



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS**

ASSEMBLY
10th extraordinary session
Agenda item 14

92FUND/A/ES.10/14
7 February 2006
Original: ENGLISH

ASSEMBLY
2nd extraordinary session
Agenda item 9

SUPPFUND/A/ES.2/8

ADMINISTRATIVE COUNCIL
18th session
Agenda item 6

71FUND/AC.18/5

CO-OPERATION WITH P&I CLUBS

Note by the Director

Summary:

Co-operation between the 1992 Fund and the P&I Clubs is governed by a Memorandum of Understanding signed in 1980 by the International Group of P&I Clubs and the 1971 Fund and extended to the 1992 Fund by an exchange of letters between the 1992 Fund and the International Group. Co-operation between the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the 1992 Fund is covered by the afore-mentioned Memorandum of Understanding supplemented by an exchange of letters between JPIA and the 1992 Fund.

Action to be taken:

1992 Fund Assembly and Supplementary Fund Assembly: To consider the draft text of a revised Memorandum of Understanding.

1971 Fund Administrative Council: Information to be noted.

1 **The issue**

- 1.1 The IOPC Funds have over the years co-operated closely with the insurers of shipowners' third party liabilities, normally one of the Protection and Indemnity Associations (P&I Clubs), in claim settlement procedures. The monitoring of the response to an incident and the assessment of the damage caused are normally carried out jointly by the P&I Club and the Fund involved in the incident.
- 1.2 Co-operation between the 1971 Fund and the P&I Clubs is governed by a Memorandum of Understanding signed in November 1980 by the International Group of P&I Clubs (International Group) and the 1971 Fund (1980 Memorandum). This Memorandum is reproduced at Annex I.
- 1.3 The 1980 Memorandum was extended to cover also co-operation between the P&I Clubs and the 1992 Fund through an exchange of letters between the Director of the 1992 Fund and the International Group. The relevant part of the Director's letter reads as follows:

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It is hereby agreed that the Memorandum of Understanding between the International Group of P&I Clubs and the International Oil Pollution Compensation Fund established under the 1971 Fund Convention (1971 Fund), therein referred to as the IOPC Fund, signed on 5 November 1980, shall apply *mutatis mutandis* also to the International Oil Pollution Compensation Fund 1992 (1992 Fund) established under the 1992 Fund Convention, and that paragraph 1 of the Memorandum shall be interpreted in respect of incidents to which the 1992 Civil Liability Convention applies in the light of the extended scope of application of that Convention.

- 1.4 At their March 2005 sessions, the Director informed the governing bodies that he and the International Group were considering a revision of the entire Memorandum of Understanding (MOU) so that it would cover directly not only, as is the case at present, the 1971 Fund but also the 1992 Fund and the Supplementary Fund and that it would also be considered whether other amendments should be made in the light of experience. The 1992 Fund Assembly instructed the Director to enter into discussions with the International Group on a revision of the Memorandum of Understanding of 1980 in the light of developments (document 92FUND/A/ES.9/28, paragraph 27.2.1).
- 1.5 The Director presented to the governing bodies of the three Funds at their October 2005 sessions the proposed text of a revised Memorandum of Understanding between the 1992 Fund/Supplementary Fund (document 92FUND/A.10/30, SUPPFUND/A.1/20 and 71FUND/AC.17/19). In view of the decision taken by the 1992 Fund Assembly that the Director should collaborate with the International Group on a revision of the voluntary agreement package, the proposed revised text was not considered at the October 2005 sessions (document 92FUND/A.10/37, paragraph 32.2).

