

王晓怡.《劳氏海难救助协议标准格式(2011版)》评述——兼谈《中国海事仲裁委员会(1994)救助合同标准格式》的修订[J].  
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## 《劳氏海难救助协议标准格式(2011版)》评述

——兼谈《中国海事仲裁委员会(1994)救助合同标准格式》的修订

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**摘要:**海难救助是海商法中特有的法律制度,自19世纪末以来,以“无效果,无报酬”原则为基础的合同救助是其主要形式。在各种救助合同格式中,目前使用最广泛的是英国劳合社发布的《劳氏海难救助协议标准格式》,该格式协议经过多次修订,形式上更趋完备,内容上也更加适应不断变化的海难救助实践需要。针对该格式最新变化以及选择并入其中的《船东互保协会特别补偿条款》进行评述,分析救助方与被救助方的主要义务、特别补偿的获得、协议的终止和履行等主要条款内容,建议吸收和借鉴其先进之处,以期修订和完善《中国海事仲裁委员会(1994)救助合同标准格式》,增强其在救助实践中的适用性。

**关键词:**海难救助;救助公约;特别补偿

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### A review of Lloyd's Standard Form of Salvage Agreement (2011)

—concurrently comments on revision of China Maritime Arbitration  
Commission Standard Form of Salvage Agreement (1994)

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**Abstract:** Salvage at sea is a particular legal system in maritime law, since the end of the 19th century, contractual salvage based on the principle “no cure, no pay” is its main form. Among various standard form of contract, *Lloyd's Standard Form of Salvage Agreement* (LOF), approved and published by the Council of Lloyd's, is most widely used at present, which has been revised several times to become more adaptable to the practical needs. This paper, by translating the latest addition of LOF as well as the *Special Compensation of Protection and Indemnity Clause* (SCOPIIC) chosen to be incorporated therein, comments on the main provisions of LOF regarding the parties' obligation, special compensation, rights of termination, etc., then gives the suggestion to absorb and learn from its merits, hoping to amend and perfect the *Standard Form of Salvage Contract of China Maritime Arbitration Commission* (1994), thus enhancing its applicability in salvage practice.

**Key words:** salvage at sea; salvage convention; special compensation

### 一、《劳氏海难救助协议标准格式》的由来及发展

《劳氏海难救助协议标准格式》(*Lloyd's Standard Form of Salvage Agreement*,简称LOF)是英国劳氏委员会于1908年发布,用于缔结海难救助合同的

协议范本,至今已有逾百年历史。LOF自发布以来,经过多次修订,但“无效果,无报酬”(no cure, no pay)始终都作为LOF下海难救助报酬给付的基本原则,该原则也为《1910年统一海上救助若干法律规则的国际公约》所吸纳,并延续至《1989年国际救助公约》(简称《89年救助公约》)。

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20世纪70年代,发生了多起重大的海上油轮污染事故,比较有代表性的有Torrey Canyon轮<sup>①</sup>、Amoco Cadiz轮<sup>②</sup>和Cristos Bitas轮<sup>③</sup>溢油污染事故。这类事故的救援难度极大,尽管救助方竭尽全力,却最终因无财产获救而无法获得救助报酬,或是根据获救财产价值计算的应得救助报酬不足以弥补救助方所投入的救助成本,这无疑会打击其在救助海上财产的同时勇于负担海洋救助责任的积极性。显然,坚守“无效果,无报酬”原则已经无法适应20世纪的海上生态环境保护需要。为此,劳氏委员会对LOF进行了一次重要修订,形成LOF1980版本。在有关油轮救助的报酬问题上,LOF1980突破了“无效果,无报酬”原则,创设了“安全网”(safety net)条款,首次把油轮对环境造成的污染与船舶、货物和有风险的运费一并列为施救对象,只要救助人在救助遇险油轮时没有过失,并为防止或减轻油污染损害付出了努力,即使救助作业没有取得成效,或只有部分成效,仍可请求油轮船东支付一笔补偿,数额相当于因进行救助作业而合理投入的成本再加上不超过15%增额。

《89年救助公约》认可并接纳了LOF1980的这一突破,在以“无效果,无报酬”为原则的第13条“救助报酬确定标准”(criteria for fixing the reward)条款基础上,增设了第14条“特别补偿”(special compensation)条款,并对只适用于油轮救助的LOF1980“安全网”条款进行了批判继承和发展,将救助对象从油轮扩大至对环境构成污染危险的任何船舶或船上货物。在公约出台之后,LOF又进行了一次修订,形成了LOF1990版本。

在《89年救助公约》尚未达到生效条件之前,LOF1990即将其部分重要条款直接并入进来,使得“安全网”条款也能够扩大适用至所有类型的船舶。随着1995年1月1日英国《商船(救助与防污)法》的生效,英国政府正式批准了《89年救助公约》。由于LOF1990只并入了公约的部分条款,为了适应国际救助法律制度的变化,劳氏委员会相应修订LOF1990,随即推出LOF1995版本,将公约的全部内

容纳入其中。但总体上,这两个版本在条款、措辞方面比较接近。

事实上,自第一版LOF出台以来,虽几经修订,但条款形式和措辞表达上都没有太大的变化,复杂的表述方式生涩难懂,一直以来遭人诟病。为此,劳氏委员会以格式规范、文字精炼、措辞明确为原则,着手升级LOF1995,推出了LOF2000版本。这一版LOF不仅格式新颖、形式简单,内容上也发生了一些实质性的变化,最值得关注的是将1999年8月生效的船东互保协会特别补偿条款(简称SCOPIC)以附件的形式并入其中。SCOPIC条款是救助方、船舶所有人、财产保险人和船东互保协会各方谈判和妥协的产物,目的是建立一个不同于《89年救助公约》特别补偿制度的简化支付机制,救助方无需证明被救助船舶是否对环境构成实质污染威胁,只要在LOF中选择援用该条款,就能保障救助方迅速获得根据该条款所计算的特别补偿。

目前,LOF的最新版本是LOF2011版<sup>④</sup>,其中并入的SCOPIC条款为2007年版本。新版本LOF沿袭了第一版所确立的救助报酬给付基本原则——“无效果,无报酬”(no cure, no pay),醒目地将其置于文本首页提请订约各当事方注意。从内容上看,LOF2011共分为三个部分。第一部分将海难救助法律关系中的当事方及其代表人、被救财产、订约时间、订约地点、获救财产的后续安置地点等基本信息,以简明的表格形式提供给各方填写。第二部分共列出十二条海难救助当事方权利和义务的核心条款。第三部分则是与协议履行相关的四个补充说明事项。

## 二、LOF2011主要内容简评

### (一)救助方尽最大努力施救义务

LOF2011第二部分A款约定了救助方应尽最大努力进行救助的基本义务。在救助作业结束后,救助方还应当及时将获救财产送至协议中指定的或事后商定的安全地点,履行这一义务是评定救助作业是否取得成效(cure)的关键因素之一。在该款中,对救助方履行义务的程度要求是“尽最大努力”

<sup>①</sup> 油轮Torrey Canyon满载120 000MT原油,在驶往英国途中触礁导致大量原油溢出,溢油向西漂流至英国南部海岸,向南漂流至法国布列塔尼亚海岸,给海岸和港口带来严重污染。

