



# **TURKISH SALVAGE**

## **TURKISH OPEN FORM ("TOF")**

## INTRODUCTION

Some 55,000 vessels pass through the Istanbul Strait annually, an average of 150 a day, and local cross-traffic movements are an estimated additional 2,000 vessels.

From such aspect Dardanelles have almost the same capacity, save Bosphorus has significantly more local cross traffic movements as you can imagine.

Both straits have their own peculiarities and it is indeed not easy to navigate through them, especially without aid of pilots, although this could not help to avoid incidents in most cases.

We think the proper way to give you an impression about the “TOF” is to begin with the Turkish Commercial Code (“the Code”) and the relevant articles in respect of salvage therein, since the document is directly referring to the code. Then we can move on to the topic itself.

### 1.SALVAGE UNDER TURKISH LAW

#### a. Present system

The term “*salvage*” is not defined in the Code. However, Article 1222 of the Code defines the cases under and by which circumstances one could be referring to a case of salvage and hence a remuneration may be demanded for the same in return by the salvors. According to Article 1222 of the Code:

*“... if a vessel, which may be subject to perils of the sea's, is out of control of her crew, and taken to safety by third parties, or upon assistance of such parties, a salvage remuneration pursuant to this part may be claimed by those.*

*Aforesaid also goes if the salvage is between vessels owned by the same owners.*

*Amount payable as result of the foregoing, under no circumstance, can be more than the value of which are salvaged.”*

According to Turkish Law, and with respect to its essence, salvage remuneration is an amount owed to salvor as a result of and in return for successful salvage operation conducted upon the vessel and her cargo. As seen here, legislative authority rests its case upon the fulfillment of the condition that the initial safety of the vessel or her cargo are secured, and following that, a successful salvage operation is conducted in full. Therefore we can emphasize that “*no cure - no pay*” principle is valid within the aspect of the Code. (TK.md.1223)

On the other hand, if the performance of an operation is compulsory by law such as a public service, then it is accepted, in principal, that one cannot refer to any such situation as “salvage” by law.

According to Article 1225:

*“ If there’s no agreement signed by the parties thereto (Article 1228), then the remuneration for salvage and assistance is established by evaluating the surrounding circumstances thereto in a rightful and justified manner.*

*Reserving the contents of Article 1230, in distribution of the salvage remuneration amongst the parties who took part in the operation, contents of Paragraph 1 do also apply.*

*Salvage remuneration is established in terms of money. Unless unanimously adopted by the parties, the said remuneration cannot be established as set upon a certain percentage of the goods or things salvaged or secured.”*

In the light of the foregoing; in cases where there is no agreement between the parties, salvage remuneration is established by evaluating the surrounding circumstances thereto in a rightful and justified manner.

One other point that must be considered regarding the remuneration is that of Article 1226:

*“ Main aspects to be considered when establishing a remuneration for salvage and assistance are as follows:*

*Overall result obtained, efforts and services of the persons in salvage, risks faced by the vessel and her cargo that is salvaged or of which’s safety is secured; risks and hazards the persons gone through in salving for and on behalf of both themselves and the vessels; amount of time spent, damages occurred and expenses made, liabilities encountered by those who took part in salvage operation, the value of equipment that the salvors had to endanger and, freight and passenger carriage remunerations and salvaged values –but on secondary basis- if the salvage vessel is assigned for a special purpose.*

*These paragraphs are also applicable to real persons, described under Paragraph 2 Article 1225, who has a right of a share out.”*

It is necessary to implement several criterias when establishing actual cost for a salvage operation. Some of these criterias depend upon salvage operation, while others depend upon the value of the goods salvaged and even to the degree of risk with regard the vessel to be salvaged. 2nd Paragraph of the said article describes the criteria upon which the judge bases his/her own-assessed decision as to what the actual amount of salvage remuneration may be under given circumstances. The most

paramount of the said criteria is the result of the salvage operation, because the judge has first to establish whether an existing risk had been avoided and, if applicable, how successful the operation conducted had been. CODE states that, in establishing the said remuneration, the size and intensity of the danger faced by both the vessel and its contents and/or passengers must also be considered as relevant criteria. However, the said criteria mainly focus on the vessel and its contents that are salvaged.

Furthermore, Article 1224 on persons, who cannot demand a remuneration, is also relevant to this case:

*“ An entity or person, who may rendered services to a vessel against opposition of vessel’s master, cannot demand any such salvage remuneration provided that the said opposition by the master is reasonable.”*

*And, crew members do not have the right to make an objection of that sort where the vessel is under risk.*

*In order for a salvage remuneration to become valid with regard to a vessel tugged away by a tugboat, or a vessel of which’s cargo is safely secured or salvaged, it is necessary for extraordinary services; so extraordinary that much beyond the ways and means of fulfilling just a towing agreement, to have been rendered.”*

## **b. Future System**

The Turkish Commercial Code is going to be changed in the near future. In fact, it is completely drafted since about two years, but awaiting approval from the National Assembly to get the validity. We were contributed to the related works for the preparation of the code as the head of the subcommission of Turkish Chamber of Shipping.

The future system imports the principles of the 1989 Salvage Convention. The important articles of the conventions such as art.8, 12, 13 and 14 are within the code now with the article numbers 1303, 1304, 1305 and 1312. There are few notable issues such as:

**TCC art.1222 – DCC art.1298 (Salvage operation)** The contents governed within both sections are exactly the similar except for one difference: the DCC governs salvage operations for vessels within navigable waters whereas the present law does not limit the application of the provision to such extent.