2 Revised Memorandum with the International Group

- 2.1 After discussions with the International Group, agreement has been reached between the Director and the Group on a revised Memorandum of Understanding covering the co-operation between, on the one hand, the P&I Clubs belonging to the International Group and, on the other hand, the 1992 Fund and the Supplementary Fund. The revised text takes into account the revised voluntary agreement package to be dealt with by the 1992 Fund Assembly and the Supplementary Fund Assembly under the agenda items STOPIA and TOPIA. The revised Memorandum, which is reproduced at Annex II, is presented to the Assemblies of the 1992 Fund and the Supplementary Fund for consideration and approval.
- 2.2 The Director considers that there is no need to revise the 1980 Memorandum as regards the 1971 Fund, since the 1971 Fund will not become involved in any new incidents and the co-operation in respect of pending incidents can be carried out on the basis of that Memorandum.
- 2.3 The main differences between the 1980 Memorandum and the revised text are as follows:
- (a) Clauses 1, 2 and 3 of the revised Memorandum correspond in substance to Clauses 1, 2 and 3 of the 1980 Memorandum. However, the order between Clauses 1 and 2 has been reversed.
 - (b) Clause 4A dealing with claims handling procedures is new.
 - (c) Clause 4B of the revised Memorandum has been expanded in comparison with Clause 4 of the 1980 Memorandum to emphasise the importance of co-operation between the Clubs and the Fund in the assessment of compensation of claims and the admissibility of such claims. Contrary to Clause 4 of the 1980 Memorandum, Clause 4B in the revised text does not refer to the use of joint lawyers, since the

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Clubs and the Funds have not in recent years used joint lawyers in view of the risk of conflicts of interests arising between them.

- (d) Clause 4C in the revised text, which relates to exchange of documents concerning payments of joint costs, is new.
- (e) Clause 5 deals with the interpretation of the term 'pollution damage' in a more detailed manner than the corresponding Clause 6 of the 1980 Memorandum. The last sentence in Clause 5 is new.
- (f) Clause 6 in the revised text, which emphasises the importance of prompt compensation, is new.
- (g) Clause 7 dealing with subrogation corresponds to Clause 5 of the 1980 Memorandum.
- (h) Clause 8 in the revised Memorandum dealing with recourse actions against third parties is new.
- (i) Clauses 9 and 10 on voluntary arrangements are new.
- (j) Clause 11 on applicable law and jurisdiction is new.
- (k) Clause 12 on entry into force and termination corresponds to Clause 7 in the present Memorandum.

2.4 With respect to Clauses 9 and 10, the Director would like to make the following observations.

2.5 At its March 2005 session, the Assembly considered, in connection with the examination of the original Small Tanker Oil Pollution Indemnification Agreement (STOPIA), a proposal by the Director that the implementation of STOPIA should be dealt with in a new Clause 6A of the Memorandum of Understanding. The Assembly decided, however, that since STOPIA was a unilateral offer, there was no need to include the proposed new Clause 6A in the Memorandum of Understanding. The Director was instructed to address any necessary administrative, technical and legal issues in respect of STOPIA by an exchange of letters between the International Group and the 1992 Fund (document 92FUND/A/ES.9/28, paragraph 26.14).

2.6 In accordance with the Assembly's decision, the International Group of P&I Clubs gave, in a letter to the Director dated 22 March 2005, certain undertakings to the 1992 Fund in relation to the original STOPIA. The letter is reproduced at Annex III.

2.7 The undertakings given by the International Group are nearly the same as those set out in the proposed additional Clause 6A of the MOU. After careful examination, and having taken legal advice, the Director considered that the undertakings were satisfactory. He therefore sent a letter of acknowledgement to the International Group in which he stated that the 1992 Fund had taken note of the undertakings set out in the letter. The Director's letter is reproduced at Annex IV.

2.8 The 1992 Fund Assembly was informed of the exchange of letters at its October 2005 session (document 92FUND/A.10/31, paragraph 3).

2.9 In the light of the presentation by the International Group of STOPIA 2006 and TOPIA 2006, the Director has reconsidered the method for implementation of these agreements. After discussions on this matter with the International Group and having taken legal advice, the Director recommends that the implementation of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement

(TOPIA) 2006 be dealt with in two new Clauses in the Memorandum of Understanding, namely Clause 9 as regards STOPIA 2006 and Clause 10 as regards TOPIA 2006. The Director considers that it would from a practical point of view be an advantage if all aspects of the relationship between the P&I Clubs, on the one hand, and the 1992 Fund and the Supplementary Fund, on the other hand, were dealt with in one single document. As pointed out at the Assembly's March 2005 session, STOPIA 2006 and TOPIA 2006 are unilateral offers by the shipowners. In order to emphasise this aspect, the text of Clauses 9 and 10 have been drafted as undertakings by the Clubs and not as an agreement between the Clubs and the Funds.