<sup>②</sup> 油轮Amoco Cadiz在一场猛烈的海上风暴后,在法国布列塔尼附近海域丧失航行动力。事故造成246 000MT原油泄入英吉利海峡,法国200英里海岸线受到污染。

<sup>③</sup> Cristos Bitas轮发生溢油后,经保险人同意,被拖带至大西洋强行凿沉以避免对海岸线造成更大的污染。救助方对该轮尽力施救,尽管在财产救助层面上并未取得所谓“效果”,但在防止或减轻污染方面却起到了积极的作用。

<sup>④</sup> LOF自问世以来共有12个版本,分别为1908版、1924版、1926版、1950版、1953版、1967版、1972版、1980版、1990版、1995版、2000版和目前最新的2011版。

(use their best endeavours), 同时在 B 款中, 也要求救助方要尽“最大努力”防止或减轻环境污染, 可见 LOF 对救助方施救行为主观能动性的发挥有着较高的要求, 但这种表述也带有很大的不确定性和弹性。由于在 J 款中明确了 LOF2011 的准据法为英国法律, 且争议解决方式为伦敦仲裁, 因此在实践中若围绕救助方是否已尽“最大努力”而产生争议时, 应由仲裁员根据英国法律和判例, 结合实际案情以及双方的举证情况自由裁量。如若判定救助方未尽“最大努力”救助财产和防止、减轻环境污染, 会对救助方产生什么不利后果, 这点并未在 LOF2011 中予以明确, 应由仲裁员根据实际情况进行裁决, 可以相应降低救助报酬的数额, 以平衡救助方与被救助方之间的关系。

### (二) 特别补偿的获得

B 款要求救助方应尽最大努力防止或减轻海洋环境污染, 虽未直接约定救助方在成功防止或减轻环境污染后能够获得额外的报酬, 但根据并入英国法的《89 年救助公约》第 14 条之规定, 救助方在防止或减轻环境污染方面的投入能够获得救助报酬之外的特别补偿。如果救助方与被救助方协议选择援用 C 款中的 SCOPIC 条款, 救助方能够获得该条款所约定计算方式下的特别补偿。

SCOPIC 酬金的计算方式与公约特别补偿的计算截然不同, 其支付条件的设置也解决了后者在实际适用中暴露出来的一些问题。根据《89 年救助公约》第 14 条之规定, 只有当船舶或船上货物对海洋环境构成实质损害威胁时所开展的救助作业, 才能请求特别补偿。SCOPIC 条款则取消了这一限制条件, 以避免对是否存在海洋环境实质污染危险产生争议而贻误最佳救援时机。在 SCOPIC 机制下, 特别补偿的计算从救助方援用 SCOPIC 条款的通知到达船舶所有人处时起算, 至救助作业结束时或救助方撤销援用 SCOPIC 条款时为止, 这也弥补了《89 年救助公约》第 14 条并未规定特别补偿计算起止时间的不足。在构成上, SCOPIC 酬金分为三个部分: (1) 救助方合理使用船舶、人员、设备所产生的费用, 按 SCOPIC 条款附录中列出的费率标准分别计算; (2) 救助方为完成救助作业实际支付给第三方的合理费用, 按救助方实付金额计算, 需要救助方提供第三方出具的收费发票或其他正式凭证予以确认后计入; (3) 救助方应得的奖励, 这部分并不要求救助要有实际成效, 直接按前两项费用总和的 25% 计算。这三部分加总计算出来的仅仅是名义上的特别

补偿数额, 还要将其与救助方根据公约第 13 条所能获得的救助报酬进行比较。当救助报酬数额小于名义上的 SCOPIC 酬金数额时, 船舶所有人仅需向救助方支付二者的差额部分; 当救助报酬高于名义上的 SCOPIC 酬金数额时, 则无需支付 SCOPIC 酬金, 还要从救助报酬中扣减二者差额的 25%, 这也提醒了救助方援用 SCOPIC 条款有风险, 只有在救助难度较大, 救助方不确信能否成功救助, 或救助财产价值过低, 使得救助报酬降低, 不足以弥补救助成本时, 援用 SCOPIC 条款才能更好地保障救助方的权益。但总体而言, SCOPIC 酬金的计算避开了《89 年救助公约》第 14 条对救助方投入的成本应当“公平、合理”的繁琐评估, 并用 25% 的固定奖励取代第 14 条所规定的缺乏明确界限且完全依赖裁判者自由裁量的增幅奖励, 简单明了, 便于操作。

需要注意的是, 根据 LOF2011D 款, 无论是依据《89 年救助公约》, 还是根据 SCOPIC 条款来计算特别补偿, 救助报酬的获得仍然是以“无效果, 无报酬”作为首要原则, 在评定救助方所能获得的救助报酬数额时, 不受特别补偿制度或 SCOPIC 条款的影响, 不能以救助方能够获得特别补偿为由而削减救助报酬的评定数额。另外, 根据 LOF2011E 款, 一旦救助方与被救助方选定以 LOF2011 签订救助协议, 在协议签订之前或签订之时所提供的任何救助服务都受 LOF2011 的约束, 也就意味着特别补偿要从救助行为开始时计算, 而不以协议签订时间为准。

### (三) 被救助方的主要义务

在海难救助中, 救援工作的指挥权通常掌握在救助方手中。尽管如此, 被救助方仍然负有与救助方通力合作的义务。

根据 LOF2011F 款, 在对船上的机器、装置和设备不会造成损害的前提下, 被救助方应当主动配合救助方, 为后者合理使用这些机器设备以及获取与救助作业相关的信息提供便利。当遇难船上的货物具有危险性或其他特性时, 这种合作显得尤为必要, 此时要求被救助方不仅要在现场协作救援, 还要根据船上的危险品货物的特性提供必要的救援方案、数据和相关重要信息。

在救助作业结束后, 被救助方仍负有义务配合救助方作好获救财产的交接工作。

### (四) 协议的终止和履行

根据 LOF2011G 款, 当对救助成效不再抱有任何合理期待时, 无论是被救助方还是救助方都有权在合理期限内, 提前书面通知相对方终止救助协议。

LOF2011 对协议终止的条件较为宽松,由各方当事人对情势进行综合判断和评估,在充分协商的基础上,作出是否终止协议的决定。这也充分体现了海难救助的“自愿”原则——当任何一方无意于救助作业的继续,都有权终止协议的履行。