**TCC art.1222 – DCC art.1304 (The amount payable)** Section 1222 of the current system states that the amount payable for the salvage operation can under no circumstances be more than the value of which are salvaged. The same provision is provided within the same wording under section 1304/3 of the TOF. Section 1304/3

also states that interest rates and legal expenses will not be considered in the application of this rule.

**TCC art.1223 – DCC art.1304 (Salvage remuneration)** The section within the present law states that no reward can be claimed for an unuseful operation, i.e. there is a “no cure – no pay” system which is also adopted by the DCC, however, with a little amendment as to the wording. The DCC states that salvors producing a useful outcome are entitled to claim such reward and further explains that the previous application of the “no cure – no pay” system will be continued except for situations listed within its provisions.

**TCC art.1225-1226 – DCC art.1305 (The criterias of remuneration)** The current law under section 1226 sets the criteria for the fixing of such remuneration where under the DCC the same issue is governed within section 1305. Section 1305 (of DCC) states that such criteria shall be considered for the fixing of a remuneration in the absence of or disproportionate amount fixed within an existing salvage contract. That is the same rule with that of the current law as stated in section 1225. Further, section 1225 (of the current law) states that such criteria shall apply to cases where a salvage operation is engaged by multiple salvors and where, therefore, such remuneration needs to be apportioned.

The following criterias within 1305 of DCC, are nonexistent in TCC:

- Vessel’s and other property’s value after salvage
- Effort and skill put to the prevention or limitation of environmental harm
- Effort and skill put by the salvor to the salvage of the vessel, the goods and persons
- Risks in accordance with the responsibility undertaken by the salvor
- Other dangers to which the salvor and his equipment were subject to
- Speed of the services
- Actual use and availability of the vessels and other equipment allocated for the salvage
- Availability of the equipment of the salvor and its use and value

**TCC art.1228 – DCC art1301 (Annulment and modification)** Section 1228 states that a contractual agreement for salvage which is entered into during or under undue influence of the perils of the sea’s and that which contains inequitable and unfair conditions shall either be annulled or modified by the court upon such claim.

The section also provides that if a party is fraudulently convinced to entering into such a contractual agreement or where the amount of remuneration decided therein is found excessively disproportionate to those borne by the actual salvage, the same rule applies.

In section 1301 of DCC, however, such condition of being “fraudulently convinced to entering into such a contractual agreement” is not listed. It will not be a reason, therefore, for the annulment or modification of the contract.

## **2. GENERAL INFORMATION ABOUT THE STATE SALVORS**

The directorate has been separated from Turkish Maritime Lines A.Ş. by the resolution of the council of Ministers Cabinet dated on 21.05.1997 number 9466 and has a statute of the state economic enterprise under the name of "General Management of Coastal Safety and Salvage Administration" which has been still giving the services and the salvage service is being given by The Head Of Salvage And Rescue Services Department.

The main mission in general is to assist and improve the safety of Navigation in Turkish Waters and consists of the following branches:

- Search and Rescue
- Salvage and Towage
- Turkish Straits Vessel Traffic Services (TSVTS)
- Aids to Navigation (Lighthouses, Buoys, dGPS, RDF, ...)
- Marine Communication
- Marine oil spill response during salvage operations or in case of emergency.

Salvage services of DGCS are organized within Turkish Straits by having 15 equipped Rescue Stations. (8 of them are Boat Stations and 7 of them are Shore Based Rescue Centers)

Professional Rescue Teams are at the stations for 24 hours a day / 7 days a week and they are tracing all communications through VHF channel of the Turkish Straits Vessel Traffic Service together with the VHF channel 16 using VHF DSC in Turkish Straits.

13 SAR boats (10 of them are high speed), 5 (RHIB) rigged hull inflatable boats and 15 vehicles to be able to transport of the main equipment to the shore based rescue stations are deployed in 15 rescue stations in both Black Sea approaches of Turkish Straits and Turkish Straits.

Rescue services are performed in two different types as shore based and at sea by boat.

Shore based rescue services are performed for the vessels grounded as drifting to shore with mentioned vehicles by sending line with rockets for whip and breeches bouy equipments. Life saving operation in vicinity of offshore is performed by 10 high speed rescue boats (30 knots) which have the capability of self righting and self floating, 3 SAR boats (12 knots) and 5 RHIBs (35-40 knots).

Salvage Department of DGCS has fulfilled the services of tugs, underwater works, salvage&towage with 2 conventional salvage vessels, 4 Fi-Fi class-1 tugs, 11 Firefighting tugs and various type service boats which make up to 25 vessels. Also our project is to include 2 Fi-Fi Class-2 tugs in the near future. DGCS has also the capability of responding marine oilspills during salvage operation or in case of any emergency situation to respond to the marine oilspills.

According the bylaws of the directorate, The Purpose of Organisation and the Fields of Operation are herebelow:

*Section 4: The purpose of the Directorate General of Coastal Safety is to assist the navigational safety of vessels with Turkish and foreign flags that are navigating in the Turkish seas and territorial waters, to provide all kinds of services regarding the navigational safety and salvage, to render rescue services within its monopoly and to establish, manage and to provide all kinds of maintenance, repair, renewal and outfitting of such equipment and facilities in respect of such services. The fields of operation of the Organisation are provided below:*

- 1. To establish and operate all sorts of systems and facilities that which are establish and those which shall be established alongside the Turkish coasts in respect of the safe navigation, light houses, beacons, naval signs, foghorns and the similar devices together with the facilities regarding the navigational safety, in its monopoly.*
- 2. To operate the (maritime and territorial) rescue stations which are established and those which shall be established at the Turkish territorial waters between Sile and Karaburun lighthouses in the Black Sea; between Cape Bababurnu and Kemikli region at the Gulf of Saroz including the coasts of Tenedos and Imros in the Aegean Sea and at the Strait of Karadeniz and the Dardanelles together with the Marmara Sea in its monopoly; and to render salvage, aid and towage services at all seas in respect of the vessels over 300 GT and their cargo which are subject to an incident except for war ships and auxiliary vessels, in its monopoly.*
- 3. To provide pilotage, towage, mooring and diver services; together with the removal of sunken ships and/or objects or to have them removed in accordance with the principals of management.*