3 Memorandum with JPIA

- 3.1 A special Memorandum was signed in 1985 governing the cooperation between the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) (which at that time was not a member of the International Group) and the 1971 Fund. This Memorandum is reproduced at Annex V. JPIA has since become a full member of the International Group and is covered by the 1980 Memorandum relating to JPIA and by the exchange of letters referred to in paragraph 1.3 above. However, the Memorandum of Understanding signed in 1985 by JPIA and the 1971 Fund contains some provisions covering the payment of claims (paragraphs 4-7 of the Memorandum) for which there are no corresponding provisions in the 1980 Memorandum.
- 3.2 In a document presented to the 1992 Fund Assembly at its 1st extraordinary session (document 92FUND/A/ES.1/11, paragraph 6) the Director stated that he considered that the provisions on the payment of claims in the 1985 Memorandum were important and that it would be valuable if they were to apply to both the 1971 Fund and the 1992 Fund. The 1992 Fund Assembly decided that the 1985 Memorandum of Understanding between the JPIA and the 1971 Fund could be replaced by an exchange of letters covering the parts of the text of the Memorandum which were not covered by the 1980 Memorandum with the International Group and the Director was instructed to agree with JPIA on the text of letters to be exchanged (document 92FUND/A.5/28, paragraph 25.2). As authorised by the 1992 Fund Assembly, agreement on these provisions was reached in an exchange of letters between the Director and JPIA. These letters are reproduced at Annexes VI and VII.
- 3.3 The Director intends to discuss with JPIA whether there is a need to supplement the new Memorandum of Understanding with the International Group with an exchange of letters between JPIA, on the one hand, and the 1992 Fund and Supplementary Fund, on the other.

4 Action to be taken by the governing bodies

- 4.1 The Assemblies of the 1992 Fund and the Supplementary Fund are invited:
- (a) to take note of the information contained in the present document;
 - (b) to consider the proposed text of a revised Memorandum of Understanding; and
 - (c) to note the Director's intention to discuss with JPIA whether there is a need to supplement the new Memorandum of Understanding with the International Group with an exchange of letters between JPIA, on the one hand, and the 1992 Fund and Supplementary Fund, on the other.
- 4.2 The Administrative Council of the 1971 Fund is invited to take note of the information contained in this document.

ANNEX I

Memorandum of Understanding with the International Group of P & I Clubs

The International Group of P & I Clubs (hereinafter referred to as "the Clubs"), whose names and addresses are scheduled hereto, and the International Oil Pollution Compensation Fund (hereinafter referred to as "the IOPC Fund") agree as follows:

- 1 The Clubs (together or individually, as the case may be) shall encourage and recommend that each of their Members promptly take or cause to be taken preventive measures when there is an escape or discharge of oil from one of their ships (as defined in Article I(1) of the CLC) threatening to cause pollution damage to the territory, including the territorial sea, of a Fund Convention Contracting State, unless there is no liability on the part of the Member concerned. However, the Clubs shall not be obliged to encourage or recommend to take such preventive measures to the extent that the cost thereof is likely to exceed the limit of that Member's legal liability or the maximum P & I cover available for oil pollution liabilities.
- 2 The Clubs will report the IOPC Fund each escape or discharge of oil which is likely to involve a claim against the IOPC Fund, and thereafter the parties hereto will exchange views concerning the same and co-operate with a view towards avoiding, eliminating or minimizing pollution damage.
- 3 The IOPC Fund recognizes the primary responsibility of the Clubs for the handling of claims against their Members. However, the Clubs will consult with the IOPC Fund concerning such claims as involve the likelihood of claims being made against the IOPC Fund.
- 4 Wherever possible and practical the Clubs and the IOPC Fund shall co-operate in the use of lawyers, surveyors and other experts necessary to determine the liability of the shipowner to third party claimants. In these circumstances the costs incurred shall be pro-rated between the shipowner concerned and the IOPC Fund in accordance with the respective amounts of their ultimate liability for the incident.
- 5 Where on payment of compensation or indemnification by the IOPC Fund, the IOPC Fund acquires subrogated rights, the Clubs will use their best efforts to ensure that any of their Members who have received any such compensation or indemnification shall fully assist the IOPC Fund to enforce such rights, subject to the usual indemnity as to costs and other customary indemnities being provided by the IOPC Fund.
- 6 The Clubs and the IOPC Fund shall exchange views from time to time with each other and shall co-operate in an effort to alleviate and dispose of such problems as may arise. In particular, the Clubs and the IOPC Fund will exchange views and will consult with one another when an incident occurs so that the term "pollution damage", which has the same definition in the Civil Liability Convention and the Fund Convention, receives the same interpretation by the Clubs and by the IOPC Fund.
- 7 This Memorandum shall enter into force when signed on behalf of the Clubs and the IOPC Fund. Either party may terminate this Memorandum by giving six months' prior written notice to the other party.