根据 LOF2011H 款,当财产被安全地移送至第三栏中载明的安全地点或条款 A 中所约定或指定的安全地点时,救助方的救助作业视为完成,协议履行完毕。

### (五) 船长的代理权

根据 LOF2011K 款,船长有权代船舶所有人签订救助协议。传统英美法下,在通讯不发达的年代,船长在订约时被视为是“紧急处分代理人”(agent of necessity)。遇险船船长以紧急处分代理人身份签订的救助协议对遇险船的船舶所有人和船上的货主均有约束力。这点在《89 年救助公约》的第 6 条中也有明确规定,该条赋予船长较为广泛的订约权。然而,需要注意的是,尽管公约赋予船长具有代船上货物所有人订立救助协议的权利,但在英国的一些判例中,法庭认为,货主是否要受遇险船船长所签订的救助协议的约束,关键在于“紧急处分代理”关系是否真实存在<sup>①</sup>。而早前的 *Pa Mar (LMLN 461)* 案确立了“紧急处分代理”的构成要件:(1) 确有必要请求救助(it was necessary to take salvage assistance);(2) 遇险船船长无法同船上货物的货主联系,以取得其指示(it was not reasonably practical to communicate with the cargo owners or to obtain their instructions);(3) 遇险船船长或其船东应出于维护货方利益的善意行事(the Master or shipowners acted bona fide in the interests of the cargo);(4) 由遇险船船长或其船东来签订救助合同,在当时情况下是合情合理的(it was reasonable for the Master or shipowner to enter into the particular contract)。[1] 在相应举证责任上,如果船上货物所有人对船长代其签订救助协议有异议时,应由救助方举证证明满足了前述要件后,遇险船船长所签订的救助协议才对船上的货主产生约束力。因此,在实践中,如果时间允许,船方最好通知船上的货物所有人救助协议的签订事宜,协同货物所有人以及其他财产所有人的代表共同在 LOF2011 表格第九栏上签名,以避免后续不必要的争议。

上文概括评述了 LOF2011 的主要内容,完整条

款见附于文后的 LOF2011 以及选择并入其中的 SCOPIC2007。

自 1908 年问世以来,LOF 经历了长达一个多世纪的海难救助实践的检验,因时而变、因势而改,构建了一个对各航运利益方较为公平合理的框架协议,很好地平衡了船东、货主、救助者、保险人和保赔协会在海难救助事件中的利益,备受国际救助联盟和国际保赔协会集团的推崇。其中,LOF1980 在一定程度上打破了近百年来确立的“无效果,无报酬”首要原则的约束,从商业化的运作模式上为鼓励海洋环境救助开辟了新的天地,进而深刻影响了国际海难救助法律制度,为以特别补偿为创新条款的《89 年救助公约》的出台推波助澜。而在《89 年救助公约》出台后,LOF 为与公约内容无缝对接,巩固其在国际海难救助协议订立上的基石作用,也几经修订,与公约相辅相成,相互影响。

时至今日,施行了近 20 年的《89 年救助公约》逐渐显露出了不合时宜之处,特别是第 14 条对救助成本是否“公平、合理”的认定在实际适用中带有很大不确定性,使得该特别补偿条款规定欠缺可操作性,不利于当前航运环境下对环境救助的鼓励。对此,国际海事委员会已经在国际救助联盟的建议下成立专家小组,启动了对《89 年救助公约》的修订工作,重点研究环境救助的报酬支付以及如何平衡海难救助相关当事方利益等核心问题,可以肯定的是,公约的修订趋势必将促进 LOF 进一步优化升级,并为其提供机遇和条件。

### 三、对中国救助合同标准格式的修订建议

回到中国的海难救助法律研究,较之其他海商法领域的研究相对落后,在《89 年救助公约》出台后,为与公约和国际惯例接轨,《中国海事仲裁委员会(1994)救助合同标准格式》(简称《北京格式》)发布。该格式发端于 20 世纪 60 年代,仅在 1994 年进行过一次修订,虽然中国海事仲裁委员会已着手修订《北京格式》,但对比 LOF 迭故更新的灵活修订机制,《北京格式》显得有些因循守旧。建议借鉴 LOF2011,紧跟国际救助法律的发展步伐,同时也应考虑中国的国情、法律环境、救捞行业的现状,以及各利益关联方的心声,使其契合新时代海洋环境保护背景下海难救助的实际需要,也为当前《中华人民共和国海商法》(简称《海商法》)第九章的修订提

<sup>①</sup> 参见 *The Choko Star* [1990] 1 Lloyd's Rep. 516(CA)。

供实践基础和问题导向思维。笔者在此就《北京格式》的修订提出几点建议。

首先,在《北京格式》中,有关救助当事方信息填写项目栏的设计不如 LOF2011 中的表格形式直观和清晰,不利于救助信息集中明确的体现和协议的快速订立。不妨借鉴 LOF2011 的表格形式,将合同主体和有关救助事宜的基本信息,如被救财产、安全地点等汇总起来供各方填写,避免繁琐的文字表述,使《北京格式》的外在形式更为精炼、一目了然。

其次,《北京格式》第2条、第3条、第4条的实质内容分别为被救助方义务、救助方义务和双方共同遵守的义务,这种规定模式尚为合理,但形式和表述上宜更加完备、明确和层次感分明。建议可参考 LOF2011,用小标题概括条款主旨,再分点罗列具体的义务要求,整合如下:

#### “第2条 被救助方的义务

1. 被救助方应与救助方通力合作,以获得准许进入安全地点,当获救的船舶或其他财产已被送到安全地点时,被救助方应当及时接受救助方提出的合理的移交要求;如未及时接受,被救助方应当对非属救助方过失造成的后果负责。

2. 被救助方应当将船上的机器、装置、设备、锚、锚链、物料和其他属具免费提供给救助方在合理限度内使用,并按照救助方的要求提供与救助作业有关的船舶或其他财产的信息。

3. 被救助方在救助作业过程中,应以应有的谨慎防止或减少环境污染损害。”

#### 第3条 救助方的义务

1. 救助方应以应有的谨慎实施救助,并在合理需要的情况下,寻求其他救助方援助。

2. 被救助方或船长合理要求其他救助方参与救助作业时,救助方应当接受此种要求,但要求不合理的,原救助方的救助报酬金额不受影响。

3. 救助方在救助作业过程中,应以应有的谨慎防止或减少环境污染损害。”

再次,《北京格式》第5条至第10条以及第14条的内容分别对应的是《海商法》第179条、第185条、第180条、第187条、第182条、第188条以及第184条的规定,有些甚至是法条原文的复制。由于《北京格式》第16条明确约定了合同的准据法为中国法律,没有必要再将《海商法》的规定重复体现在合同条款中,特别是第9条关于特别补偿的支付,

完全照搬了《海商法》第182条的规定,该规定又与《89年救助公约》第14条的规定相同,因此《89年救助公约》特别补偿制度的不足之处仍然存在于《北京格式》的特别补偿计算中,在实际适用时容易引发争议。

遗憾的是,交通运输部2020年1月提交给司法部的《中华人民共和国海商法(修改送审稿)》,对《海商法》原第182条关于特别补偿的规定并未作出改动,这无疑会给中国海难救助实践中特别补偿的计算继续带来不确定性。对此,借鉴 SCOPIC2007 中的合理部分不失为一条捷径,也有利于与国际救助制度的接轨。笔者建议,可将《北京格式》原第9条内容修改如下:

#### “第9条 特别补偿

1. 对构成环境污染损害危险的船舶或船上货物进行救助时,救助方有权获得依据本合同所适用法律计算的特别补偿,也可以选择按照本条第2款所特别约定的方式计算并获得特别补偿。

2. 本款所指的特别补偿,是指按费率计算出的人工费、拖轮和其他船艇费、便携式救助设备费,以及实际支出费用和应得奖励的总和。其中:

