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IMPLEMENTATION OF STOPIA 2006 AND TOPIA 2006

Note by the Director

Summary:

In February/March 2006 the Assemblies of the 1992 Fund and the Supplementary Fund took note of two voluntary agreements, STOPIA 2006 and TOPIA 2006, under which the shipowner/P&I Clubs will reimburse the 1992 Fund and the Supplementary Fund for part of the compensation payable by the Funds under the 1992 Fund Convention and the Supplementary Fund Protocol, respectively. In this document consideration is given to the procedures required to implement the voluntary agreements.

Action to be taken:

Consider the procedures to implement STOPIA 2006 and TOPIA 2006.

1 Introduction

- 1.1 At their February/March 2006 sessions, the Assemblies of the 1992 Fund and the Supplementary Fund took note of two voluntary agreements, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 (documents 92FUND/A/ES.10/18, section 13 and SUPPFUND/A/ES.2/9, section 8).
- 1.2 The texts of STOPIA 2006 and TOPIA 2006 are reproduced at Annexes IV and V of document 92FUND/A/ES.11/6 and SUPPFUND/A/ES.3/5.
- 1.3 The effect of STOPIA 2006 is that the maximum amount of compensation payable by owners of all ships of 29 548 gross tonnage or less is 20 million SDR. The 1992 Fund is not a party to the agreement, but the agreement confers legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved. The 1992 Fund is entitled to indemnification by the shipowner of the difference between the limitation amount applicable to the ship under the 1992 Civil Liability Convention and the total amount of the admissible claims or 20 million SDR, whichever is the less.
- 1.4 In respect of incidents covered by TOPIA 2006, the Supplementary Fund continues to be liable to compensate claimants as provided in the Supplementary Fund Protocol. The Supplementary Fund will be entitled to indemnification by the shipowner of 50% of the compensation it has paid under the Protocol for oil pollution damage in Supplementary Fund Member States.

- 1.5 The Director has held discussions with the International Group of P&I Clubs concerning the necessary procedures to implement the payment provisions in STOPIA 2006 and TOPIA 2006. The Director submits for consideration by the Assemblies a draft note concerning these procedures, the text of which has been accepted by the International Group. The draft note is reproduced at the Annex to this document.

2 Director's considerations

- 2.1 The Director and the International Group consider that it is important that the indemnification clauses in STOPIA 2006 and TOPIA 2006 are implemented in a practical manner, so as not to create an additional administrative burden on the Funds and the P&I Clubs and at the same time give the contributors to the Funds the intended benefits of the voluntary agreements.
- 2.2 As regards STOPIA 2006, there seem to be two main options for implementing the indemnification clauses.

Option 1

Once the shipowner/Club has paid compensation up to the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention, the 1992 Fund will take over compensation payments. The 1992 Fund will levy contributions from the contributors to the General Fund and/or the Major Claims Fund, if any, and request reimbursement (indemnification) from the shipowner/Club either when the incident is finalised or at regular intervals, eg yearly.

Option 2

Once the shipowner/Club has paid compensation up to the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention, the 1992 Fund will take over compensation payments. The 1992 Fund will invoice the shipowner/Club for the amounts paid by it on a regular basis, normally monthly, for payment within 14 days from the date of the invoice. The 1992 Fund will levy contributions from its contributors for any amounts required if and to the extent that the total amount of compensation payable in respect of the incident exceeds 20 million SDR.

- 2.3 The first option set out in paragraph 2.2 would impose a considerable burden on the IOPC Funds' Secretariat and would require contributors to pay contributions which will, in most cases, be reimbursed in due course. The second option is in the Director's view much more practical and would be beneficial to the 1992 Fund's contributors, since contributions would need to be levied only if and to the extent that the total amount of compensation payable in respect of the incident exceeds 20 million SDR. The Director proposes therefore that the second option should be adopted.
- 2.4 With respect to TOPIA 2006, the Director considers that the most appropriate solution would be for the Supplementary Fund to invoice that Fund's contributors for 50% of the amount of the levy decided by the Assembly and at the same time invoice the shipowner/Club concerned for the remaining 50% of that levy, the date of payment for the shipowner/Club being the same as that for the contributors.
- 2.5 The attached draft document has been prepared on the basis of the proposals set out in paragraphs 2.3 and 2.4.

3 **Action to be taken by the Assemblies**

The Assemblies are invited:

- (a) to take note of the information contained in this document; and
- (b) to consider the draft text of a note on administrative procedures for indemnification of the 1992 Fund and the Supplementary Fund by shipowners/P&I Clubs under STOPIA 2006 and TOPIA 2006 set out in the Annex.