4. *To establish the Vessel Traffic Services System regarding the navigational safety at the Turkish seas and territorial waters, to manage the already established Vessel Traffic Services System for the Turkish Straits on behalf of the Undersecretariat of Maritime Affairs, to fulfill all its needs regarding the service and to make the necessary investments, to establish and to have established, to manage and to have managed, to supervise, control and to provide certification services of a prospective Vessel Traffic Services System that shall be established upon requirement on behalf of the Undersecretariat of Maritime Affairs.*
5. *To operate in its monopoly and to make all kinds of investments in regard to the coastal radio stations, Automatic Identification System, GPS and etc. that which are established and those shall be established at the Turkish seas and territorial waters for safe navigation.*
6. *To provide aerial, naval and territorial vehicles in regard to navigational safety, salvage and marine security and to provide all kinds of maintenance, repair, renewal and outfitting services for the aforesaid vehicles.*
7. *To collect payments in return for the salvage services and other services rendered on a tariff such as: lighthouse, rescue, marine communication, pilotage, towage, mooring and diver services.*
8. *Provided always that it is within the purpose and field of operation; to join domestic and foreign partnerships, to establish or terminate partnerships, to establish domestic or foreign bureaus, stations, and similar facilities, to enter into all kinds of agreements, to establish or to cancel liens, to hire all kinds of vehicles, movable and immovable property and services.*
9. *To provide and augment resources necessary for the execution, enhancement and introduction of the operations in the light of the principle of efficiency.*
10. *To establish or to terminate institutions and associations when required, to effect necessary proceedings in regard to such operations, to harmonize the budgets, tariffs and the investments of the affiliate companies with the general economy and maritime policies.*
11. *To take necessary precautions, to establish or to have established, to manage or to have managed educational facilities, to provide consultancy services and to receive consultancy services either domestically or foreign in order to train such personnel at a level of world standards in relation to their field of operation and their specialisations, when required.*
12. *To perform other duties assigned by the relevant Ministry. The Organisation performs the aforementioned duties and purposes directly and through affiliate companies, affiliates and its other units. The purpose and field of operation of the Organisation may be altered by a decision of the Counsel of Higher Planning.*



### 3. TURKISH OPEN FORM (“TOF”)

We must point out that the reason for the drafting of the TOF is the monopoly of salvage operations in various parts of Turkey, especially on the Straits of Bosphorus and Dardanelles, the Marmara Sea and also some of the Turkish Ports (see map), granted to the state enterprise called “*Salvage Administration*” or in short “KEGM”. (hereinafter “*salvors*”)

Turkish Open Form is consists of eight clauses: (needles to say that TOF is to be amended when the new Code comes into force)

**ARTICLE 1-** This agreement has been executed on the principle of “*no cure-no pay*” pursuant to ARTICLE 1223 of the Turkish Code of Commerce.

No objection can be raised against the fact that the service provided in accordance with this agreement is salvage.

**EXPLANATION:** *The first article of the TOF stipulates that the base of the agreement is “no cure no pay” principle. Second sentence of the same clause is stating that, once signed, the opponent party can not raise any objection against the fact that the services rendered under the roof of TOF is not salvage.*

**ARTICLE 2-** The MASTER has, in remuneration for, requested the SALVOR to save the property to be salvaged stated in Box 2 which is exposed to the sea perils and to deliver the same to him at the place stated in Box 3. The SALVOR has accepted the request and undertaken to use its best endeavours to save the property within the context of provisions of this agreement at its own expense and by providing its own all kind of services and equipments.

The SALVOR is always entitled to exercise his absolute discretion at the commencement of the salvage operation until its conclusion in deciding whether the services will yield result or are worth the salvage service and expenses for the property to be salvaged stated in Box 2.

The SALVOR may by exercising its absolute discretion withdraw from this salvage agreement if it considers that the salvage service will not yield result or, if after taking into account the condition of the properties exposed to sea peril and stated in Box 2 and other facts and circumstances, that the property to be salvaged neither justify the costs that will be incurred nor the salvage service to be given. In that event the SALVOR has an absolute right of abandoning the salvage notwithstanding that the operation may have already begun. If the SALVOR withdraws from the agreement and abandons the salvage, no claim may be made against the SALVOR. If the vessel or the properties on board are partly salvaged the SALVOR shall be entitled

to the remuneration based on the property salvaged. The remuneration may not exceed the value of the property salvaged.

The SALVOR has always an absolute authority to render a salvage service using any salvage tugs mentioned in this agreement or any other tugs and equipments in its possession and to change any tug/vessel or equipment at any stage of the salvage service.

**EXPLANATION:** *Clause 2 deals with the matter of how the salvage Operation shall be conducted, i.e. the right of the salvors at the beginning and throughout the operation whether to begin or to continue or not to begin or not the continue.*

*Furthermore clause 2 stipulates that in the event of a partial salvage, the remuneration will be also calculated percentagewise.*

*The last sentence of the clause declares that the salvor is not necessarily bound to use the tugs or other equipment mentioned within the agreement, i.e. they are at liberty to change the tugboat and bring new equipment at their discretion.*

**ARTICLE 3-** The master of a vessel exposed to sea peril shall perform any manoeuvre and operation that the SALVOR deems necessary and shall deliver any necessary equipment to the SALVOR or put under SALVOR's command.