Dated this 5th day of November 1980.

Signed

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ANNEX II

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE INTERNATIONAL GROUP OF P & I CLUBS, ON THE ONE PART,
AND
THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 AND THE
INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND 2003, ON
THE OTHER PART**

The Members of the International Group of P & I Clubs ("the Clubs"), whose names and addresses are scheduled hereto, on the one part, and the International Oil Pollution Compensation Fund 1992 ("1992 Fund") and the International Oil Pollution Compensation Supplementary Fund 2003 ("Supplementary Fund"), hereinafter referred to collectively as "the Funds", on the other part, agree as follows:

1 Notification of incidents to the 1992 Fund

The Clubs will report to the 1992 Fund each escape or discharge of oil where there is a reasonable risk that claims for oil pollution damage may be made against that Fund. Thereafter the Club concerned and the 1992 Fund will exchange views concerning the incident and co-operate with a view towards avoiding, eliminating or minimising pollution damage.

2 Preventive measures

The Clubs (together or individually, as the case may be) shall encourage and recommend that each of their Members promptly take or cause to be taken or co-operate in taking preventive measures (as defined in Article I(7) of the 1992 Civil Liability Convention) when there is an escape or discharge of oil from a ship entered with any of the Clubs which threatens to cause pollution damage in the territory, including the territorial sea, exclusive economic zone or area designated under Article 3(a)(ii) of the 1992 Fund Convention of a State party to the latter Convention, unless there is no liability on the part of the shipowner concerned. However, the Clubs shall not be obliged to encourage or recommend their Members to take or cause to be taken or co-operate in taking preventive measures to the extent that the cost thereof is likely to exceed the limit of that Member's legal and contractual liability or the maximum P & I cover available for oil pollution liabilities.

3 Consultations

The Funds recognise the primary responsibility of the Clubs for the handling of claims for compensation for oil pollution damage against their Members. However, the Clubs will consult with the 1992 Fund concerning the handling of claims arising from incidents in respect of which claims will be made against that Fund or there is a reasonable risk that such claims will be made.

4 Claims handling

- A. The Club concerned and the 1992 Fund shall consult each other in order to agree on the most appropriate procedures for the handling of claims arising out of a particular incident, including the need for the establishment of a joint Claims Handling Office in the area affected by the incident.
- B. Wherever possible and practical, the Club concerned and the Funds shall co-operate in the use of surveyors and other experts necessary to determine the liability of the shipowner to third party claimants as well as in the assessment of the admissibility of compensation claims under the 1992 Conventions and the Supplementary Fund Protocol and the

admissible quantum of such claims, except to the extent that there may be a conflict of interest or a potential conflict of interest between the shipowner/Club and the Funds. Where joint surveyors and experts are used or joint Claims Handling Offices are established, the costs incurred shall be pro-rated between the shipowner and the Funds in accordance with the respective amounts of their ultimate liability for the incident, including sums of indemnification paid to the 1992 Fund and the Supplementary Fund in accordance with STOPIA 2006 and TOPIA 2006 referred to in Clauses 9 and 10.

- C. The Club concerned and the 1992 Fund shall send to each other copies of invoices or other relevant documents relating to fees and expenses incurred in connection with the use of joint surveyors and experts, unless these documents have already been sent to the other party, and jointly approve such invoices or documents before they are paid.