(1)‘费率’可以由救助方与被救助方协商或选定第三方评估主体确定,也可以参考国际上通行格式条款中的费率标准。

(2)‘实际支出’费用是指已经由救助方或代表救助方合理支付给第三方的费用,包括雇佣人力、拖轮、其他船艇和设备的租金,以及救助作业所必需的其他合理费用。该费用按实际支付金额计入特别补偿。

(3)应得奖励为前述两项费用加总的25%<sup>①</sup>。

3. 第2款所指的特别补偿,从救助方选择该计算方式的书面通知到达被救助方时起算,至救助作业结束时终止计算。

4. 本条所指特别补偿,只有在超过救助方依据本合同适用的法律所能够获得的救助报酬时,方可实际支付,支付数额为其超过救助报酬的差额部分。”

另外,《北京格式》第11条就特别补偿的支付提供担保的约定过于笼统,在实践中的操作性不强,对此也可借鉴 LOF2011 及 SCOPIC2007 中有关担保方面的约定,结合中国国情,从担保的程序、主体、方式和担保数额几个方面进行约定,并以附件的形式

<sup>①</sup> 25%的应得奖励幅度参考的是 SCOPIC2007 中约定的比例,也可以在中国的救助市场进行充分调研和评估后进一步确定。

列于主条款之后,这样可以避免主条款的冗长繁杂,也有利于双方当事人灵活商定担保方案。

此外,在 SCOPIC 机制下,各方当事人可以各自指定一名技术人员作为“特别事故代表”参与到救助事宜中,负责监督救助作业并向其委托方汇报救助作业的进展。这对于被救助方而言意义重大,因为在 SCOPIC 条款下,特别补偿自援用通知到达被救助方时开始一直计算至整个救助作业结束时为止,如果救助方故意拖延救助作业,将导致特别补偿的数额畸高,损害被救助方的利益。因此,指派特别事故代表介入救助作业进行监督,如若发现救助方确有无故拖延救助作业的行为,特别事故代表可以及时将此情况反馈给被救助方,被救助方有权终止 SCOPIC 条款的适用。同样的,救助方指定的特别事故代表也会参与到救助事宜中,代表救助方的利益行事,如果发现为继续履行对救助合同项下财产的救助义务的总成本将超过能够获救的财产价值,或超出救助方有权获得的全部特别补偿的,则救助方也有权向船舶所有人发出书面通知,以终止 SCOPIC 条款和主协议项下的救助服务。

《北京格式》可以效仿上述特别事故代表机制,直接将 SCOPIC2007 的相关内容并入进来。事实

上,在中国已有将 SCOPIC 条款并入救助合同中的实践。如在烟台打捞局作为申请人与被申请人天津海运股份有限公司就“天利”轮救助报酬争议的仲裁案中,仲裁庭认为,被申请人代表对申请人提出 SCOPIC 条款及其附件 A 须并入 LOF2000 救助合同的要求进行签字予以认可,这表明双方合意已经形成,属于当事人的真实意思表示,SCOPIC 条款及其附件 A 成为申请人与被申请人之间救助合同内容的一部分。<sup>[2]</sup>

归纳上述,《北京格式》的修订应兼收并蓄,积极融合国际上较为成熟和完善的格式合同,为海难救助当事人提供灵活的条款样式,使中国的海难救助格式合同为国际社会广泛认可。

附:Lloyd's Standard Form of Salvage Agreement  
(2011) 中译文及 Special Compensation of P&I Clause  
(2007) 中译文

LLOYD'S STANDARD FORM OF SALVAGE AGREEMENT  
(Approved and Published by the Council of Lloyd's)

劳氏救助协议标准格式  
(经劳氏委员会批准发布)

NO CURE - NO PAY

无效果,无报酬

<p>1. Name of the salvage Contractors; (referred to in this agreement as "the Contractors") 订约救助方名称: (简称救助方)</p>	<p>2. Property to be salvaged; The vessel; her cargo freight bunkers stores and any other property thereon but excluding the personal effects or baggage of passengers master or crew (referred to in this agreement as "the property") 被救财产 船舶及其上装载的货物、燃料、物料和任何其他财产,但不包括旅客、船长或船员的个人物品或行李 (简称财产)</p>
<p>3. Agreed place of safety; 约定的安全地点</p>	<p>4. Agreed currency of any arbitral award and security (if other than United States dollars) 仲裁裁决和担保中约定使用的币种 (若非美元)</p>
<p>5. Date of this agreement 协议签订日期</p>	<p>6. Place of agreement 协议签订地点</p>
<p>7. Is the Scopic Clause incorporated into this agreement? State alternative: Yes/No 船东互保协会特别补偿条款是否并入本协议? 选择:是/否</p>	
<p>8. Person signing for and on behalf of the Contractors Signature: 救助方代表 签字:</p>	<p>9. Captain or other person signing for and on behalf of the property Signature: 船长或其他财产所有人代表 签字:</p>

**A Contractors' basic obligation:** The Contractors identified in Box 1 hereby agree to use their best endeavours to save the property specified in Box 2 and to take the property to the place stated in Box 3 or to

such other place as may hereafter be agreed. If no place is inserted in Box 3 and in the absence of any subsequent agreement as to the place where the property is to be taken the Contractors shall take the property

to a place of safety.

救助方的基本义务:上表第一栏中载明的救助方尽其最大努力救助第二栏中载明的财产,并将它们送至第三栏中载明的地点或事后约定的安全地点。如果第三栏中没有指定地点且事后也没有约定财产可送往的地点,救助方应将财产送至任一安全地点。

**B Environmental protection:** While performing the salvage services the Contractors shall also use their best endeavours to prevent or minimise damage to the environment.

环境保护:在提供救助服务时,救助方应尽最大努力防止或减轻环境污染损害。

**C Scopic Clause:** Unless the word “No” in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Scopic Clause is not incorporated and forms no part of this agreement. If the word “No” is deleted in Box 7 this shall not of itself be construed as a notice invoking the Scopic Clause within the meaning of sub-clause 2 thereof.

船东互保协会特别补偿条款:除非第7栏中的选项“否”被删除,本协议应被视为是在船东互保协会特别补偿条款未并入本协议且未构成成本协议的一部分的基础上订立的。即使第7栏中的选项“否”被删除,该删除亦不得被解释为构成在船东互保协会特别补偿条款第2条范围内援用船东互保协会特别补偿条款的通知。

**D Effect of other remedies:** Subject to the provisions of the International Convention on Salvage 1989 as incorporated into English law (“the Convention”) relating to special compensation and to the Scopic Clause if incorporated the Contractors services shall all be rendered and accepted as salvage services upon the principle of “no cure-no pay” and any salvage remuneration to which the Contractors become entitled shall not be diminished by reason of the exception to the principle of “no cure-no pay” in the form of special compensation or remuneration payable to the Contractors under a Scopic Clause.

其他补偿措施的影响:无论是根据英国法所并入的《1989年国际救助公约》(简称公约)中有关特别补偿的规定,还是被并入协议中的船东互保协会特别补偿条款,救助方所提供的、并为被救助方所接受的救助服务,都是建立在“无效果,无报酬”原则

基础之上。救助方有权获得的任何救助报酬,不能因“无效果,无报酬”原则适用上的例外而被削减,这种例外表现为救助方所能获得的特别补偿或船东互保协会特别补偿条款下的应得酬金。

**E Prior services:** Any salvage services rendered by the Contractors to the property before and up to the date of this agreement shall be deemed to be covered by this agreement.

