

## **GUIDELINES FOR SHIPOWNER'S CASUALTY REPRESENTATIVES**

### **1. Introduction**

With effect from 1st August 1999 the SCOPIC clause was formally approved for use in conjunction with Salvage Agreements under Lloyd's Open Form of Salvage Agreement "No Cure - No Pay". Article 14 of the 1989 Salvage Convention provided that salvors could receive special compensation in certain circumstances where the salvaged fund was insufficient to allow them to recover their expenses and a fair rate for tugs and equipment used in salvage operations. The SCOPIC clause endorsed this concept but introduced a tariff to calculate the Salvors' special compensation together with an uplift fixed at 25%. Although appointed by the Shipowners, the Shipowners' Casualty Representative ("SCR") perform his functions under the SCOPIC clause on behalf of all parties and their insurers. His role is to monitor the salvage services and liabilities and provide a Final Salvage Report which forms the basis for the settlement of any claim for SCOPIC remuneration which the salvor might have against the shipowner. SCR's are chosen by the shipowner from a Panel ("the SCR Panel") the members of which are chosen by a group consisting of representatives of the International Group of P&I Clubs, the International Salvage Union, the International Union of Marine Insurers and the International Chamber of Shipping (called the "SCR Committee"). The SCR Committee has promulgated the following guidelines to SCR's to assist them in performing their function as SCR's in the collection of evidence, the monitoring of the salvage operation and compilation of the Final Salvage Report (including the provisional calculation of SCOPIC remuneration)

### **2. The SCR's duty**

(a) Appendix B paragraph 2 of SCOPIC states:-

*"The Salvage Master shall at all times remain in overall charge of the operation, make all final decisions as to what he thinks is best and remain responsible for the operation".*

(b) Appendix B paragraph 2 of SCOPIC states:-

*"The primary duty of the SCR shall be the same as the Contractor, namely to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment".*

(c) The SCR has a duty to report, observe and consult with the Salvage Master and produce Dissenting Reports (if necessary) and the Final Salvage Report (SCOPIC, Appendix B, paragraphs 5(d) and (e)).

- (d) The SCR has a duty, if appropriate, to endorse and in any case to circulate the Daily Salvage Reports of the Salvage Master to interested parties (see SCOPIC, Appendix B, paragraph 5(c)(i) and (ii)).

### **3. The SCR's Powers**

- (a) The SCR is obliged to report, observe and consult with the Salvage Master but not to attempt to direct the salvage operation.
- (b) If the SCR disapproves of the way the salvage operation is being conducted, the type or number of tugs, men and equipment being used, he should inform the Salvage Master in writing as soon as possible and, if not satisfied with the Salvage Master's Daily Salvage Report, publish a dissenting report (see SCOPIC, Appendix B, Paragraph 5(c)(iii)). However the SCR has no power to direct the Salvage Master to employ more or less resources in the salvage operation and this decision must remain at the Salvage Master's discretion.
- (c) The SCR similarly cannot bind the owners of ship or cargo to any particular course of action. The SCR can contact any interest direct at any time provided all other salvaged interests are copied in.
- (d) The SCR's powers and duties are limited and he should not be held responsible either civilly or criminally for the acts or omissions of those interested in the salvaged property or the salvors in respect of events which led to or followed the incident giving rise to the salvage services (however see 8 below).
- (e) No decision or viewpoint of the SCR is binding on the parties. Obviously they are influential but if not accepted by one of the parties the final decision is that of the Arbitrator.

### **4. Special Representatives and the SCR**

- (a) The Special Representatives have the right to be informed of all material facts concerning the salvage operation as the circumstances reasonably allow (SCOPIC, Appendix C, paragraph 2). A Special Representative is on board solely to investigate, monitor, ascertain and report on issues relevant to the Salvage operation and the assessment of the salvage award to be made under Article 13 of the Salvage Convention 1989 or SCOPIC remuneration.
- (b) The SCR shall co-operate with the Special Representatives and he and shipowners and salvors shall jointly permit the Special Representatives to have *"full access to the vessel to observe the salvage operation and to inspect such of the ship's documents as are relevant to the salvage operation"*. (SCOPIC, Appendix C, paragraph 1).