The SALVOR is entitled to use engine, anchor, chain, and all kind of equipments and its accessories of the vessel exposed to sea peril free of charge in the salvage service. Therefore the SALVOR may displace all kind of equipments mentioned above, transfer them into another vessel or a salvage tug, if necessary.

The SALVOR may discharge, freely displace, lightening everything on board the vessel exposed to sea peril including the cargo, ballast, bunkers, means, accessories, equipment etc. and may jettison anything which it deems necessary in its absolute discretion. Therefore the SALVOR cannot be held responsible for any claim.

The SALVOR can not be held liable for the damage incurred, damages and losses or total loss on hull, equipment, cargo and other values of the vessel exposed to sea peril during the salvage operation due to manoeuvring, loading, discharging, towing and other acts or due to adverse weather or any other reason whatsoever.

**EXPLANATION:** *Article 3 mainly deals with the rights of the salvors during the operation (such as using the equipment of the vessel, and discharging / displacing the cargo, bunkers or any other means onboard) and also the liability of the*

*salvors for the damages and losses incurred during the operation, from which the salvors are fully exempted from liability. The first sentence of the clause also dictates on the master as to how he should behave during the operation.*

**ARTICLE 4-** The Master and other crews can not in any way intervene to the salvage operation, hinder or attempt any of their own manoeuvres and operation. Furthermore the MASTER and crews are obliged to provide all the information and specifications and other relevant matters relating to the vessel, cargo, casualty to the Master of the Salvage Tug immediately.

In addition, the MASTER is obliged to provide to the SALVOR, in writing, the quality, quantity and values of the cargo and the bunker on board and name of the insurance companies of the vessel, the cargo and the freight and their insured values and whether the freight is collected and the amount of collected part, if collected.

In case of the fact that the SALVOR is prevented or intervened from completing the salvage operation by the MASTER, the salvage service shall nevertheless be deemed to have been fully and satisfactorily rendered and the salvage remuneration shall be assessed and paid accordingly.

**EXPLANATION:** *Article 4 continues to dictate on the master and also on the crew members how they have to cooperate during the salvage operation, as such intervention is not allowed, furthermore that they have to provide every information requested by the salvors. (occurrence of the casualty and values for the cargo and bunkers onboard, details of the insurance companies, both H&M and P&I underwriters, the status of the freight)*

*Last sentence stipulates that, if the salvage operation will be prevented by the acts of the master and crew members, salvage services are to be deemed as successful, which obviously giving the salvors the right to claim full remuneration.*

**ARTICLE 5-** The salvage operation shall be deemed to have been successfully performed at the date of the occurrence of the circumstance stated within the last paragraph of article 4 occur and the MASTER shall be deemed to have taken delivery of the salvaged properties according to the provisions of this agreement or of the properties brought to the place stated in Box 3 or secured where they are located.

MASTER, following the completion of the Salvage operation in accordance with the first paragraph of this ARTICLE and immediately with unlimited duration, shall be obliged to provide a cash security or legally sufficient bank security including joint

and several obligor and solitary surety, a copy of which is attached hereto in covering property salvaged in the form, terms and amount determined by the SALVOR against the salvage remuneration, costs, interest, arbitrators and solicitors' fees, arbitration costs as well as entirely other items that the MASTER is to be addressee and liable to pay the SALVOR. The amount of security shall not in any way affect the determination of the salvage remuneration imposition for the costs and other liabilities by the arbitrators.

The SALVOR may keep at standby a salvage tug in the vicinity of salvaged vessel or take other measures until such date that appropriate security is provided in accordance with the terms of this Agreement. The costs incurred, damages suffered and losses caused by the reasons mentioned above shall be taken into account when the salvage remuneration is determined. While determining this remuneration, the time spent is calculated as a period when the tug moves from its location until turning back to the same place.

The SALVOR shall have a right of pledge and lien over the property to be salvaged and secured pursuant to this Agreement and the relevant provisions of the Turkish Code of Commerce. The salvaged vessel and the property on board may not be moved from the place stated in Box 3 or to another place and the cargo, other property and materials may not be removed from the vessel without the written consent of the SALVOR.

In case where a separate security is given for the vessel, cargo, bunkers or freight instead of only one letter of guarantee against all property salvaged and accepted in writing by SALVOR, the responsibility of the ship owner shall continue with regard to the cargo as well as the letter of guarantee for cargo and the SALVOR may exercise to the legal process against the ship owner firstly or together with letter of guarantee issued for the cargo.

Not only one but also separate securities may be given for the vessel, cargo, freight and the bunker with the written consent of the SALVOR. Despite the fact that a separate security is given, the SALVOR may exercise the legal process against the ship owner.

Where there is no security given or the security provided is insufficient, the SALVOR shall be free to exercise all its legal rights in order to secure its claim including exercising its right of lien and pledge or its right to detain the vessel and the cargo through a cautionary attachment or cautionary judgment, until such time that full security is provided or completed. The responsibility for any loss or damage that may be caused to the vessel and the cargo as a result of the exercise of these rights shall lie on the persons concerned with the vessel, bunkers, cargo and the freight.

If by any reason the cargo on board is discharged without any security or with insufficient security, the owner of the salvaged vessel and the MASTER shall be personally liable to the SALVOR in respect of the cargo interests' share of profits for the salvage remuneration.

No claim for compensation may be made against the SALVOR for having obtained a high amount of security.