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ANNEX

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ADMINISTRATIVE PROCEDURES FOR INDEMNIFICATION OF THE 1992 FUND AND THE SUPPLEMENTARY FUND BY SHIPOWNERS/CLUBS UNDER STOPIA 2006/TOPIA 2006

1 The contribution system of the 1992 Fund and the Supplementary Fund

Basis for levy of contributions

The 1992 Fund and the Supplementary Fund are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, after carriage by sea. The levy of contributions is based on reports on oil receipts in respect of individual contributors which are submitted to the Funds' Secretariat by the Governments of Member States. Contributions are paid by the individual contributors directly to the Funds. Governments are not responsible for the payment of contributions, unless they have voluntary

The contribution system for the Supplementary Fund differs from that of the 1992 Fund in that where the aggregate quantity of contributing oil received in a Member State in a given calendar year is less than 1 million tonnes, that Member State will be liable to pay contributions for a quantity of contributing oil corresponding to the difference between 1 million tonnes and the aggregate quantity of actual contributing oil receipts reported in respect of that State.

The Supplementary Fund Protocol contains provisions for so-called 'capping' of contributions, ie that the aggregate amount of contributions payable in respect of contributing oil received in a particular Member State during a calendar year should not exceed 20% of the total amount of contributions levied. The capping provisions apply until the total amount of contributing oil received in the States which are Members of the Supplementary Fund has reached 1 000 million tonnes or for a period of 10 years from the date of the entry into force of the Protocol (3 March 2005), whichever is the earlier.

Timing of levies

The amount of contributions to be levied is decided annually by the Assembly of each Fund, normally at the Assemblies' autumn sessions, to meet the anticipated payments of compensation and the estimated administrative expenses during the forthcoming year. Invoices are then sent to contributors in early December for payment by 1 March the following year. If required, the Assemblies may decide at extraordinary sessions to levy additional contributions.

Deferred invoicing

The two Funds operate a deferred invoicing system. Under this system each Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific, lower amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

General Fund and Major Claims Funds for the 1992 Fund

The 1992 Fund maintains a General Fund and Major Claims Funds, each of which has separate income and expenditure accounts. The General Fund covers the 1992 Fund's expenses for the administration of the Organisation, including the 1992 Fund's share of the costs of running the joint Secretariat, and for compensation payments and claims related expenditure up to a maximum amount of the Pounds sterling equivalent of 4 million SDRs per incident converted at the rate

applicable on the date of the incident. Separate Major Claims Funds are established for incidents where the total amount payable by the 1992 Fund exceeds 4 million SDRs.

General Fund and Claims Funds for the Supplementary Fund

The Supplementary Fund maintains a General Fund and will, if required, maintain Claims Funds. The General Fund covers the Supplementary Fund's expenses for the administration of the Organisation, including the Supplementary Fund's share of the costs of running the joint Secretariat. Separate Claims Funds will be set up for each incident in which the Supplementary Fund becomes involved.

2 STOPIA 2006 and TOPIA 2006

STOPIA 2006 and TOPIA 2006 apply to incidents occurring after noon GMT on 20 February 2006.

The texts of STOPIA 2006 and TOPIA 2006 are reproduced at Annexes IV and V of document 92FUND/A/ES.11/6 and SUPPFUND/A/ES.3/5.

STOPIA 2006

The Small Tanker Oil Pollution Indemnification Agreement 2006 (STOPIA 2006) which applies to pollution damage in States for which the 1992 Fund Convention is in force, is a contract between owners of small tankers to increase, on a voluntary basis, the limitation amount applicable to the tanker under the 1992 Civil Liability Convention. The contract applies to all small tankers entered in one of the P&I Clubs which are members of the International Group of P&I Clubs and/or reinsured through the pooling arrangements of the International Group. Owners of small tankers not insured by an International Group Club and not covered by the pooling arrangement may agree with their insurers to be covered by STOPIA 2006. Certain Japanese coastal tankers have already agreed to be bound in this way.

The effect of STOPIA 2006 is that the maximum amount of compensation payable by owners of all ships of 29 548 gross tonnage or less is 20 million SDR. The 1992 Fund is not a party to the agreement, but the agreement confers legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved.

In respect of ships covered by STOPIA 2006 the 1992 Fund continues to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. The 1992 Fund is entitled to indemnification by the shipowner of the difference between the limitation amount applicable to the ship under the 1992 Civil Liability Convention and the total amount of the admissible claims or 20 million SDR, whichever is the less.

TOPIA 2006

The Tanker Oil Pollution Indemnification Agreement 2006 (TOPIA 2006) applies to all tankers entered in one of the P&I Clubs which are members of the International Group and reinsured through the pooling arrangements of the International Group.

In respect of incidents covered by TOPIA 2006, the Supplementary Fund continues to be liable to compensate claimants as provided in the Supplementary Fund Protocol. The Supplementary Fund will be entitled to indemnification by the shipowner of 50% of the compensation it has paid under the Protocol for oil pollution damage in Supplementary Fund Member States.

3 Memorandum of Understanding

The main framework for the implementation of STOPIA 2006 and TOPIA 2006 is laid down in the Memorandum of Understanding between the 1992 Fund and the Supplementary Fund, on the one hand, and the International Group of P&I Clubs, on the other hand, signed on 19 April 2006, which is reproduced at the Annex of document 92FUND/A/ES.11/6 and SUPPFUND/A/ES.3.

