



CLYDE & CO
CLASIS SINGAPORE
A joint law venture

Spillcon 2016
"Salvage claims: legal issues faced by shipowners and their insurers in casualties"

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The Clyde & Co Casualty Response Team

- We are able to assist you in limiting exposure from the moment you are notified of the casualty.
- The team is available to mobilise at short notice to assist with casualty investigation and help manage issues on the ground.
- We are able to tailor the response to meet your requirements for dealing with the incident.



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"Salvage claims: legal issues faced by shipowners and their insurers in casualties"

- Salvage and General Average - the basics
- Choice of salvor
- Local laws and cabotage
- Choice of salvage contract
- Security and insurance implications
- Sanctions
- The UK Bribery Act 2010

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The nature of salvage

*"In English law a right to salvage arises when a person, acting as a **volunteer** (that is without any pre-existing contractual or other legal duty so to act) preserves or contributes to preserving at sea any **vessel, cargo, freight or other recognised subject of salvage from danger**. In the absence of a binding agreement fixing the amount of the remuneration the salvor, upon the property being salvaged and brought into a place of safety, is **entitled to recover salvage remuneration not exceeding the value of the property salvaged** assessed as at the date and place of termination of the **salvage services**. In the absence of **success or a contribution to ultimate success**, the person rendering the services, however great his exertions, is entitled to no reward; this is the principle of **"no cure – no pay"**.*



[Brice on Maritime Law of Salvage - para 1-01]

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Salvage – key elements

- VOLUNTARINESS - not under a duty or pre-existing contract
- DANGER - real or apprehended
- "SALVAGE" SERVICES - i.e. preserving at sea any recognised subject of salvage from danger
- "NO CURE, NO PAY" – success or benefit must be conferred

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The International Convention on Salvage 1989

- Incorporated into English Law by the Merchant Shipping Act 1995
- Concept of "Special Compensation" introduced
- Incentive to perform "uneconomic" salvage
- Need environmental "trigger", i.e. threat of damage to environment



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Article 1 - Definitions

Article 1

(a) **Salvage operation** means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.

(b) **Vessel** means any ship or craft, or any structure capable of navigation.

(c) **Property** means any property not permanently and intentionally attached to the shoreline and includes freight at risk.

("Property" can include non physical chattels such as freight at risk. However, while salvaging life at sea can be an enhancing feature of any salvage service, a salvor can not be rewarded for salvaging life alone).

(d) **Damage to the environment** means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.

(e) **Payment** means any reward, remuneration or compensation due under this Convention.

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Article 13 - The basis of Lloyd's Open Form and common law salvage awards

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) to (j) – see next slide

2. **Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values.** However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. **The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.**

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Article 13 criteria

- a) Salvaged value of the vessel and other property
- b) Skill and efforts of salvors in minimising environmental damage
- c) Measure of success
- d) Nature and degree of danger
- e) Skill and efforts of salvors in salvaging the vessel, property and life
- f) Time used and expenses incurred
- g) Risk of liability
- h) Promptness of services rendered
- i) The availability and use of vessels or other equipment intended for salvage operations
- j) State of readiness of salvors' equipment and value thereof

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Special compensation and SCOPIC

• Article 14 – Special Compensation

- Concept of "Special Compensation" introduced
- Incentive to perform "uneconomic" salvage
- Need environmental "trigger", i.e. threat of damage to environment (coastal or inland waters)

• SCOPIC

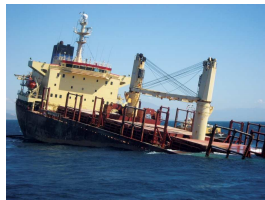
- Not dependent on a threat of damage to the environment
- P&I Club only pays SCOPIC to extent exceeds actual or potential Article 13 award
- Easily incorporated – see LOF 2011
- Invocation at salvors' sole option
- Tariff rate for salvage personnel and equipment
- 25% uplift on tariff rate
- SCOPIC paid by the P&I Club to extent it exceeds Art 13
- 25% reduction if SCOPIC is less than Art 13, this being for the benefit of H&M and cargo underwriters

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General Average - Definition

- Section 66 of the Marine Insurance Act 1906 provides that:-

"There is a General Average Act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common venture".



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General Average – Key elements

- Peril
- Common maritime venture
- Extraordinary sacrifice or expenditure
- Reasonableness
- The vessel, cargo or other property owners might make a General Average sacrifice
- Loss or expense that results does not fall on one interest but is shared out amongst all of them in proportion to their values
- General Average claims against other property owners
- General Average security



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Security and insurance implications

Security

- **Lloyds Open Form**
 - Security from individual property owners/their insurers – e.g. Owners, Charterers, Cargo
- **Wreckhire**
 - Security from the Owners/their insurers
- **General Average**
 - Security from one property owner to another

Liabilities

- **Hull and Machinery Underwriters**
 - Salvage services
 - Salvage services not on an LOF i.e. Wreckhire
 - General average
- **P&I Club**
 - Third party liabilities, including oil pollution clean up
 - SCOPIC to extent it exceeds Article 13
 - Unrecoverable Salvage and GA
 - Wreck removal

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Sanctions issues in Iran

Joint Comprehensive Plan of Action (JCPOA)

- International Atomic Energy Association
- Four key milestones over 10 years for termination of nuclear related sanctions
- 16 January 2016 – Implementation Day for first phase - European Union lifted most "secondary sanctions" against Iran in relation to nuclear issues
- Not all Iranian sanctions are included in the JCPOA

US Sanctions

- Sanctions dating back to 1979, known as "primary sanctions", remain in place
- US persons generally remain prohibited from economic activity with Iran
- Transactions in US dollar prohibited unless they comply with OFAC

Insurance issues

- Implications for Owners, H&M underwriters and P&I Clubs
- Obtaining security or contribution to salvage claims difficult for Owners if local underwriters or re-insurers are based in or connected with the US

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The UK Bribery Act 2010

On 1st July 2011, the Bribery Act 2010 came into force in the UK.

Bribery

Promising, offering or giving, or requesting, agreeing to receive or accepting a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith. Bribery does not have to involve cash or an actual payment exchanging hands and can take many forms such as a gift, lavish treatment during a business trip or tickets to an event.



Scenario (entirely hypothetical)

- Local salvors offer payment to master to sign LOF
- An official seeks cash payment from Owners to permit salvage
- P&I Club asked to deal with some local "smoothing expenses"

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Offences under the Act

S1. General offences – Active bribery

S2. General offences – Passive bribery

S3. Relevant function –

- Any function of a public nature and any activity connected with a business.
- Need have no connection with the UK and may be carried out in a country or territory outside the UK.
- The person performing that activity/function must be expected to perform it in good faith, with impartiality or be in a position of trust.

S4. Improper performance - Will occur if it is intended that, by paying the bribe, the recipient of the bribe would be expected to act otherwise than in good faith, in an impartial manner or in accordance with a position of trust.

S5. Foreign Public Officials

S6. Companies

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Application and Penalties under the Act

Application

- Individuals who are British Citizens or of any nationality living or working in UK
- Commercial organisations which:
 - Are incorporated or formed under UK law
 - Carry out part of their business in UK
 - Have any connections with UK
- Any commercial organisation with a business presence in the UK will be caught by the Act

Penalties

Include fines and custodial sentences



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Conclusion

A number of legal issues may face Owners and their insurers in salvage operations.

Aim is to obtain salvage services, put up security, refloat and repair the vessel, negotiate settlement or pay the award and get back to trading as soon as possible and with minimum disruption



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