**EXPLANATION:** Article 5 is dealing with several issues:

*(1) The outcome of the services (as successful): The master shall be deemed to have taken safe delivery of the salvaged properties if the vessel is brought to the place stated in Box 3 or secured where they are located.*

*(2) Security: The master have to tender security in cash or in a form of a bank letter of guarantee for an amount to be determined by the salvors to secure the salvage remuneration, costs, interest, arbitrators and solicitors' fees, arbitration costs and any other expenditure. (The last sentence of the article 5 stipulates that salvors cannot be held liable if the amount asked for security is higher than necessary.) According to the wording of the Article this is independent from the determination of the salvage remuneration. The third sentence declares that the salvors can keep a tug on standby at the vicinity until security is properly tendered. The costs at such stage will also be taken into account for the calculation of the salvage remuneration. According the fifth article, security can be provided by the owners of the wholly salvaged properties or separately by both vessel and cargo interests, which in the latter case (which is subject to salvors approval-in practice this is not required) taking the necessary steps at first instance against the vessel or to both parties will be at salvors discretion. If no sufficient security is provided, salvors are at liberty to arrest the vessel and/or the cargo, during which period salvors do not accept any responsibility for damages and losses to the vessel and/or the cargo.*

*(3) Lien: The clause repeats that the salvors have a lien on the salvaged property (vessel, cargo, bunker and uncollected freight) with the reference to the Turkish Commercial Code.*

**ARTICLE 6-** The owner of the salvaged or assisted vessel is jointly and severally liable to the SALVOR with persons concerned with the cargo interests for the latter's share of profit for the salvage award including salvage award that the person concerned with the cargo is charged to pay, arbitrators' fees, solicitor fees, costs and other financial burdens. Further, the ship owner is responsible for the full amount of claim

including all associated expenses. The owner of the salvaged vessel shall pay to the SALVOR the whole claim regarding the salvage service rendered. The SALVOR shall have an absolute discretion to direct the party to the ship owner alone or the owner of the cargo together with the ship owner or to the MASTER at the basis of solidary and participation in covering property salvaged at the suit in order to collect the SALVOR's credit.

The ship owner agrees to pay the salvage award and the associated expenses relating to the vessel, bunkers, cargo and the freight in full and that the claim may be directed to it alone.

The fact that the securities are provided separately does not in any way affect the right to direct to the parties.

Where an amicable settlement cannot be reached between the parties the conflict related with the determination of the salvage award arising from the salvage service rendered to the property salvaged then the conflict shall if demanded by the SALVOR be resolved by reference to an arbitration in Istanbul within the legal period. Any other conflicts shall be resolved and settled in accordance with the general provisions by the Istanbul Courts.

The SALVOR shall appoint one arbitrator and the MASTER or the ship owner acting on behalf of the property salvaged shall appoint another arbitrator. If the MASTER or the ship owner fails to appoint his arbitrator stated in this ARTICLE and notifies to the SALVOR, within one week of receiving the notification of an arbitrator's choice, the second arbitrator shall, upon application of the SALVOR, be appointed by the Istanbul Maritime Specialized Court.

If the two arbitrators cannot reach agreement, they will appoint a third arbitrator. If the arbitrators fail to agree on the appointment of the third arbitrator, then upon the application of the SALVOR the third arbitrator shall be appointed by the Istanbul Maritime Specialized Court.

The arbitrators shall complete their investigation and issue an award within 55 days of the first meeting on which the parties have been invited to attend, regardless of whether the parties have actually attended. Where it is decided to appoint a third arbitration the period shall be deemed to have been extended for 45 days upon commencing from the date of the meeting on which the parties have been invited to attend by the three arbitrators, regardless of whether the parties have actually attended. In that event the arbitrators as a panel of three shall complete their examination and issue an award within 45 days upon commencing from the date of the meeting attended by the three arbitrators.

The arbitrators are not bound to the Code of Civil Procedure except for the obligatory provisions related with the arbitration. Any party not attending the examination shall not be notified and the trial shall progress in his absence.

The period of arbitration may be extended by the mutual consent of the parties or by a court decision.

Where separate securities have been received in respect of the vessel, cargo, bunkers and the freight, the arbitrators shall state in their award the values of the salvaged property and their ratios.

The arbitrators shall be paid on the basis of amount under the award. This amount shall be 10 % of the sum awarded where there are two arbitrators and 12 % of the award accrued from this amount shall belong to persons concerned and/or owners of property salvaged of which the action of depth is litigated and shall be split equally between the arbitrators.

The arbitrators shall apply interest on the awarded sum commencing on the day after the salvage operation has ended, at the rediscount rate on Short Term Loans proposed by the Central Bank of the Republic of Turkey.

**EXPLANATION:** *Article 6 declares that the owners of the vessel are jointly and severally liable with the cargo interests for the contribution of the cargo to the salvage remuneration as well as the expenses of the arbitration. Launching the arbitration case against the owners on behalf of all salvaged interests or under the same arbitration suing the vessel owners and cargo interests at the same time is subject the salvors discretion.*

*The rest of the clause deals with the procedural issues in respect of the arbitration, which is to be finished within 55 days if with two arbitrators and another 45 days extension if an umpire (third arbitrator) is to be appointed.*

*According to the clause, the arbitrators shall be paid on the basis of the amount under the award. This amount shall be 10 % of the sum awarded where there are two arbitrators and 12 % where there is an umpire.*

**ARTICLE 7-** If the vessel exposed to sea peril frees herself by her own means until the SALVOR has arrived at the place of the casualty, the SALVOR shall be entitled to recover the expenses and any damages it has incurred as well as an appropriate remuneration.

Where the vessel exposed to sea peril, whether within or outside of the monopoly area becomes salvaged by or receives assistance from third parties or vessels, it agrees to pay the SALVOR the indemnity of salvage remuneration in full.

