Appeal Award was published by the Council and the representations themselves are submitted in writing to the Arbitrator or Appeal Arbitrator within 21 days of the date of the notice of intention.*
- 12.2 *Subject to any order of the Arbitrator or Appeal Arbitrator the Award, or Appeal Award, and Reasons will be made available on the website as soon as practicable after expiry of the 21 day period referred to in clause 12.1.*
- 12.3 *In the event of an appeal being entered against an Award, the Award and Reasons shall not be made available on the website until either the Appeal Arbitrator has issued his Appeal Award or the Notice of Appeal is withdrawn subject always to any order being made in accordance with clause 12.1.*

As stated above (see LOF new IMPORTANT NOTICE 3) these new clauses set out the conditions governing the making available of LOF Awards, etc on Lloyd's website www.lloydsagency.com

Note that Lloyd's will make available the Award and Reasons on its website 21 days after publication of the Award unless:

- (i) An appeal has been entered against an Award or
- (ii) The Arbitrator or Appeal Arbitrator has ordered, in response to representations by any party, that there is “good reason” for deferring or withholding them.

In the event of (i) above, the Award and Reasons will not be made available on the website until either the Appeal Arbitrator has issued his Appeal Award or the Notice of Appeal is withdrawn (subject always to any order referred to in (ii) above.)

Container Vessel Cases

Special Provisions

These Special Provisions shall apply to salvaged cargo insofar as it consists of laden containers.

13 *The parties agree that any correspondence or notices in respect of salvaged property which is not the subject of representation in accordance with Clause 7 of these Rules may be sent to the party or parties who have provided salvage security in respect of that property and that this shall be deemed to constitute proper notification to the owners of such property.*

14 *Subject to the express approval of the Arbitrator, where an agreement is reached between the Contractors and the owners of salvaged cargo comprising at least 75% by value of salvaged cargo represented in accordance with Clause 7 of these Rules, the same agreement shall be binding on the owners of all salvaged cargo who were not represented at the time of the said approval.*

15 *Subject to the express approval of the Arbitrator, any salvaged cargo with a value below an agreed figure may be omitted from the salvaged fund and excused from liability for salvage where the cost of including such cargo in the process is likely to be disproportionate to its liability for salvage.*

Discussions to implement the above (or similar) clauses have been taking place in the LSG forum over the past three years. These discussions originated out of concerns that the costs incurred in collecting salvage security from low-value cargo interests in cases involving container (multi-bill of lading) vessels were disproportionate to their proportion of any salvage award or settlement.

Clause 13 specifically relates to the provisions of the Arbitration Act 1986, which require notices to be given to the owners of the salvaged property, which in container vessel cases may number several hundred or even thousands. It allows the SAB, or the salvors, or their appointed representatives/agents to send any appropriate notices to the party (usually the cargo insurers) that has provided the salvage security.

This can significantly reduce the number of notices to be sent because, often, an insurer will have provided security for a number of their insureds.

It is often the case in container vessel cases that the salvors are able to reach an amicable settlement with the “represented” cargo interests, but are left with no option but to obtain an Award against the remaining interests, thereby incurring the costs associated with utilizing the full arbitration process. The provisions set out in Clause 14 above allow the salvors to apply to the Arbitrator to bind the unrepresented cargo to the terms of the settlement agreement where the agreement has been reached with owners of at least 75% by value of the salvaged cargo.

Clause 15 allows the salvors to apply to the Arbitrator to excuse any cargo below an agreed value from any liability for salvage where the cost of including it is likely to be disproportionate to its proportion of any Award or settlement.

The potential effect of these clauses (13, 14 and 15) is to reduce the cost of collecting salvage security and obtaining an Award against the unrepresented cargo.

The contact details for the SAB are as follows:

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LOF2011 and the amended LSSA Clauses can now be downloaded from www.lloydsagency.com by clicking on the following link:

<http://www.lloyds.com/The-Market/Tools-and-Resources/Lloyds-Agency-Department/Salvage-Arbitration-Branch/Lloyds-Open-Form-LOF>

If you have any queries in relation to these changes please do not hesitate to contact members of the Salvage Arbitration Branch or me.

Karen

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