前期服务:救助方在协议签订之前或签订之时所提供的任何救助服务都视为包含于本协议范围之内。

**F Duties of property owners:** Each of the owners of the property shall cooperate fully with the Contractors. In particular:

(i) the Contractors may make reasonable use of the vessel's machinery gear and equipment free of expense provided that the Contractors shall not unnecessarily damage abandon or sacrifice any property on board;

(ii) the Contractors shall be entitled to all such information as they may reasonably require relating to the vessel or the remainder of the property provided such information is relevant to the performance of the services and is capable of being provided without undue difficulty or delay;

(iii) the owners of the property shall co-operate fully with the Contractors in obtaining entry to the place of safety stated in Box 3 or agreed or determined in accordance with Clause A.

财产所有人的义务:任何财产所有人都应与救助方通力合作,特别表现为:

(1)救助方可以合理地免费使用船上的机器、装置和设备,前提是不能使船上任何财产遭受不必要的毁损或牺牲;

(2)救助方有权获得其合理需要的有关船舶或其他财产的信息,前提是该类信息与救助工作的开展相关,且获取该类信息不会给救助作业造成不必要的障碍或导致救助的延迟;

(3)财产所有人应与救助方通力合作以获得准许进入第三栏中所载明的安全地点,或条款A中所约定或指定的安全地点。

**G Rights of termination:** When there is no longer any reasonable prospect of a useful result leading to a salvage reward in accordance with Convention Arti-

cles 12 and/or 13 either the owners of the vessel or the Contractors shall be entitled to terminate the services hereunder by giving reasonable prior written notice to the other.

**协议终止权:**当对基于公约第12条和/或第13条的规定能够产生救助报酬的有效救助不再抱有任何合理期待时,无论是船舶所有人还是救助方都有权在合理期限内,提前书面通知相对一方终止救助协议。

**H Deemed performance:** The Contractors' services shall be deemed to have been performed when the property is in a safe condition in the place of safety stated in Box 3 or agreed or determined in accordance with clause A. For the purpose of this provision the property shall be regarded as being in safe condition notwithstanding that the property (or part thereof) is damaged or in need of maintenance if (i) the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or harbour authority, governmental agency or similar authority and (ii) the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.

**视为履行:**当财产被安全地移送至第三栏中载明的安全地点或条款A中所约定或指定的安全地点时,救助方的救助作业视为完成。即使财产(或部分财产)损坏或需要维修,如果(1)港口当局、政府主管部门或类似机构没有要求救助方继续履行照管财产的责任,(2)且已经没有必要继续由救助方或其他救助者提供专业技术性服务以防止财产丢失或进一步毁损的,就本条规定而言,该财产仍被视为是处于安全状态下。

**I Arbitration and the LSSA Clauses:** The Contractors' remuneration and/or special compensation shall be determined by arbitration in London in the manner prescribed by Lloyd's Standard Salvage and Arbitration Clauses ("the LSSA Clauses") and Lloyd's Procedural Rules in force at the date of this agreement. The provisions of the said LSSA Clauses and Lloyd's Procedural Rules are deemed to be incorporated in this agreement and form an integral part hereof. Any other difference arising out of this agreement or the operations hereunder shall be referred to arbitration in

the same way.

**仲裁和“劳合社标准救助和仲裁条款”:**救助方的报酬和/或特别补偿,应当根据本协议签订之时有效的“劳合社标准救助和仲裁条款”的规定(简称LSSA条款)和“劳合社程序规则”,在伦敦仲裁确定。前述LSSA条款和“劳合社程序规则”应视为并入本协议,构成本协议不可分割的组成部分。本协议项下或救助服务中所产生的任何其他争议应以同样的方式提交仲裁解决。

**J Governing law:** This agreement and any arbitration hereunder shall be governed by English law.

**准据法:**本协议及其项下的任何仲裁事宜应适用英国法律。

**K Scope of authority:** The Master or other person signing this agreement on behalf of the property identified in Box 2 enters into this agreement as agent for the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

**授权范围:**船长或其他代表第2栏中载明之财产的所有人签署本合同的人,系作为各财产所有人的代理订立本协议,其签署行为对其所代表的各财产所有人均有约束力(而并不约束其他人或本人)。

**L Inducements prohibited:** No person signing this agreement or any party on whose behalf it is signed shall at any time or in any manner whatsoever offer provide make give or promise to provide or demand or take any form of inducement for entering into this agreement.

**禁止诱导:**任何签署本协议的人或任何以其名义签署本协议的人都不应在任何时候,以任何方式提供、作出、给予或承诺提供、要求、接受任何形式的诱导从而订立本协议。

#### IMPORTANT NOTICES

##### 重要注意事项:

**1 Salvage security.** As soon as possible the owners of the vessel should notify the owners of other property on board that this agreement has been made. If the Contractors are successful the owners of such property should note that it will become necessary to provide the Contractors with salvage security promptly in accordance with Clause 4 of the LSSA Clauses referred to in Clause I. The provision of General Average security



does not relieve the salvaged interests of their separate obligation to provide salvage security to the Contractors.

救助担保。船舶所有人应尽快将订立本协议的事宜通知船上其他财产的所有人。一旦救助成功,获救财产的所有人应注意必须根据本协议第1条中所指LSSA条款第4条的规定,立即向救助方提供海难救助担保。获救财产利益方提供的共同海损担保并不能解除其向救助方提供海难救助担保的义务。

**2 Incorporated provisions.** Copies of the applicable Scopic Clause, the LSSA Clauses and Lloyd's Procedural Rules in force at the date of this agreement may be obtained from (i) the Contractors or (ii) the Salvage Arbitration Branch at Lloyd's, One Lime Street, London EC3M 7HA.

并入条款。本协议签订之时适用的SCOPIC条款、LSSA条款和劳合社程序规则的文本可以从(1)救助方,或(2)劳合社救助仲裁分会(位于伦敦莱姆街1号,EC3M 7HA)获得。

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

裁决。劳氏委员会有权将仲裁裁决、上诉裁决及裁决理由发布于网站([www.lloydsagency.com](http://www.lloydsagency.com)),但要符合LSSA条款第12条所规定的条件。

**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 signed agreement or a true copy thereof to the Council as soon as possible. The Council will not charge for such notification.

向劳氏委员会发送通告。救助方应于提供本协议项下救助服务的14天之内,将相关救助作业情况通知劳氏委员会,并尽快将已签署的救助协议或真实有效的副本发送给劳氏委员会,劳氏委员会对此不收取任何费用。

## SCOPIC CLAUSE

### 船东互保协会特别补偿条款

#### 1. General

This SCOPIC clause is supplementary to any

Lloyd's Form Salvage Agreement "No Cure-No Pay" ("Main Agreement") which incorporates the provisions of Article 14 of the International Convention on Salvage 1989 ("Article 14"). The definitions in the Main Agreement are incorporated into this SCOPIC clause. If the SCOPIC clause is inconsistent with any provisions of the Main Agreement or inconsistent with the law applicable hereto, the SCOPIC clause, once invoked under sub-clause 2 hereof, shall override such other provisions to the extent necessary to give business efficacy to the agreement. Subject to the provisions of sub-clause 4 hereof, the method of assessing Special Compensation under Convention Article 14(1) to 14(4) inclusive shall be substituted by the method of assessment set out hereinafter. If this SCOPIC clause has been incorporated into the Main Agreement the Contractor may make no claim pursuant to Article 14 except in the circumstances described in sub-clause 4 hereof. For the purposes of liens and time limits the services hereunder will be treated in the same manner as salvage.