5 Interpretation of the term “pollution damage”

The Clubs and the Funds shall exchange views from time to time with each other and shall co-operate in an effort to alleviate and dispose of such problems as may arise. In particular, the Clubs and the Funds will exchange views and will consult with one another when an incident occurs so that the term "pollution damage", which has the same definition in the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol, is given the same interpretation by the Clubs and by the Funds. The Clubs shall endeavour to ensure that, in respect of incidents falling within the scope of the 1992 Civil Liability Convention but where the 1992 Fund is not called upon to pay compensation, the term "pollution damage" is also given the same interpretation as if the 1992 Fund had been involved.

6 Prompt payment of compensation

The Clubs and the Funds shall also co-operate throughout with the aim of ensuring that, within the legal framework of the 1992 Civil Liability Convention, the 1992 Fund Convention and the Supplementary Fund Protocol, compensation is paid as promptly as possible.

7 Subrogated rights

Where on payment of compensation the Funds acquire subrogated rights, the Club concerned will use its best efforts to ensure that any of its Members who have received any such compensation shall fully assist the Funds to enforce such rights, subject to the usual indemnity as to costs and other customary indemnities being provided by the Funds.

8 Recourse actions against third parties

- A. Any decisions as to whether the Club concerned or the Funds are to take recourse actions against any third parties, and as to the conduct of any such actions, including any out-of-court settlement, are at the absolute discretion of each party.
- B. Either party may consult with the other party in relation to any recourse action in which they are actual or potential claimants. Nothing in this Memorandum shall prevent the parties from agreeing on any arrangements relating to such actions as may be considered appropriate in the particular case, including any terms as to the apportionment of the costs of funding such actions, or as to the allocation of any recoveries made.

9 STOPIA 2006^{<1>}

- A. As regards the implementation of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, the Clubs undertake as follows for the period STOPIA 2006 is in force.
- B. The Clubs undertake to provide cover, on terms similar to those governing other forms of oil pollution risk, against any liabilities incurred by their Members to pay Indemnification to the 1992 Fund under STOPIA 2006, subject always to such cover being provided in accordance with the Rules of the Club concerned.
- C. In respect of Relevant Ships, Club cover shall provide for automatic entry in STOPIA 2006 by virtue of entry in the Club for Insurance against oil pollution risks. However, nothing in this Clause 9 shall require the terms of Club cover -
- (a) to apply such automatic entry to any Ship the Owner of which expressly objects to becoming a Participating Owner or has previously withdrawn from STOPIA 2006; or
 - (b) to affect the right of the Participating Owner to withdraw from STOPIA 2006 at a later date; or
 - (c) to exclude any Ship not entered in STOPIA 2006 from cover against pollution risks.
- D.
- (a) The Clubs shall through the International Group Secretariat notify the 1992 Fund every six months of the names of all Ships entered in each Club which are Entered Ships.
 - (b) Each Club shall through the International Group Secretariat notify the 1992 Fund as soon as practicable of the name of any Entered Ship which was not included in the most recent notification made to the 1992 Fund under Clause D(a) above.
 - (c) Each Club shall notify the 1992 Fund as soon as practicable of the name of
 - (1) any Relevant Ship which is accepted for entry in that Club for Insurance against oil pollution risks without being or becoming entered in STOPIA 2006; or
 - (2) any Ship which has been entered in STOPIA 2006 (whether as a Relevant Ship or pursuant to Clause III(D) of the scheme) and which ceases to be entered in STOPIA 2006 whilst remaining insured against such risks by that Club.
- E. Where Pollution Damage is caused by an Incident involving an Entered Ship, the Clubs agree that a claim by the 1992 Fund under STOPIA 2006 may be brought directly against the Club through which the Ship is insured. The Clubs reserve the right to avail themselves of the defence that the Pollution Damage resulted from the wilful misconduct of the Participating Owner himself but they shall not avail themselves of any other defence which they might have been entitled to invoke in proceedings brought by the Participating Owner against them. The Clubs also reserve the right to require in any event the Participating Owner to be joined in proceedings against the Club concerned. Save as aforesaid, any such proceedings against the Clubs shall be subject to the same provisions of STOPIA 2006 as those applying to a claim against the Participating Owner.
- F. Where Pollution Damage is caused by an Incident involving a Relevant Ship which is not an Entered Ship at the time of the Incident, the Clubs agree that the 1992 Fund shall

<1 > The terms 'Club', 'Indemnification', 'Insurance', 'Insured', '1992 Fund', 'Relevant Ship', 'Entered Ship', 'Pollution Damage', 'Incident', 'Oil', 'Owner', 'Participating Owner', 'Liability Convention', 'Ship' and 'Protocol' are defined in Clause I of STOPIA.

enjoy the same rights against the Club insuring the Ship at that time as are set out in Clause 9E above, notwithstanding that there is no liability under STOPIA 2006 on the part of the Owner, unless the 1992 Fund has previously received notice, whether under Clause 9D(c) above or otherwise, of the Ship's non-entry (or cesser of entry) in STOPIA 2006.

