

Lloyd's Panel of Salvage Arbitrators' Guidelines for Fixed Cost Arbitration Procedure on Documents Alone

Introduction

Pursuant to concern expressed by the users of Lloyd's Open Form about the cost of arbitration under LOF and their expressed wish for greater use of the documents alone procedure the Panel of Arbitrators wishes to announce that the existing powers to order a hearing on documents alone and to limit the recoverable costs will be exercised in accordance with the Guidelines set out below.

Guidelines

- 1** In assessing cases which are suitable for this procedure the arbitrators will take into account the suggestion made by the ISU and ASG that cases where the security demand is less than US\$1,000,000 will usually be appropriate for a hearing on documents alone. However, the documents-alone procedure will not be restricted to such cases
- 2**
 - a** Pursuant to the powers provided by clause 2(c) of the LOF Procedural clauses the arbitrator appointed by the Salvage Arbitration Branch of Lloyd's will, in every case, invite the parties to advise him or her at the earliest opportunity whether the case is suitable for determination by the Fixed Cost Procedure.
 - b** Thereafter, the arbitrator may order that the case be determined by the Fixed Cost Procedure or by such other procedure as may be appropriate or may adjourn determination of the question of the mode of procedure to a later date.
 - c** Where the arbitrator has ordered that the case be determined other than by the Fixed Cost Procedure and it subsequently becomes apparent that the case is suitable for the Fixed Cost Procedure, the arbitrator may revoke the previous order and order that the case be determined by the Fixed Cost Procedure.
 - d** Where the arbitrator has ordered that the case shall be determined by the Fixed Cost Procedure and it subsequently becomes apparent that the case is not suitable for that procedure, the arbitrator may revoke the previous order and order the case to be determined by such other procedure as may be appropriate.
- 3** Disclosure will take place in the usual way unless there is reason for disclosure to be limited to a particular issue or dispensed with altogether. At the earliest opportunity the arbitrator will invite the parties to consider whether full disclosure is necessary or whether the case or any aspect of it can be determined upon an agreed statement of the facts. Users of LOF are reminded that unless otherwise ordered, each party will disclose to the other party or parties, on or before the date ordered by the arbitrator the following documents.
 - a** All documents relevant to the salvage services, the dangers, alternative assistance, values and any other relevant matter, whether contemporaneous or acquired after termination of the services, and
 - b** Any privileged documents and witness statements which that party intends to invite the arbitrator to take into consideration, by providing copies thereof.

- 4** Where the Fixed Cost Procedure is ordered the arbitrators will expect the following procedure to be followed,
- a** By the date fixed by the arbitrator, the parties will prepare a joint bundle, not exceeding 50¹ pages, comprising the documents, statements and any agreed statement of facts which they wish the arbitrator to take into consideration and will provide the same to the arbitrator.
 - b** Pursuant to the timetable fixed by the arbitrator,
 - i** The contractors will provide submissions not exceeding 4,000 words to the arbitrator. The said submissions will include the contractors' case on all relevant matters, including interest, currency adjustment and costs.
 - ii** The respondents will provide to the arbitrator submissions not exceeding 4,000 words. The said submissions will include the respondent's case on all relevant matters, including interest, currency adjustment and costs, and
 - iii** The contractors will provide to the arbitrator typed submissions in reply not exceeding 4,000 words alternatively a letter stating that they do not intend to provide submissions in reply.
 - c** Where there is more than one respondent they will cooperate with each other to the fullest possible extent with a view to avoiding duplication of submissions.
 - d** Within 3 weeks from the date of receipt of the contractors' submissions in reply or notice that they do not intend to reply, the arbitrator will send the award, the reasons and the confidential report to the Salvage Arbitration Branch of Lloyd's.
- 5** As to costs,
- a** References to First Instance Fixed Costs, Fixed Charges, Fixed Costs on Appeal and the like are to Schedules of such costs published from time to time by the Salvage Arbitration Branch of Lloyd's.
 - b** The arbitrator's fee for the Fixed Cost Procedure will be the Fixed Charge as published by the Salvage Arbitration Branch of Lloyd's from time to time.
 - c** The arbitrator will be entitled to charge a fee for work not within the scope of the Fixed Cost Procedure and to include the same in the award.
 - d** The Salvage Arbitration Branch of Lloyd's charge for administering the Fixed Cost Procedure shall be its Fixed Charge as published by it from time to time and will include the cost of publishing the award. The Salvage Arbitration Branch of Lloyd's will be entitled to charge for work not within the scope of its Fixed Charge.
 - e** The arbitrator shall have power to order any party to pay the costs of any other party. A party in whose favour an order for costs is made shall not be entitled to a sum exceeding the Fixed Costs in respect of its costs (excluding the arbitrator's Fixed Cost and the Fixed Charge of the Salvage Arbitration Branch and any other costs not within the scope of the First Instance Fixed Costs) of the Fixed Cost Procedure.
 - f** For the avoidance of doubt, reasonable disbursements, and the costs of obtaining security or enforcing any lien are not within the scope of the First Instance Fixed Costs and Fixed Costs on Appeal.
 - g** The fee of any arbitrator will include the cost of making the order for directions which includes the order that the Fixed Cost Procedure will apply.