#### 总则

本条款是并入了《1989年救助公约》第14条之规定的劳氏“无效果,无报酬”救助协议标准格式(主协议)的补充条款。主协议中各定义条款也被并入到本条款中。一旦本条款根据其第2款之约定被援用,则当其与主协议的任何条款或与适用的法律规定有不一致的地方,为确保协议的商业效力,本条款应优先适用。除本条款第4条另有规定外,公约第14条(包含第1款至第4款)所规定的计算特别补偿的方法应由下文列出的计算方法替代。如果本条款并入主协议,除该条款第4条所述情形之外,救助方不得依据公约第14条请求特别补偿。在涉及留置权和诉讼时效方面的问题上,本条款下的各项服务将视同是救助行为。

#### 2. Invoking the SCOPIC Clause

The Contractor shall have the option to invoke by written notice to the owners of the vessel the SCOPIC clause set out hereafter at any time of his choosing regardless of the circumstances and, in particular, regardless of whether or not there is a "threat of damage to the environment". The assessment of SCOPIC remuneration shall commence from the time the written notice is given to the owners of the vessel and services

rendered before the said written notice shall not be remunerated under this SCOPIC clause at all but in accordance with Convention Article 13 as incorporated into the Main Agreement (“Article 13”).

#### 援用 SCOPIC 条款

救助方有权在其选择的任何时间内书面通知船舶所有人援用 SCOPIC 条款,而无须考虑当时的情形,尤其无须考虑是否存在“对环境构成污染的威胁”。SCOPIC 酬金自书面通知到达船舶所有人时起算。在上述书面通知到达船舶所有人之前所提供的服务,不得依据本条款计算特别补偿,但可以根据并入主协议的公约第 13 条之规定获得报酬。

### 3. Security for SCOPIC Remuneration

(i) The owners of the vessel shall provide to the Contractor within 2 working days (excluding Saturdays and Sundays and holidays usually observed at Lloyd's) after receiving written notice from the contractor invoking the SCOPIC clause, a bank guarantee or P&I Club letter (hereinafter called “the Initial Security”) in a form reasonably satisfactory to the Contractor providing security for his claim for SCOPIC remuneration in the sum of US \$ 3 million, inclusive of interest and costs.

(ii) If, at any time after the provision of the Initial Security the owners of the vessel reasonably assess the SCOPIC remuneration plus interest and costs due hereunder to be less than the security in place, the owners of the vessel shall be entitled to require the Contractor to reduce the security to a reasonable sum and the Contractor shall be obliged to do so once a reasonable sum has been agreed.

(iii) If at any time after the provision of the Initial Security the Contractor reasonably assesses the SCOPIC remuneration plus interest and costs due hereunder to be greater than the security in place, the Contractor shall be entitled to require the owners of the vessel to increase the security to a reasonable sum and the owners of the vessel shall be obliged to do so once a reasonable sum has been agreed.

(iv) In the absence of agreement, any dispute concerning the proposed Guarantor, the form of the security or the amount of any reduction or increase in the security in place shall be resolved by the Arbitrator.

#### SCOPIC 酬金的担保

(1) 船舶所有人应在收到救助方选择援用 SCOPIC 条款的书面通知后的两个工作日内(星期六、星期日及劳合社通常认可的节假日除外),向救助方提供令其满意的银行保函或协会担保(简称初步担保),作为救助方 SCOPIC 酬金的担保,金额总计 300 万美元,包含利息和其他费用。

(2) 在提供了初步担保后的任何时间内,如果经船舶所有人合理计算,SCOPIC 酬金加上利息和费用将少于已提供的担保,船舶所有人有权要求救助方合理降低担保金额。一旦商定了合理的数额,救助方就有义务按船舶所有人要求行事。

(3) 在提供了初步担保后的任何时间内,如果经救助方合理计算,SCOPIC 酬金加上利息和费用将高于已提供的担保,救助方有权要求船舶所有人合理增加担保金额。一旦商定了合理的数额,船舶所有人就有义务按救助方的要求行事。

(4) 如未能协商一致,任何与担保人、担保形式、担保金额的增减有关的争议应以仲裁的方式解决。

### 4. Withdrawal

If the owners of the vessel do not provide the Initial Security within the said 2 working days, the Contractor, at his option, and on giving notice to the owners of the vessel, shall be entitled to withdraw from all the provisions of the SCOPIC clause and revert to his rights under the Main Agreement including Article 14 which shall apply as if the SCOPIC clause had not existed. PROVIDED THAT this right of withdrawal may only be exercised if, at the time of giving the said notice of withdrawal the owners of the vessel have still not provided the Initial Security or any alternative security which the owners of the vessel and the Contractor may agree will be sufficient.

#### 撤销

如果船舶所有人在前述的两个工作日内未能提交初步担保,救助方可以选择在通知船舶所有人后撤销援用 SCOPIC 的所有条款,此时如同 SCOPIC 从未存在,公约第 14 条恢复适用,同时恢复救助方在并入了公约第 14 条的主协议下的各项权利。但要行使此项撤销权,只能是在发出撤销通知时,船舶所有人仍然没有提供初步担保或其他船舶所有人和救助方一致认可的充分担保形式。

### 5. Tariff Rates

(i) SCOPIC remuneration shall mean the total of

the tariff rates of personnel; tugs and other craft; portable salvage equipment; out of pocket expenses; and bonus due.

(ii) SCOPIC remuneration in respect of all personnel; tugs and other craft; and portable salvage equipment shall be assessed on a time and materials basis in accordance with the Tariff set out in Appendix "A". This tariff will apply until reviewed and amended by the SCR Committee in accordance with Appendix B (1)(b). The tariff rates which will be used to calculate SCOPIC remuneration are those in force at the time the salvage services take place.

(iii) "Out of pocket" expenses shall mean all those monies reasonably paid by or for and on behalf of the Contractor to any third party and in particular includes the hire of men, tugs, other craft and equipment used and other expenses reasonably necessary for the operation. They will be agreed at cost, PROVIDED THAT: (a) If the expenses relate to the hire of men, tugs, other craft and equipment from another ISU member or their affiliate(s), the amount due will be calculated on the tariff rates set out in Appendix "A" regardless of the actual cost. (b) If men, tugs, other craft and equipment are hired from any party who is not an ISU member and the hire rate is greater than the tariff rates referred to in Appendix "A" the actual cost will be allowed in full, subject to the Special Casualty Representative ("SCR") being satisfied that in the particular circumstances of the case, it was reasonable for the Contractor to hire such items at that cost. If an SCR is not appointed or if there is a dispute, then the Arbitrator shall decide whether the expense was reasonable in all in the circumstances. (c) Any out of pocket expense incurred during the course of the service in a currency other than US dollars shall for the purpose of the SCOPIC clause be converted to US dollars at the rate prevailing at the termination of the services.