- G. For the avoidance of doubt, it is agreed that this Clause 9 does not apply to any Ship which at the time of the Incident is not a Relevant Ship as defined by STOPIA 2006, and that it does not confer on the 1992 Fund any rights of action against any insurer other than the Club insuring the Relevant Ship at the time of the Incident.
- H. The Clubs agree that rights of direct action conferred by this Clause 9 shall apply irrespective of whether the Relevant Ship is required by Article VII of the Liability Convention to carry a certificate of insurance.
- I. Notwithstanding Clause XI(B) of STOPIA 2006, the Clubs undertake to consult with the 1992 Fund well in advance of any decision being taken if the Clubs consider terminating or amending STOPIA 2006, so as to enable the 1992 Fund to present its views.

10 TOPIA 2006<2>

- A. As regards the implementation of the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006, the Clubs undertake as follows for the period TOPIA 2006 is in force.
- B. The Clubs undertake to provide cover, on terms similar to those governing other forms of oil pollution risk, against any liabilities incurred by their Members to pay Indemnification to the Supplementary Fund under TOPIA 2006, subject always to such cover being provided in accordance with the Rules of the Club concerned at the time of the incident.
- C. In respect of Relevant Ships, Club cover shall provide for automatic entry in TOPIA 2006 by virtue of entry in the Club for Insurance against oil pollution risks. However, nothing in this Clause 10 shall require the terms of Club cover –
 - (a) to apply such automatic entry to any Ship the Owner of which expressly objects to becoming a Participating Owner or has previously withdrawn from TOPIA 2006; or
 - (b) to affect the right of the Participating Owner to withdraw from TOPIA 2006 at a later date; or
 - (c) to exclude any Ship not entered in TOPIA 2006 from cover against pollution risks.
- D. Each Club shall through the International Group Secretariat notify the Supplementary Fund as soon as practicable of
 - (1) any Relevant Ship which is accepted for entry in that Club for Insurance against oil pollution risks without being or becoming entered in TOPIA 2006; or
 - (2) any Ship which has been entered in TOPIA 2006 (whether as a Relevant Ship or pursuant to Clause III(D) of the scheme) and which ceases to be entered in TOPIA 2006 whilst remaining insured against such risks by that Club.

<2> The terms 'Club', 'Indemnification', 'Insurance', 'Insured', '1992 Fund', 'Relevant Ship', 'Entered Ship', 'Pollution Damage', 'Incident', 'Oil', 'Owner', 'Participating Owner', 'Liability Convention', 'Ship' and "Supplementary Fund" are defined in Clause I of TOPIA.

- E. Where Pollution Damage is caused by an Incident involving an Entered Ship, the Clubs agree that a claim by the Supplementary Fund under TOPIA 2006 may be brought directly against the Club through which the Ship is insured. The Clubs reserve the right to avail themselves of the defence that the Pollution Damage resulted from the wilful misconduct of the Participating Owner himself but they shall not avail themselves of any other defence which they might have been entitled to invoke in proceedings brought by the Participating Owner against them. The Clubs also reserve the right to require in any event the Participating Owner to be joined in proceedings against the Club concerned. Save as aforesaid, any such proceedings against the Clubs shall be subject to the same provisions of TOPIA 2006 as those applying to a claim against the Participating Owner.
- F. Where Pollution Damage is caused by an Incident involving a Relevant Ship which is not an Entered Ship at the time of the Incident, the Clubs agree that the Supplementary Fund shall enjoy the same rights against the Club insuring the Ship at that time as are set out in Clause 10E above, notwithstanding that there is no liability under TOPIA 2006 on the part of the Owner, unless the Supplementary Fund has previously received notice, whether under Clause 10D above or otherwise, of the Ship's cesser of entry in TOPIA 2006.
- G. For the avoidance of doubt, it is agreed that this Clause 10 does not apply to any Ship which at the time of the Incident is not a Relevant Ship as defined by TOPIA 2006, and that it does not confer on the Supplementary Fund any rights of action against any insurer other than the Club insuring the Relevant Ship at the time of the Incident.
- H. The Clubs agree that rights of direct action conferred by this Clause 10 shall apply irrespective of whether the Relevant Ship is required by Article VII of the Liability Convention to carry a certificate of insurance.
- I. Notwithstanding Clause XI(B) of TOPIA 2006, the Clubs undertake to consult with the Supplementary Fund well in advance of any decision being taken if the Clubs consider terminating or amending TOPIA 2006, so as to enable the Supplementary Fund to present its views.