**EXPLANATION:** *Article 7 deals with two separate issues:*

*(1) If the vessel exposed to peril avoid this herself by her*

*own means until the SALVOR has arrived at the place of the casualty, the SALVOR shall be entitled to recover the expenses and any damages it has incurred as well as an appropriate remuneration.*

*(2) Where the vessel exposed to sea peril, whether within or outside of the monopoly area becomes salvaged by or receives assistance from third parties or vessels, it agrees to pay the SALVOR the indemnity of salvage remuneration in full.*

**ARTICLE 8-** The salvage award awarded by the arbitrators as well as solicitors' and arbitrators' fees, interest, arbitration costs and other sums shall be paid to the SALVOR within 7 days of service of the award by the MASTER, ship owner or their attorneys. Otherwise the SALVOR shall be entitled to recover its full claim from the security it holds or from the vessel, outstanding freight or the cargo.

**EXPLANATION:** *The last article deals with the payment of the award, giving the liberty to salvors to encash the security, if no payment will be made in 7 days commencing upon the receipt of the service.*

### 3. PRACTICAL ISSUES

As from the attached statistics can be observed, there are three types of incidents which could end up with salvage services:

1. Grounding
2. Drifting as a consequence of rudder or engine failure or poor navigation
3. Fire

Herebelow are some peculiarities and advices regarding the above particular types:

1. Grounding: It should be emphasized that the relevant port authority grants a time to the master to try to refloat the vessel by vessels means (certainly no assistance will be allowed from third parties, even from a sistership), the length of such time is at discretion of the authority with the following general principles:



- a. If the vessel is grounded at the straits (Bosphorus or Dardanelles): The allowed time is max. 6 hours, no matter whether the vessel or anything else is imperilled or not.
- b. If the vessel is grounded anywhere else (but within the monopoly area): In this case, be bearing in mind the issues such as whether the vessel is imperilled or not, whether she is causing danger to the navigation at the particular area or not, also whether the cargo is of dangerous type or not, also generally the weather conditions, the authority will grant the time at its discretion but generally up to 48 hours.

After the lapse of such time, the state salvors have the right to interfere and commence related services to reload the vessel. Under such circumstances signing of TOF is not required for the salvors to claim remuneration for their services. Then it will become a common law salvage subject to the rules of the Turkish Commercial Code.

2. Drifting as a consequence of rudder or engine failure or poor navigation: Another frequent cause is drifting either because of a technical failure or poor navigation, and it is obvious that such incidents pose a danger both to the shore (especially during strait passages) and other vessels, not to mention the drifting vessel and her cargo. On both straits state salvors are keeping tugboats on strategically important locations to be able to offer a prompt service to avoid accidents as a consequence of driftings.

The services rendered by the salvors in this sense are considered also as salvage with almost the same rules as per groundings.

As one can imagine, usually TOF will not be signed after such brief operation and the dispute, if no amicable settlement will be reached, will be considered again as a common law matter.

There is an important issue which would be advisable for the masters in order to avoid claim of salvage services. The critical aspect during the consideration of the services for salvage is to avoid the imminent danger during drifting, therefore, before intervention of the salvors, if the master drops anchor (even during strait passage) and would be able to stop the drifting, then there will be no more danger to avoid. Under such circumstances the only service which could be given to the vessel would be towing her to anchorage area for completion of necessities, there will be no salvage demand from the salvors.

3. Fire: Comparing with the above, fire is rather a straightforward situation, i.e. once the fire onboard gets out of control and cannot be extinguished by internal means of the vessel, any service as rendered by the state salvors will be considered as salvage and to be remunerated accordingly.

However, same position like above would be also encountered, as such if the master will sign TOF then it would be subject to the terms of the agreement (also subject to arbitration) and if the master will reject to sign the TOF, then it will be subject to common law principles (and also to the jurisdiction of Turkish Courts.)

In relation with issues explained above, there are some important practical aspects involved when dealing with the salvors:

- a. During the salvage operation, salvors are seeking the market values of the ship and the cargo. As for the ship, they have a broker in London, as one can imagine their values are rather on the higher side. For the cargo, they seek opinion from the local market through their own sources.
- b. During or by latest after completion of the salvage, salvors will notify the parties with their demand of security. This is usually an amount 15%-20% of the salved value, which is calculated as per "a". At which stage providing the valuation seems to prove no effect at all, although such figures would be very useful for the next steps.
- c. In most cases, ships' interests are providing the security on both ship and cargo accounts, although provision of security and representation of the cargo separately is neither unusual nor rare.
- d. On the other hand, our experience tells us that there is a high possibility to reach a prompt settlement even before submitting the security. The correct timing for this would be right after receiving the security demand by the salvors.
- e. Provision of information and documents asked by the salvors (regarding the vessel's documents, such as her certificates, policies, etc and also insurance policy and commercial cargo onboard, if any, also the charterparty, for determining the amount of the freight at stake and also the amount of bunkers onboard)
- f. One has to bear in mind that the negotiation consists of two stages:

Stage 1: During the official meeting with the committee of the salvors, first step is the determination of the salved values. As explained above in ("a") salvors will have their own valuations. At this stage it is vital to challenge those values by producing valuations for the ship obtained from the market (two valuations would be better, of course if they are matching each other value wise). This could enable the vessel interests to negotiate the final value and achieve a discount on the value obtained by the salvors.