4 Procedures for indemnification of the 1992 Fund and the Supplementary Fund under STOPIA 2006 and TOPIA 2006

STOPIA 2006

Under the 1992 Civil Liability Convention, the shipowner is liable, and notwithstanding STOPIA 2006 remains liable *vis à vis* the claimants, for the payment of compensation up to the limitation amount applicable to the shipowner under the 1992 Civil Liability Convention.

As is the case for other incidents, claims arising out of incidents to which STOPIA 2006 applies are handled jointly by the P & I Club and the 1992 Fund, in accordance with the Memorandum of Understanding.

Clauses IV (E) (2) and (3) of STOPIA 2006 provide:

Unless otherwise agreed with the 1992 Fund –

(2) prior to that time^{<1>} the 1992 Fund shall be entitled to receive from the Participating Owner such payment or payments on account of Indemnification as the 1992 Fund considers to be equal to the anticipated amount of Indemnification;

(3) payment of any amounts which the 1992 Fund is entitled to receive under this agreement shall be made concurrent with payment of the levies on contributors for the Incident concerned in accordance with Articles 10 and 12 of the 1992 Fund Convention.

The indemnification clauses should be implemented as follows. Once the shipowner/Club has paid compensation up to the limitation amount applicable to the ship in question, the 1992 Fund will take over payments. The 1992 Fund will invoice the shipowner/Club for the amounts paid by the Fund on a regular basis, normally monthly, for payment within 14 days of the date of the invoice. Interest may be charged by the Fund for late receipt of payment at 2% higher than the lowest London clearing bank base rate. The 1992 Fund will levy contributions from its contributors for any amounts required if and to the extent that the total amount of compensation payable in respect of the incident exceeds 20 million SDR.

TOPIA 2006

The Supplementary Fund Assembly will determine the amount to be levied on contributors to that Supplementary Fund due at a given date. It is likely that contributions relating to major Supplementary Fund incidents will be spread over several years. The Supplementary Fund will invoice the contributors an amount corresponding to 50% of the amount required for payment of compensation and all the claims related expenses as fixed by the Assembly.

In accordance with Clause IV(E)(3) of TOPIA 2006, the Supplementary Fund will raise an invoice payable by the shipowner/Club corresponding to 50% of the amount required for payment of compensation as fixed by the Assembly on each occasion. This invoice will be sent to the shipowner/Club at the same time as invoices are sent to the contributors to the Supplementary Fund. The provisions set out in the Supplementary Fund's Internal Regulations in

<1> ie the time set out in Clause IV (E) (1).

relation to contributions shall apply, *mutatis mutandis*, to amounts payable by the shipowner/Club, e.g. the due date for the payment to the Supplementary Fund and the calculation of interest for late payment will be the same as those applicable to the payments by contributors to that Fund.

Distribution of costs

STOPIA 2006 and TOPIA 2006 only apply to compensation payments. The distribution of costs arising out of incidents falling under these agreements between the shipowner/Club and the respective Fund is governed by the Memorandum of Understanding. The Funds must therefore in its decisions to levy contributions separate compensation payments and costs.

Accounting

Any payment of indemnification on account under STOPIA 2006 or TOPIA 2006 shall be credited by the 1992 Fund or the Supplementary Fund to a special account relating solely to the indemnification (reimbursements) in respect of the incident concerned.

In respect of TOPIA 2006, on closure of the respective Claims Fund, the shipowner/Club will be reimbursed, if and to the extent that the aggregate amount of payments made by them to the Supplementary Fund exceeds 50% of the total compensation payments made in respect of the incident, together with accrued interest thereon.

Recourse actions

STOPIA 2006 and TOPIA 2006 provide that the right to indemnification of the 1992 Fund or the Supplementary Fund, as the case may be, does not accrue until notice is given that no recourse (or no further recourse) proceedings are contemplated by the respective Fund.

Clause IV (E) of STOPIA 2006 provides:

(1) The entitlement of the 1992 Fund to receive Indemnification from the Participating Owner accrues when it gives a Recourse Conclusion Notice as defined in Clause V (C) below.

And, Clause V (C) of STOPIA 2006 provides:

(C) For the purposes of this Agreement, a Recourse Conclusion Notice is notice to the Participating Owner that a final conclusion has been reached in relation to all and any recourse action taken or contemplated by the 1992 Fund against any third parties in respect of the Incident. Such a conclusion may include a decision by the 1992 Fund not to take a recourse action, or to discontinue any such action already commenced.

TOPIA 2006 contains, *mutatis mutandis*, the same clauses.

As regards any amount recovered by the 1992 Fund or the Supplementary Fund through recourse action against third parties, credit is to be given to the shipowner/Club for any sums recovered. In respect of STOPIA 2006, the shipowner/Club will only benefit from any recovery made by the 1992 Fund from third parties after the 1992 Fund has recouped the amount for which it is liable in excess of the indemnification. As for TOPIA 2006, if after indemnification by the shipowner/Club has been paid, the Supplementary Fund recovers any amount from third parties, 50% of the amount recovered shall be paid by the Supplementary Fund to the shipowner/Club within 14 days of the Fund's receipt of the recovered amount.