11 Applicable law and jurisdiction

Any claims or disputes in relation to this Memorandum shall be governed by English law and be subject to the exclusive jurisdiction of the English High Court of Justice.

12 Entry into force and termination

- A. This Memorandum shall enter into force when signed on behalf of the International Group of P & I Clubs and the Funds.
- B. The International Group and the Funds may terminate this Memorandum by giving six months' prior written notice to the other party.

Dated

For the International Group of P&I Clubs

For the International Oil Pollution
Compensation Fund 1992 and the
International Oil Pollution
Compensation Supplementary Fund
2003

Signed

Måns Jacobsson
Director

ANNEX III

INTERNATIONAL GROUP OF P&I CLUBS
Peek House, 20 Eastcheap
London EC3M 1EB

Secretary & Executive Officer
D.J.L. Watkins

Telephone: 020 7929 3544
Fax 020 7621 0675
e-mail:secretariat@internationalgroup.org.uk

Mr. Mans Jacobsson
International Oil Pollution Compensation Fund
Portland House
Stag Place
London SW1E 5PN

22nd March 2005

FILE: P0419. COPY:	
DCN#: 3144.	
RECEIVED: 22 MAR 2005	
SEEN BY:	<i>MJ</i>
COMMENTS:	

Dear Mr. Jacobsson,

STOPIA

The International Group of P&I Clubs hereby gives the following undertakings to the International Oil Pollution Compensation Fund 1992 (1992 Fund) in relation to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA):

- (i) The following terms in this Undertaking shall have the same meaning as in Clause 1 of STOPIA:- 'Club', 'Indemnification', 'Insurance', 'Insured', '1992 Fund', 'Relevant Ship', 'Entered Ship', 'Pollution Damage', 'Incident', 'Owner', 'Participating Owner', 'Liability Convention', 'Ship'.
- (ii) The Clubs shall provide cover, on terms similar to those governing other forms of oil pollution risk, against any liabilities incurred by their members to pay Indemnification to the 1992 Fund under the Small Tanker Oil Pollution Indemnification Agreement (STOPIA).
- (iii) In respect of Relevant Ships, Club cover shall provide for automatic entry in STOPIA by virtue of entry in the Club for Insurance against oil pollution risks. However, nothing in this Undertaking shall require the terms of Club cover –
 - (a) to apply such automatic entry to any Ship the Owner of which expressly objects to becoming a Participating Owner or has previously withdrawn from STOPIA; or
 - (b) to affect the right of the Participating Owner to withdraw from