Stage 2: The second step is to negotiate on the salvage remuneration based on the salved amount. Although salvors claim that they will not apply a

percentage based formula, at the end of the day it is always coming to the percentages. (which would have different criterias for different type of ships, such as tankers for example)

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## DIRECTORATE GENERAL OF COASTAL SAFETY

**SALVAGE AGREEMENT**

FR. 710.139 Rev. 00 / 26.05.2006

**NO CURE - NO PAY**

*Master, Shipowner or Agent of the vessel exposed to sea peril shall hereinafter be referred to as the "MASTER". The MASTER acting for and on behalf of all property to be salvaged has accepted and hereunder signed this Agreement in duplicate consisting of 8 Clauses and 4 pages.*

**1. Name of the Salvor: DIRECTORATE GENERAL OF COASTAL SAFETY**

*(referred to hereinafter as "the SALVOR")*

**2. Property to be salvaged: Vessel, Bunker, Cargo, Freight** *(referred to hereinafter as "the property to be salvaged")***3. Place of Delivery:**

*(Nearest anchorage area shall be assumed as the Agreed Place of Delivery unless otherwise is stated)*

**4. The name of Shipowner/Operator:****5. Place of this agreement:****6. Date of this agreement:****7. Person signing for and on behalf of the Salvor:****8. Master or person signing for and on behalf of the property to be salvaged:**

**ARTICLE 1-** This agreement has been executed on the principle of "no cure-no pay" pursuant to ARTICLE 1223 of the Turkish Code of Commerce.

No objection can be raised that the service provided in accordance with this agreement is salvage service.

**ARTICLE 2-** The MASTER has, in remuneration for, requested the SALVOR to salvage the property to be salvaged stated in Box 2 which is exposed to the sea perils and to

deliver the same to him at the place stated in Box 3. The SALVOR has accepted the request and undertaken to use its best endeavours to save the property within the context of provisions of this agreement at its own expense and by providing its own all kind of services and equipments.

The SALVOR is always entitled to use his absolute discretion at the commencement of the salvage operation until its conclusion in deciding whether the services will yield result or worth to the salvage service and expenses for the property to be salvaged stated in Box 2.

The SALVOR may by exercising its absolute discretion withdraw from this salvage agreement if it considers that the salvage service will not yield result or, if after taking into account the condition of the properties exposed to sea peril and stated in Box 2 and other facts and circumstances, the property to be salvaged do not only justify the costs that will be incurred but also the salvage service to be given. In that event the SALVOR has absolute right of abandoning the salvage notwithstanding that the operation may have already begun. If the SALVOR withdraws from the agreement and abandons the salvage, no claim may be made against the SALVOR. If the vessel or the properties on board are partly salvaged the SALVOR shall be entitled to the remuneration based on the property salvaged. The remuneration may not exceed the property salvaged.

The SALVOR has always absolute authority to render salvage service using any salvage tugs mentioned in this agreement or any other tugs and equipments in its possession and to change any tug/vessel or equipment at any stage of the salvage service.

**ARTICLE 3-** The master of vessel exposed to sea peril shall perform any manoeuvre and operation that the SALVOR deems necessary and shall deliver any necessary equipment to the SALVOR or put under SALVOR's command.

The SALVOR is entitled to use engine, anchor, chain, all kind of equipments and its accessories of the vessel exposed to sea peril as a free of charge related with the salvage. Therefore the SALVOR may displace all kind of equipments mentioned above, transfer them into the another vessel or salvage tug, if necessary

The SALVOR may discharge, freely displace, lighten everything on board of vessel exposed to sea peril including the cargo, ballast, bunkers, means, accessories, equipment etc. and may jettison anything which it deems necessary in SALVOR's absolute discretion. Therefore the SALVOR can not be held responsible from any claim.

The SALVOR can not be held liable for incurred damage, damages and losses or total loss on hull, equipment, cargo and other values of the vessel exposed to sea peril during the salvage operation due to manoeuvring, loading, discharging, towing and other acts or due to adverse weather or any other reason whatsoever.

**ARTICLE 4-** The Master and other crews can not in any way intervene to the salvage operation, hinder or attempt on their own any manoeuvres and operation. Furthermore the MASTER and crews are obliged to provide all the information and specifications and other relevant matters relating to the vessel, cargo, casualty to the Master of the Salvage Tug immediately.

In addition, the MASTER is obliged to provide to the SALVOR in writing type, quality, quantity and values of the cargo and bunker on board and name of the insurance companies of the vessel, cargo and freight and their insured values and whether the freight is collected and amount of collected part, if collected

In case of the fact that the SALVOR be prevented or intervened from completing the salvage operation by the MASTER, the salvage service shall nevertheless be deemed to have been fully and satisfactorily rendered and the salvage remuneration shall be assessed and paid accordingly.

**ARTICLE 5-** The salvage operation shall be deemed to have been successfully performed at the date of the circumstance stated in the last paragraph of article 4 occur and the MASTER shall be deemed to have been taken delivery of the salvaged properties according to the provisions of this agreement or brought to the place stated in Box 3 or secured where they are located.

MASTER, following completion of the Salvage operation in accordance with the first paragraph of this ARTICLE and immediately with unlimited duration, shall be obliged to provide a cash security or legally sufficient bank security including joint and several obligor and solitary surety, a copy of which is attached hereto in covering property salvaged in the form, terms and amount determined by the SALVOR against the salvage remuneration, costs, interest, arbitrators and solicitors' fees, arbitration costs as well as entirely other items that the MASTER is to be addressee and liable to pay the SALVOR. The amount of security shall not in any way affect the determination of the salvage remuneration imposition of costs and other liabilities by the arbitrators.

The SALVOR may keep standby a salvage tug in the vicinity of salvaged vessel or take other measures until such date that appropriate security is provided in accordance with the terms of this Agreement. The costs incurred, damages suffered and losses caused by the reasons mentioned above shall be taken into account when the salvage remuneration is determined. While determining of this remuneration, the times spent is calculated as a period when the tug moves from its location until turning back to the same place.

