The origins of Lloyd's Form

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The bottom left hand corner of every Lloyd's Form (LOF) lists dates on which previous editions of the form have been published. The earliest date is January 15, 1908, but several forms of salvage agreement acceptable to Lloyd's had been in existence for many years previously. By 1908, a significant number of salvage claims had been resolved by arbitration, either by the Committee of Lloyd's or by an arbitrator appointed by the Committee.

The story of LOF began in April 1890 when, in response to concern regarding the activities of certain salvors in the Dardenelles and Black Sea regions, Colonel Sir Henry Hozier, the Secretary to Lloyd's, visited Vincent Grech, the most prominent salvor in the area. There had been complaints from Masters of unreasonable behaviour by salvors. Invariably, the Master was compelled to sign a contract for payment of a lump sum frequently regarded as grossly excessive.

Lloyd's succeeded in persuading Mr Grech to agree that, in future, he would perform salvage services on the terms of a lump sum contract which, however, gave the Committee or its appointed arbitrator the right to review the agreed figure and to alter it – upwards or downwards – if the figure was considered inappropriate.

Documents in the possession of Lloyd's Salvage Arbitration Branch indicate that this arrangement was soon brought into effect. Following the successful salvage by Mr Grech of the vessel Helen Otto, the underwriters concerned objected to the fixed price of £950 stated in the contract. In November 1890, the dispute was referred to two members of the Committee but they upheld the agreed figure.

By this time, Lloyd's had made a similar approach to Perim, the other leading salvor in the Dardenelles region. Perim was prepared to use a form of contract very similar to that negotiated with Grech, but the company declined to give any assurance that it would use that form of contract in all cases.

Nevertheless, Perim did use the Lloyd's contract form later in 1890, when providing salvage assistance to the P&O vessel Hong Kong, which had stranded. The contract provided for the payment of a lump sum of £30,000 on completion of the services – a considerable sum in those days. P&O objected and, on this occasion, the Committee decided not to act as arbitrators but to appoint a lawyer in that capacity. They chose William Walton (later Sir William), who had recently retired as a partner in Waltons Bubb & Johnson – the Committee's solicitors. Mr Walton was appointed arbitrator on January 7, 1891. He decided that £30,000 was excessive and reduced the amount to £12,000. Thereafter, it became the Committee's practice to appoint Mr Walton or a senior member of the Admiralty Bar as sole arbitrator in all cases.

Despite these agreements, meetings were held at Lloyd's in late November 1890 to consider what further action might be taken to allay underwriters' concerns regarding the availability of salvage assistance and the terms on which such assistance could be obtained. The

discussion focused on a list of the known salvage contractors of the time and the vessels and equipment at their disposal. The Committee was asked to consider a proposal that underwriters should form a company to engage in salvage.

Lloyd's rejected the underwriters' proposal, as its constitution did not permit it to act as salvage contractors. Instead, it was agreed to redouble efforts to establish a standard form of salvage agreement – including the concept of arbitration by the Committee or its appointed arbitrator.

Subsequently, Lloyd's approached salvors in other areas, in the hope of concluding appropriate agreements. One audience was the International Salvage Union of Copenhagen, which comprised A/S E.Z. Svitzer, the Neptun company and Nordischer Bergungs of Hamburg. However, Lloyd's proved unable to conclude an agreement with the ISU on a standard salvage contract.

Nevertheless, in January 1891 further support for arbitration by or on behalf of the Committee of Lloyd's was received from the General Shipowners' Society, which called on Lloyd's to prepare a standard form of salvage agreement in terms which might receive universal support.

Lloyd's adopted this suggestion and a draft contract was prepared by Waltons. Whilst modelled on the agreement negotiated with Grech, it differed in one important respect. Instead of providing that the fixed price should be paid to the salvor on completion of the services, it stated that the amount should be paid to Lloyd's in cash, where it would be held on deposit pending the outcome of arbitration. The draft was approved by Lloyd's Agency Committee on July 28, 1891.

Negotiations then took place, in the hope that the draft would prove acceptable to all concerned. A measure of success was achieved but the ISU of Copenhagen refused to accept the arbitration provisions. In their view, in the event of a dispute, Lloyd's and the salvor should each appoint their own arbitrator, who would have power to appoint an umpire if they were unable to reach agreement on remuneration.

The ISU, however, was prepared to accommodate Lloyd's on one point. It was willing to agree not only that the fixed price need not be paid at termination of the services but that, in the event of an objection to the price, it would be sufficient for the underwriters concerned to provide security to Lloyd's for the payment of the amount awarded by arbitration. In pragmatic fashion, Lloyd's concluded a separate agreement with the ISU on this basis in December 1891. Shortly afterwards, a similar arrangement was agreed with another prominent salvor, Berging Maatschappij of Maasluis.