- (c) The SCR is obliged to provide any Special Representative with the Salvage Master's Daily Salvage Reports and any Dissenting Report as soon as possible after he receives or issues them or the Special Representative is appointed, whichever is the later (SCOPIIC, Appendix C, paragraph 3).
- (d) To ease the burden on the Salvage Master the route of communication with the Salvage Master to which a Special Representative is entitled is through the SCR (if there is one readily available). This does not prevent the Salvage Master talking to the Special Representatives should he wish to do so.
- (e) It is not the SCR's function to police the Special Representatives even if he suspects the Special Representatives are not acting properly within the scope of their powers. In such circumstances he may notify all parties and it is for the Shipowner to decide what action should be taken.

## **5. The Salvage Master and the SCR**

- (a) As stated in Paragraphs 2(a) and (b) above the Salvage Master remains in overall charge of the salvage operation and the SCR (like the Salvage Master) is under a duty to use his best endeavours to assist in the salvage of the vessel and the property thereon and in so doing to prevent and minimise damage to the environment.
- (b) By virtue of SCOPIIC, Appendix B, paragraph 4, the SCR is entitled:-
  - ◆ To be kept informed by or on behalf of the Salvage Master or the Principal Contractor's Representative on site; and
  - ◆ To be consulted by the Salvage Master during the operation if circumstances allow; and
  - ◆ Once on site the SCR shall be entitled to offer the Salvage Master advice (which the Salvage Master may or may not accept at his sole discretion).
- (c) The Salvage Master's Daily Salvage Report must be given to the SCR and should include the information in Appendix B, paragraph 5(a). The SCR should check the accuracy and sufficiency of the Daily Salvage Reports and, if he disagrees issue a Dissenting Report. Any Dissenting Report is to be delivered to the Salvage Master and the other parties mentioned in SCOPIIC, Appendix B, paragraph 5(c)(iii) by the quickest method reasonably available. All Reports should be made in writing if practicable. The Salvage Master should be encouraged to submit his reports in the form of Appendix 1 hereto and the SCR should try to complete and append a Costs Schedule in the form of Appendix 2 hereto to each Daily Salvage Report.

- (d) It is the SCR's duty to obtain sufficient information from the Salvage Master, the Master of the vessel and others to enable him to calculate SCOPIC remuneration from the commencement of the salvage services (rather than just from the date on which SCOPIC was invoked). This should facilitate the assessment (where necessary) of any discount to be made from the Article 13 Salvage Convention 1989 Salvage Award pursuant to ~~paragraph 7~~ *sub-clause 7* of the SCOPIC clause. The Salvors and the vessel's Master and Owners should co-operate with the SCR in this exercise and, in particular, should provide the SCR with copies of all Daily Salvage Reports from the commencement of the services, photocopies of the Deck Logs of the tugs and other craft involved in the operation and the casualty itself and any other documents which the SCR may reasonably require for this purpose.

## 6. **The SCR's Final Salvage Report**

- (a) SCOPIC, Appendix B, ~~Clause~~ *paragraph 5(e)* states:-

*"As soon as reasonably possible after the salvage services terminate, the SCR shall issue a report (hereinafter called the "SCR's Final Salvage Report") setting out:-*

- ◆ *the facts and circumstances of the casualty and the salvage operation insofar as they are known to him.*
- ◆ *The tugs, personnel and equipment employed by the Contractor in performing the operation.*
- ◆ *A calculation of the SCOPIC remuneration to which the Contractor may be entitled by virtue of this SCOPIC clause.*