The SALVOR shall have rights of pledge and lien over the property to be salvaged and secured pursuant to this Agreement and the relevant provisions of the Turkish Code of Commerce. The salvaged vessel and the property on board may not be moved from the place stated in Box 3 or moved to another place and the cargo, other property and materials may not be removed from the vessel without the written consent of the SALVOR.

In case of giving a separate security for the vessel, cargo, bunkers or freight instead of only one letter of guarantee against all property salvaged and accepted in written form by SALVOR, the responsibility of ship owner shall continue relating to the cargo as well as letter of guarantee for cargo and the SALVOR may exercise to the legal process against the ship owner firstly or together with letter of guarantee issued for the cargo.

Not only one security but also separate securities may be given for the vessel, cargo, freight and bunker with the written consent of SALVOR. Although a separate security is given, the SALVOR may exercise to the legal process against the ship owner.

Where there is no security given or the security provided is insufficient, the SALVOR shall be free to exercise all its legal rights in order to secure its claim including exercising its right of lien and pledge or its right to detain the vessel and the cargo through a cautionary attachment or cautionary judgment, until such time that full security is provided or completed. The responsibility for any loss or damage that may be caused to the vessel and the cargo as a result of the exercise of these rights shall lie to the persons concerned with the vessel, bunkers, cargo and freight.

In case of any reason that the cargo on board is discharged without any security or with insufficient security, the owner of the salvaged vessel and the MASTER shall be personally liable to the SALVOR in respect of the cargo interests' share of profits for the salvage remuneration.

No claim for compensation may be made against the SALVOR for having obtained a high amount of security.

**ARTICLE 6-** The owner of the salvaged or assisted vessel is jointly and severally liable to the SALVOR with persons concerned with the cargo interests for the latter's share of profit for the salvage award including salvage award that the person concerned with the cargo is charged to pay, arbitrators' fees, solicitor fees, costs and other financial burdens. Further, the ship owner is responsible for the full amount of claim including all associated expenses. The owner of the salvaged vessel shall pay to the SALVOR the whole claim relating to the salvage service rendered. The SALVOR shall have absolute discretion to direct the party to the ship owner alone or the owner of the cargo together with the ship owner or to the MASTER at the basis of solidary and participation in covering property salvaged at the suit in order to collect the SALVOR's credit.

The ship owner agrees to pay the salvage award and the associated expenses relating to the vessel, bunkers, cargo and freight in full and that the claim may be directed to it alone.

The fact that securities are provided separately does not in any way affect to direct to the parties.

Where an amicable settlement cannot be reached between the parties the conflict related with the determination of the salvage award arising from the salvage service rendered to the property salvaged then the conflict shall if demanded by the SALVOR be resolved by reference to arbitration in Istanbul within the legal period. Any other conflicts shall be resolved and settled in accordance with the general provisions by the Istanbul Courts.

The SALVOR shall appoint one arbitrator and the MASTER or the ship owner acting on behalf of the property salvaged shall appoint another arbitrator. If the MASTER or the ship owner fails to appoint his arbitrator stated in this ARTICLE and give notifies to the SALVOR, within one week of receiving notification of an arbitrator's choice, the second arbitrator shall, upon application of the SALVOR, be appointed by the Istanbul Maritime Specialized Court.

If the two arbitrators cannot reach agreement, they will appoint a third arbitrator. If the arbitrators fail to agree on the appointment of the third arbitrator, then upon the application of the SALVOR the third arbitrator shall be appointed by the Istanbul Maritime Specialized Court.

The arbitrators shall complete their investigation and issue an award within 55 days of the first meeting on which the parties have been invited to attend, regardless of whether the parties have actually attended. Where it is decided to appoint a third arbitration the period shall be deemed to have been extended for 45 days upon commencing from the date of the meeting on which the parties have been invited to attend by the three arbitrators, regardless of whether the parties have actually attended. In that event the arbitrators as a panel of three arbitrators shall complete their examination and issue an award within 45 days upon commencing from the date of the meeting attended by the three arbitrators.

The arbitrators are not bound to the Code of Civil Procedure except of the obligatory provisions related with the arbitration. Any party not attending the examination shall not be notified and the trial shall progress in his absence.

The period of arbitration may be extended by the mutual consent of the parties or by court decision.

Where separate securities have been received in respect of the vessel, cargo, bunkers and freight, the arbitrators shall state in their award the values of the salvaged property and their ratios.

The arbitrators shall be paid on the basis of amount under the award. This amount shall be 10 % of the sum awarded where there are two arbitrators and 12 % the award accrued from this amount shall belong to persons concerned and/or owners of property salvaged of which the action of depth is litigated and shall be split equally between the arbitrators.

The arbitrators shall apply interest on the awarded sum commencing on the day



after the salvage operation has ended, at the rediscount rate on Short Term Loans proposed by the Central Bank of the Republic of Turkey.

**ARTICLE 7-** If the vessel exposed to sea peril frees herself by her own means until the SALVOR has arrived at the place of the casualty, the SALVOR shall be entitled to recover the expenses and any damages it has incurred as well as an appropriate remuneration.

Where the vessel exposed to sea peril, whether within or outside of the monopoly area becomes salvaged by or receives assistance from third parties or vessels, it agrees to pay the SALVOR the indemnity of salvage remuneration in full.

**ARTICLE 8-** The salvage award awarded by the arbitrators as well as solicitor and arbitrators' fees, interest, arbitration costs and other sums shall be paid to the SALVOR within 7 days of service of the award on the MASTER, ship owner or their attorneys. Otherwise the SALVOR shall be entitled to recover its full claim from the security it holds or from the vessel, outstanding freight or the cargo.