(iv) In addition to the rates set out above and any out of pocket expenses, the Contractor shall be entitled to a standard bonus of 25% of those rates except that if the out of pocket expenses described in sub-paragraph 5(iii)(b) exceed the applicable tariff rates in Appendix "A" the Contractor shall be entitled to a bonus such that he shall receive in total (a) The actual cost

of such men, tugs, other craft and equipment plus 10% of the cost, or (b) The tariff rate for such men, tugs, other craft and equipment plus 25% of the tariff rate whichever is the greater.

#### 费率

(1) SCOPIC 酬金是指按费率计算出的人工费、拖轮和其他船艇费、便携式救助设备费,以及实际支出费用和应得奖励的总和。

(2) 所有与 SCOPIC 酬金有关的人工费、拖轮和其他船艇费、便携式救助设备费,应按附录 A 所列的费率表,根据使用的时间和耗费的材料进行计算。该费率表将适用直至特别事故代表(SCR)委员会根据附录 B 第 1 条 b 款对其进行审查和作出修订。用于计算 SCOPIC 酬金的费率应是在救助服务进行时有效的费率。

(3) "实际支出"费用是指已由救助方或代表救助方合理支付给第三方的费用,具体而言,包括雇佣人力、拖轮、其他船艇和设备的租金,以及救助作业所必需的其他合理费用。该费用按实际支付金额计算,但:①如果该费用是与租用国际救助联盟(ISU)成员或其附属机构所有的人力、拖轮、其他船艇和设备有关的,则应付金额按附录 A 列出的费率计算而不考虑实际花费的数额。②如果是从其他任何非属于国际救助联盟(ISU)的成员那里租用人力、拖轮、其他船艇和设备,且租金率高于附录 A 所列出的费率,则实际花费允许全额计入,但以特别事故代表(SCR)在特定个案中认定救助方以那样的费用租赁这些项目是合理的为前提。如果尚未任命特别事故代表(SCR)或存在争议,由仲裁员裁决该实际花费在此种情形下是否合理。③在救助期间发生的任何实际支出费用如果是以美元以外的货币单位支付的,在 SCOPIC 条款下,应按救助结束时的汇率兑换成美元。

(4) 除了上述所列费率计算的费用和实际支出的费用,救助方还有权获得相当于这些费用总和的 25% 的标准奖励,但如果第 5 条(3)款②项所述的实际支出费用超过了按附录 A 中费率计算的费用,救助方有权获得的奖励,将使其获取的总数额达到以下两种情况中的较高者:①人力、拖轮、其他船艇或设备的实际支出费用外加这些费用的 10%,或②按费率计算的人力、拖轮、其他船艇或设备费用总和外加这些费用的 25%。

#### 6. Article 13 Award

(i) The salvage services under the Main Agree-

ment shall continue to be assessed in accordance with Article 13, even if the Contractor has invoked the SCOPIC clause. SCOPIC remuneration as assessed under sub-clause 5 above will be payable only by the owners of the vessel and only to the extent that it exceeds the total Article 13 Award (or, if none, any potential Article 13 Award) payable by all salvaged interests (including cargo, bunkers, lubricating oil and stores) before currency adjustment and before interest and costs even if the Article 13 Award or any part of it is not recovered.

(ii) In the event of the Article 13 Award or settlement being in a currency other than United States dollars it shall, for the purposes of the SCOPIC clause, be exchanged at the rate of exchange prevailing at the termination of the services under the Main Agreement.

(iii) The salvage Award under Article 13 shall not be diminished by reason of the exception to the principle of “No Cure-No Pay” in the form of SCOPIC remuneration.

#### 公约第13条报酬

(1)即使救助方援用了SCOPIC条款,主协议项下的救助服务仍应继续按公约第13条之规定评定救助报酬。按照前述第5条计算的SCOPIC酬金仅由船舶所有人负责支付,且仅支付该酬金高出所有财产(包括货物、燃油、润滑油及物料)获救利益方按照公约第13条,在货币换算之前和不计利息、费用的情况下所应付的救助报酬总额(如果尚未确定,则为潜在的第13条下的救助报酬)的部分,即使该救助报酬尚未获全部或部分支付。

(2)如果依据公约第13条计算的救助报酬或实付款是以美元以外的货币进行结算的,在SCOPIC条款下,应按主协议项下的救助服务结束时的汇率折算成美元。

(3)根据公约第13条计算的救助报酬不得因“无效果,无报酬”原则在SCOPIC酬金形式中的例外而削减。

#### 7. Discount

If the SCOPIC clause is invoked under sub-clause 2 hereof and the Article 13 Award or settlement (before currency adjustment and before interest and costs) under the Main Agreement is greater than the assessed SCOPIC remuneration then, notwithstanding the actual date on which the SCOPIC remuneration provisions

were invoked, the said Article 13 Award or settlement shall be discounted by 25% of the difference between the said Article 13 Award or settlement and the amount of SCOPIC remuneration that would have been assessed had the SCOPIC remuneration provisions been invoked on the first day of the services.

#### 扣减

如果依据本条款第2条之约定援用了SCOPIC条款,且依据公约第13条计算的救助报酬数额或依据主协议确定的应付额(在货币换算前,且不包括利息和费用)高于评定的SCOPIC酬金的,则不管SCOPIC酬金条款于何时被援用,应从上述救助报酬数额或应付额中扣减其与SCOPIC酬金差额的25%,该SCOPIC酬金是假设从救助服务开始的第一天即援用SCOPIC条款计算而来。

#### 8. Payment of SCOPIC Remuneration

(i) The date for payment of any SCOPIC remuneration which may be due hereunder will vary according to the circumstances.

(a) If there is no potential salvage award within the meaning of Article 13 as incorporated into the Main Agreement then, subject to Appendix B(5)(c)(iv), the undisputed amount of SCOPIC remuneration due hereunder will be paid by the owners of the vessel within 1 month of the presentation of the claim. Interest on sums due will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.

(b) If there is a claim for an Article 13 salvage award as well as a claim for SCOPIC remuneration, subject to Appendix B(5)(c)(iv), 75% of the amount by which the assessed SCOPIC remuneration exceeds the total Article 13 security demanded from ship and cargo will be paid by the owners of the vessel within 1 month and any undisputed balance paid when the Article 13 salvage award has been assessed and falls due. Interest will accrue from the date of termination of the services until the date of payment at the US prime rate plus 1%.

(ii) The Contractor hereby agrees to give an indemnity in a form acceptable to the owners of the vessel in respect of any overpayment in the event that the SCOPIC remuneration due ultimately proves to be less than the sum paid on account.

