

Circular From GARD

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The Summary of the International Group's Review Into the Potential for Delays in the Contracting and Engagement of Salvage Services in Marine Casualties

Background

In 2020, the use of traditional Lloyd's Open Form (LOF) contracts was reported to be at a historic low confirming a continued decline in its use over recent decades. There was also evidence of parties entering into alternative contractual arrangements leading to delays in the engagement of salvage services and, in some cases, pollution and wreck liabilities that might otherwise have been avoided. In light of this concern, the International Group of P&I Clubs (IG) commissioned the former Secretary of State's Representative (SOSREP), Hugh Shaw, to conduct an independent, neutral and objective review that investigated the possible direct and root causes for delay in these circumstances and what changes might be made to improve use of LOF.

Hugh Shaw's final full report was presented to the Group and subsequently published in July 2022. It can be freely downloaded by clicking [here](#). A presentation was made at Lloyd's of London by Hugh Shaw in September 2022 and the findings are being considered in conjunction with Lloyd's own review of LOF.

Key Findings

In summary the review carried out found that:

1. Delays in the contracting and engagement of salvage services are on the increase and might lead to an escalation of a situation to a point where a significant loss and/or danger to life might occur.
2. The unfettered authority of the Master or Designated Person Ashore (DPA), and their timely response to an incident, are critical.
3. Some of the key stakeholders in a maritime incident seek greater certainty over costs and often opt for a non-LOF contract that can cause delays whilst parties engage in negotiations for a less expensive option. Some maritime authorities confirmed that, in circumstances where delays are unreasonable, they will be entitled to use their powers to select a salvor and an appropriate contract at the shipowner's expense.
4. Where time is of the essence or there is an emergency, LOF remains the 'contract of preference' for

stakeholders. The ‘no cure-no pay’ principle provides additional incentive, and LOF is simple, effective and straightforward to use. However, there are concerns over alleged ‘historic’ abuse/misuse, the time taken for the process of assessing the salvage award, and uncertainty over the award and costs.

5. The use of “side letters” can lead to further delays.
6. Fewer LOF contracts might disincentivise salvors to continue to invest in new technology and/or new equipment and these costs may eventually shift to the shipowners and their insurers.
7. Coastal State ‘intervention’, or the threat of intervention, was recognised to have a positive effect in influencing ‘faster or rapid’ decision making, when lengthy contractual negotiations were ongoing.
8. Education and training must be targeted at the appropriate individuals.
9. The lack of agreed practices and procedures does not mitigate, and even contributes towards, the likelihood of delays.
10. There needs to be effective communication and collaboration between all stakeholders who will have a key role in casualty response.

In light of the above findings, the Report’s main recommendations are as follows:

1. The International Chamber of Shipping (ICS), supported by H&M and P&I underwriters, should remind their members of the need to ensure that, in compliance with International Safety Management Code (ISM), their Masters, DPA, or other nominated person(s), as named in the Safety Management System (SMS), have the appropriate knowledge and experience with regard to the procurement and provision of salvage services and are given the authority to act promptly and decisively.
2. The ICS may wish to consider submitting a paper to the IMO’s Marine Safety Committee (MSC) requesting that any future amendments to Circular 6 (Guidance on the Qualifications, Training and Experience Necessary for Undertaking The Role of The Designated Person) include reference to the provision of salvage services.
3. The Lloyd’s Salvage Arbitration Branch (LSAB) to conduct a study to assess the development of LOF awards over a minimum of the last two decades in order to analyse the size of awards and address the ‘perceived’ disparity between costs for a simpler case where an incident is dealt with (a) by means of a pre-award commercial contract, (b) a standard LOF contract, and (c) an LOF with a side letter capping the Article 13 award.
4. The LSAB to consider if either actual settlements/awards, settlement ‘ranges’ or realistic examples/case studies can be published within a digital equivalent to the former Lloyd’s Open Form Digest.
5. The LSAB to ‘relaunch’ LOF to demonstrate that they have addressed industry’s concerns and have criteria that reflect a ‘fair award for the services rendered’ through a process with enhanced transparency.
6. All interested parties to identify communication channels with key decision makers in the maritime authorities and endeavour to keep each other informed of casualty response assessment, response methodology, contractual options and progress being made. Any failure to liaise may lead to delays or result in State intervention with the added risk of being ‘directed’ to take specific action that is likely to be more costly.
7. Maritime Authorities not already participating in the Group’s outreach programme, are encouraged to contact the Group for further information.
8. The International Union of Marine Insurance (IUMI) to consider where there is any scope to improve existing arrangements, including a system where the ‘overall claims lead’ in the H&M market can be identified quickly by all stakeholders and facilitate earlier dialogue between interested parties.

9. An Education Steering Group/Committee on Salvage Contracts, Services & Operations should be established, with an independent chair and cross-industry representatives.
10. The IG, IUMI, International Salvage Union and ICS to consider establishing a working group with other co-opted stakeholders, to develop, and implement, a Cross-Industry Code of Practice/Guidelines (CoP).

The Group accepts the report's findings and commends the recommendations to the global shipowning, salvage and insurance industry.

The Group would like to take this opportunity to express our sincere thanks to Hugh Shaw for his dedication to this project. Please do not hesitate to contact the Group if you have any questions on the above.

Source of Information: The Gard P&I Club