¹ Any necessary Schedules of Values are excluded from this figure

- 6** Where an appeal is brought pursuant to the LSSA clauses the appeal shall be heard on documents and submissions alone. It is expected that the following procedure will apply.
- a** Within 14 days after service of the notice of appeal stating the grounds of the appeal, the appellants shall provide the appeal arbitrator with a bundle consisting of,
 - i** The documents provided to the arbitrator pursuant to the Fixed Cost Procedure, and
 - ii** The submissions of the parties at first instance, including the contractors' reply (if any) and shall provide the appeal arbitrator with their submissions on appeal not exceeding 4,000 words. The submissions on appeal shall include the appellants' case on interest, currency adjustment and costs.
 - b** Within 14 days thereafter the respondents shall provide to the appeal arbitrator their submissions not exceeding 4,000 words. The submissions on appeal will include the respondents' case on interest, currency adjustment and costs.
 - c** Within 10 days thereafter, the appellants shall provide to the appeal arbitrator their submissions in reply not exceeding 4,000 words, alternatively a letter stating that they do not intend to provide submissions in reply.
 - d** Where there is more than one respondent they will cooperate with each other to the fullest possible extent with a view to avoiding duplication of submissions on appeal.
 - e** Within 3 weeks from the date of receipt of the appellants' submissions in reply on appeal, alternatively notice that they do not intend to reply, the appeal arbitrator will send the appeal award and reasons to the Salvage Arbitration Branch of Lloyd's.
 - f** The appeal arbitrator's fee for the Fixed Cost Procedure will be the Fixed Charge on Appeal as published by the Salvage Arbitration Branch of Lloyd's from time to time
 - g** The appeal arbitrator shall be entitled to charge a fee for work not within the scope of the Fixed Cost Procedure and to include the same in the award.
 - h** The Salvage Arbitration Branch of Lloyd's charge for administering the Fixed Cost Procedure on Appeal shall be its Fixed Charge on Appeal as published by it from time to time and will include the cost of publishing the award.
 - i** The appeal arbitrator shall have power to order any party to pay the costs of any other party. A party in whose favour an order for costs is made shall not be entitled to a sum exceeding the Fixed Cost in respect of its costs (excluding the Fixed Charge of the appeal arbitrator and the Fixed Charge of the Salvage Arbitration Branch of Lloyd's and any other costs not within the scope of the Fixed Costs on Appeal) of the Fixed Cost Procedure on Appeal.
- 7** It is expected that under the Fixed Cost Procedure the arbitrator's reasons and the appeal arbitrator's reasons on appeal will be less detailed than has been the recent practice.
- 8** Documents
- a** All documents shall be readily legible.
 - b** Where a party's disclosable documents include documents in a foreign language or illegible manuscript a typed translation or transcript (as appropriate) shall be provided by that party at the time when disclosure is made.
 - c** All submissions and notices shall be typed.
 - d** Any bundle of documents shall be clearly paginated.
 - e** Any document or notice required to be provided to a party or to the (appeal) arbitrator shall also be provided to every other relevant party.