Progress had been made, but the fact that it had not been possible to achieve a form of contract acceptable to all was recognised as unsatisfactory.

Accordingly, during 1892, various amendments were made to the July 1891 draft, in the hope that this would improve the form's acceptability. Unfortunately, this produced complaints from Grech and others, who felt that the form had become too lengthy. Waltons

responded with a shortened form and both long and short versions were published in "Lloyd's Seaman's Almanac". Yet Lloyd's remained keen to pursue the goal of one standard form and Waltons prepared the first so-called "Lloyd's salvage agreement" in November 1892. Its material provisions are set out in the report of the Court of Appeal's decision in "The City of Calcutta" (1898) 8 Asp. 442 – the first case to come before the courts involving a "Lloyd's salvage agreement."

In that case, the salvors had chosen to sue for salvage in the Admiralty Court, despite the arbitration provisions in the salvage agreement. The shipowners applied for a stay of the Court action. This was refused by the Admiralty Court and the owners appealed. However, they were also unsuccessful in the Court of Appeal (which had "grave doubt" that the Master had authority to bind his owners to arbitration). Moreover, the ISU were probably encouraged by the finding that salvors should not be compelled to go to arbitration under an agreement which enabled the Committee to object to a fixed price as being too large and then to act as arbitrators – when they would be "judges in their own cause".

By 1898, however, the contract wording of November 1892 had gained widespread support, except from the ISU of Copenhagen and Berging Maatschappij, which continued to use the separate forms agreed with them in 1891.

However, in 1897 Lloyd's made a further bid to bring the ISU into the fold. They proposed an amendment to the arbitration clause, allowing the salvor the option either of accepting arbitration by the Committee or its arbitrator or to have the remuneration assessed by a panel comprising arbitrators appointed by the salvors and shipowners respectively, with an umpire to be appointed by the Committee if those two arbitrators could not agree. Unfortunately, these suggestions did not prove acceptable to the ISU. Consequently, in December 1904, Lloyd's concluded that it would be necessary to publish two versions of a standard form.

It was not until 1907 that Lloyd's and the ISU positions were reconciled. Matters came to a head on June 3, 1907, when a meeting with ISU representatives took place at Lloyd's. This was held in the context of a suggestion that "a permanent Court of arbitration" should be established (possibly in Hamburg) to resolve salvage claims involving Lloyd's and other marine underwriters in London. It was envisaged that this Court would consist of a tribunal comprising: a technical expert, such as a surveyor; an average adjuster; and a Chairman with power to call for any assistance which might be required from a lawyer, an independent shipowner or merchant.

During this meeting, the ISU representatives indicated that they were prepared to disregard the proposal to create an arbitration Court if the standard form of salvage agreement, which Lloyd's were promoting, could be amended to meet their concerns on arbitration.

Little is known about the way salvage arbitrations were conducted at that time, but it appears that there was no oral hearing before the arbitrator, who made his award solely on the basis of documents supplied. The ability of the parties to adduce evidence to the arbitrator was severely restricted. The arbitrator gave no written reasons for his award and did not, in practice, specify the value of the salved property on which the award was based.

Lloyd’s were not unsympathetic to the proposals to reform the arbitration process. The meeting concluded on the basis that a new draft of a standard form would be prepared, with a view to its replacing all existing forms. Drafting was entrusted to Sir Henry Johnson of Waltons, who had attended the meeting. This became the first Lloyd’s Standard Form of Salvage Agreement, published in January 1908. This agreement provided that, whether or not the contract stipulated for the payment of a lump sum, the salvors were required to notify Lloyd’s, on completion of the services, of the amount for which they required security. This reflected the objective that, regardless of whether or not the agreement was a fixed price contract, the final remuneration payable should be determined by arbitration by the Committee or its appointed arbitrator unless, following a period for reflection, all parties were satisfied that any price agreed was fair.

In an attempt to meet the ISU’s criticisms of the Lloyd’s arbitration system, provisions were included to give all parties the right to be heard and adduce evidence. It was hoped that this would allay the salvors’ concern that an arbitrator with no practical experience of salvage and no relevant technical expertise might not fully appreciate the real merit of the services rendered.

Looking back at the origins of Lloyd’s Form, there are parallels with more recent events in the world of salvage. For example, concern that LOF might have become unwieldy was an issue addressed in the production of the streamlined LOF 2000 contract. There are also echoes of the difficult negotiations which led to the SCOPIC agreement. But, as the events show, there remains a willingness to confront these challenges to produce standard forms acceptable to all.

The latest version of LOF, LOF2011, is the 12th version since its inception and a clear demonstration of how LOF has kept pace with changes in the maritime industry and remained the preferred contract of choice for emergency situations.