*The SCR's Final Salvage Report shall be sent to the owners of the vessel and their liability insurers and to Lloyd's who shall forthwith distribute it to the Interested Persons".*

- (b) *Either* [In his Final Salvage Report, the SCR shall comment on each of the criteria for fixing an award under Article 13(i) Salvage Convention 1989 if a liability to pay an Article 13 award might arise. Article 13(i) of the 1989 Convention states:-

*"1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:*

- (a) *the salvaged value of the vessel and other property;*
- (b) *the skill and efforts of the salvors in preventing or minimizing damage to the environment;*

- (c) *the measure of success obtained by the salvor;*
- (d) *the nature and degree of the danger;*
- (e) *the skill and efforts of the salvors in salvaging the vessel, other property and life;*
- (f) *the time used and expenses and losses incurred by the salvors;*
- (g) *the risk of liability and other risks run by the salvors or their equipment;*
- (h) *the promptness of the services rendered;*
- (i) *the availability and use of vessels or other equipment intended for salvage operations;*
- (j) *the state of readiness and efficiency of the salvor's equipment and the value thereof."*

In addressing Article 13(i)(a) the SCR should confine his comments to the nature and condition of the salvaged property at the termination of the services and express no view on its value in the Final Salvage Report.] **or**

*[The SCR's description of the facts and circumstances of the casualty and the salvage operation should be limited to fact rather than opinion and should confine itself to a brief description of the situation e.g. the fact that the vessel has broken down, rather than conjecture as to cause e.g. poor maintenance of the propulsive machinery]"*.

- (c) The Final Salvage Report should also (where a liability to pay an Article 13 award might arise) include the SCR's calculation of SCOPIC remuneration from the commencement of the services for the purposes of assessing any SCOPIC Article 7 discount of the Convention Article 13 award. A liability to pay an Article 13 award might arise whenever value remains in the salvaged property on the termination of the services.
- (d) A proforma SCR's Final Salvage Report may be found in Appendix 3 to these Guidelines. Proformas may be downloaded from [www.lloyds.com/agencysalvage/scopic](http://www.lloyds.com/agencysalvage/scopic).
- (e)
  - (i) The SCR's Final Salvage Report should be issued by the SCR as quickly as possible following the termination of the salvage services. For this reason as much work as practicable should be carried out by the SCR on his Final Salvage Report on site.
  - (ii) If information from the Salvors, their sub-contractors or others is delaying production of the SCR's Final Salvage Report the SCR should produce an Interim Final Salvage Report while awaiting this information stating in the said report:-

- ◆ *Such information in Appendix B paragraph 5(e) as he has; and*
  - ◆ That it is only an interim report; and
  - ◆ What information is awaited and approximately how much it represents in financial terms.
- (iii) The SCR's Final Salvage Report or interim Final Salvage Report should be issued and sent to the Owners of the vessel, Lloyd's and the Shipowner's liability insurers no later than one month after the termination of the salvage services or sooner if possible.

**7. Unresolved Issues on the calculation of SCOPIC remuneration**

If the parties cannot agree as to how SCOPIC remuneration should be calculated in any particular case, the SCR should publish his report omitting the disputed item(s) with a footnote dealing with any unresolved issues and leave one or both of the parties to apply to the Arbitrator for a decision on the point.

**8. Liability Insurance**

The SCR shall exercise reasonable care to avoid and minimise injury and damage to himself or his property while performing his functions on site and neither Lloyd's nor the SCR Committee nor those interested in the ship, cargo, bunkers or stores or their insurers nor the salvors can accept any liability in respect of such injury, damage or loss however caused (with or without the negligence or gross negligence of any party). If any liability does arise or if he suffers any injury, damage or loss the SCR should bear in mind that it is his responsibility. He is on site at his own risk.

It is strongly recommended that the SCR shall have continuing insurance in adequate amounts for

- (a) Personal injury, accident, death or disability.
- (b) Third Party Liability.
- (c) Professional Liability.