### SCOPIC 酬金的支付

(1)任何 SCOPIC 酬金的支付期限视实际情况而有所不同:

①如果不存在并入主协议的公约第 13 条意义上的救助报酬,除附录 B 中第 5 条 c 款 iv 项另有规定,船舶所有人应在特别补偿支付请求提出后的一个月内,支付无争议的 SCOPIC 酬金。利息按美国基准利率再加 1%,自救助服务结束时起计算至实际付款日为止。

②如果既存在公约第 13 条下的救助报酬请求权,又有 SCOPIC 酬金请求权,除附录 B 中第 5 条 c 款 iv 项另有规定外,船舶所有人应在一个月内支付估算的 SCOPIC 酬金超出船货双方按公约第 13 条要求所提供的担保部分的 75%,剩余部分若无争议,于公约第 13 条的报酬确定并到期应付时予以支付。利息按美国基准利率再加 1%,自救助服务结束时起计算至实际付款日为止。

(2)如果最终确定的 SCOPIC 酬金被证明少于已实际支付金额的,救助方同意就船舶所有人超额支付的部分以其能够接受的形式给予补偿。

### 9. Termination

(i) The Contractor shall be entitled to terminate the services under the SCOPIC clause and the Main Agreement by written notice to owners of the vessel with a copy to the SCR (if any) and any Special Representative appointed if the total cost of his services to date and the services that will be needed to fulfil his obligations hereunder to the property (calculated by means of the tariff rate but before the bonus conferred by sub-clause 5(iii) hereof) will exceed the sum of:

(a) The value of the property capable of being salvaged; and

(b) All sums to which he will be entitled as SCOPIC remuneration

(ii) The owners of the vessel may at any time terminate the obligation to pay SCOPIC remuneration after the SCOPIC clause has been invoked under sub-clause 2 hereof provided that the Contractor shall be entitled to at least 5 clear days' notice of such termination. In the event of such termination the assessment of SCOPIC remuneration shall take into account all monies due under the tariff rates set out in Appendix A hereof including time for demobilisation to the extent that such time did reasonably exceed the 5 days' notice of termina-

tion.

(iii) The termination provisions contained in sub-clause 9(i) and 9(ii) above shall only apply if the Contractor is not restrained from demobilising his equipment by Government, Local or Port Authorities or any other officially recognised body having jurisdiction over the area where the services are being rendered.

### 终止

(1)如果救助方迄今为止所提供的服务,以及为继续履行其在本合同项下对财产的救助义务的总成本[根据费率计算,并不包括本条款第 5 条(3)款规定的奖励]将超过①能够获救的财产价值,及②其有权获得的全部 SCOPIC 酬金,则救助方有权向船舶所有人发出书面通知并抄送特别事故代表(如果有的话)或其他指定的特别代表,以终止 SCOPIC 条款和主协议项下的救助服务。

(2)在 SCOPIC 条款依据其第 2 条之规定被援用后,船舶所有人可以随时终止其支付 SCOPIC 酬金的义务,但应至少提前 5 个完整工作日通知救助方。此时,对 SCOPIC 酬金评定应考虑按附录 A 中列出的费率计算的所有应付款项,为遣散救助方所耗费的超出 5 天通知期限的合理时间,也应计算 SCOPIC 酬金。

(3)前述第 9 条(1)款和(2)款中有关终止条款的规定,仅在政府、地方、港口当局或其他官方承认的在提供救助服务的地区有管辖权的机构不限制救助方遣散救助设备时方可适用。

### 10. Duties of Contractor

The duties and liabilities of the Contractor shall remain the same as under the Main Agreement, namely to use his best endeavours to save the vessel and property thereon and in so doing to prevent or minimise damage to the environment.

#### 救助方的义务

救助方的义务和责任与主协议的规定一致,即应尽其最大努力救助船舶及船上的财产,以防止或减轻对环境的损害。

### 11. Article 18 — 1989 Salvage Convention

The Contractor may be deprived of the whole or part of the payment due under the SCOPIC clause to the extent that the salvage operations thereunder have become necessary or more difficult or more prolonged or the salvaged fund has been reduced or extinguished because of fault or neglect on its part or if the Contrac-

tor has been guilty of fraud or other dishonest conduct.

### 《89年救助公约》第18条

如果救助方因自身的过失或疏忽而使救助作业变得更加必要、更为困难、更为持久,救助价值减少甚至丧失,或有欺诈以及其他不诚信的行为,救助方可能被剥夺 SCOPIC 条款下全部或部分的应得款项。

### 12. Special Casualty Representative (“SCR”)

Once this SCOPIC clause has been invoked in accordance with sub-clause 2 hereof the owners of the vessel may at their sole option appoint an SCR to attend the salvage operation in accordance with the terms and conditions set out in Appendix B. Any SCR so appointed shall not be called upon by any of the parties hereto to give evidence relating to non-salvage issues.

#### 特别事故代表

一旦 SCOPIC 条款依据第 2 款之规定被援用,船舶所有人可以依照附录 B 中列出的条款和条件自行选择指定一位特别事故代表参与到救助作业中。任何当事方不得要求任何指定的特别事故代表提供与救助事项无关的证明材料。

### 13. Special Representatives

At any time after the SCOPIC clause has been invoked the Hull and Machinery underwriter (or, if more than one, the lead underwriter) and one owner or underwriter of all or part of any cargo on board the vessel may each appoint one special representative (hereinafter called respectively the “Special Hull Representative” and the “Special Cargo Representative” and collectively called the “Special Representatives”) at the sole expense of the appointor to attend the casualty to observe and report upon the salvage operation on the terms and conditions set out in Appendix C hereof. Such Special Representatives shall be technical men and not practising lawyers.

#### 特别代表

在 SCOPIC 援用后的任何时间内,船舶和机械设备的承保人(如果有多个,则为主承保人),以及

船上全部或部分货物的所有人或保险人可以各自指定一名特别代表(分别简称船方特别代表和货方特别代表,并合称为特别代表),根据附录 C 中列出的条款和条件参与事故的处理,观察并汇报救助作业开展的情况。该特别代表应为技术人员而非执业律师。

### 14. Pollution Prevention

The assessment of SCOPIC remuneration shall include the prevention of pollution as well as the removal of pollution in the immediate vicinity of the vessel insofar as this is necessary for the proper execution of the salvage but not otherwise.

#### 污染预防

SCOPIC 酬金的计算应包含污染预防以及清除船舶附近污染物的费用,但限于是为了妥善完成救助所必需,而非出于其他目的。

### 15. General Average

SCOPIC remuneration shall not be a General Average expense to the extent that it exceeds the Article 13 Award; any liability to pay such SCOPIC remuneration shall be that of the Shipowner alone and no claim whether direct, indirect, by way of indemnity or recourse or otherwise relating to SCOPIC remuneration in excess of the Article 13 Award shall be made in General Average or under the vessel's Hull and Machinery Policy by the owners of the vessel.

#### 共同海损

SCOPIC 酬金高出公约第 13 条报酬的部分不得列入共同海损费用,支付 SCOPIC 酬金的责任应由船舶所有人单独承担。船舶所有人不得通过补偿、追偿或其他方式,直接或间接地将 SCOPIC 酬金高出公约第 13 条报酬的部分列入共同海损或依据船舶保险单提出理赔。

16. Any dispute arising out of this SCOPIC clause or the operations thereunder shall be referred to Arbitration as provided for under the Main Agreement.

因本条款或本条款项下的救助作业而产生的任何争议,应根据主协议的规定以仲裁的方式解决。

### 参考文献:

[1] HILL C. Maritime law[M]. London: LLP Professional Publishing, 1998: 346.

[2] “天利”轮救助报酬争议案[EB/OL]. (2018-07-19)[2020-04-05]. <http://www.cnla.org.cn/zl/al/2018/0719/2262.html>.