STOPIA at a later date; or

- (c) to exclude any Ship not entered in STOPIA from cover against Pollution risks.
- (iv)
 - (a) The Clubs, through the International Group Secretariat, shall notify the 1992 Fund annually of the names of all Ships entered in each Club which are Entered Ships.
 - (b) A Club shall notify the 1992 Fund as soon as practicable of the name of any Entered Ship which was not included in the most recent annual notification made to the 1992 Fund under Clause (iv)(a) above.
 - (c) A Club shall notify the 1992 Fund as soon as practicable of the name of
 - (1) any Relevant Ship which is accepted for entry in that Club for Insurance against oil pollution risks without being or becoming entered in STOPIA; or
 - (2) any Ship which has been entered in the scheme (whether as a Relevant Ship or pursuant to Clause III(D) of STOPIA) and which ceases to be entered in STOPIA whilst remaining insured against such risks by that Club.
- (v) Where Pollution Damage is caused by an Incident involving an Entered Ship, a claim by the 1992 Fund under STOPIA may be brought directly against the Club by which the Ship is insured. The Club may avail itself of the defence that the Pollution Damage resulted from the wilful misconduct of the Participating Owner himself but it shall not avail itself of any other defence which it might have been entitled to invoke in proceedings brought by the Participating Owner against it. The Club shall in any event have the right to require the Participating Owner to be joined in proceedings against it. Save as aforesaid, any such proceedings against the Club shall be subject to the same provisions of STOPIA as those applying to a claim against the Participating Owner.
- (vi) Where Pollution Damage is caused by an Incident involving a Relevant Ship which is not an Entered Ship at the time of the Incident, the 1992 Fund shall enjoy the same rights against the Club insuring the Ship at that time as are set out in Clause (v) above, and notwithstanding that there is no liability under STOPIA on the part of the Owner, unless the 1992 Fund has previously received notice, whether under (iv)(c) above or otherwise, of the Ship's non-entry (or cesser of entry) in STOPIA.
- (vii) For the avoidance of doubt, this Undertaking does not apply to any Ship

which at the time of the Incident is not a Relevant Ship as defined by STOPIA, and it does not confer on the 1992 Fund any rights of action against any insurer other than the Club insuring the Relevant Ship at the time of the Incident.

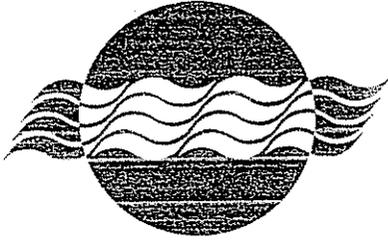
- (viii) Rights of direct action conferred by this Undertaking shall apply irrespective of whether the Relevant Ship is required by Article VII of the Liability Convention to carry a certificate of insurance.
- (ix) Notwithstanding Clause X(B) of STOPIA, the International Group undertakes to consult with the 1992 Fund well in advance of any decision being taken if it considers terminating or amending STOPIA, so as to enable the 1992 Fund to present its views.
- (x) This Undertaking shall cease to have any effect in the event that STOPIA is terminated in its entirety in accordance with Clause VIII thereof.
- (xi) Any claims or disputes in relation to this Undertaking shall be governed by English law and be subject to the exclusive jurisdiction of the English High Court of Justice.

Yours sincerely,



 D.J.L. Watkins

ANNEX IV



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

FONDS INTERNATIONAL
D'INDEMNISATION DE 1992
POUR LES DOMMAGES DUS
À LA POLLUTION PAR LES
HYDROCARBURES

FONDO INTERNACIONAL
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS 1992

Our ref. POL/19-962/05jlm

23 March 2005

Mr DJL Watkins
Secretary & Executive Officer
International Group of P & I Clubs
Peek House
20 Eastcheap
London EC3M 1EB

Dear Mr Watkins

STOPIA

As you may be aware, at its 9th extraordinary session held during the period 15-22 March 2005, the Assembly of the International Oil Pollution Compensation Fund 1992 took note of the information contained in document 92FUND/A/ES.9/24 regarding the offer by the International Group of P&I Clubs to the International Oil Pollution Compensation Fund 1992 (1992 Fund) to increase, on a voluntary basis, the limitation amount for small tankers, to be known as the Small Tankers Oil Pollution Indemnification Agreement (STOPIA), which came into force on 3 March 2005, the date of the entry into force of the Supplementary Fund Protocol.

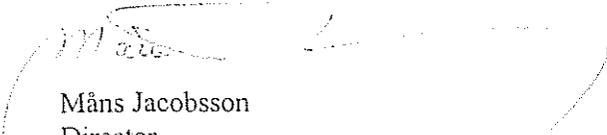
The Assembly decided that since STOPIA was a unilateral offer, it was sufficient for the 1992 Fund to note the content of STOPIA and instructed the Director to inform the International Group of P & I Clubs accordingly

The Assembly noted that the International Group of P & I Clubs had proposed that a new clause 6A should be added to the Memorandum of Understanding signed in 1980 by the 1971 Fund and the International Group and extended in 1996 by an exchange of letters to cover also the co-operation between the International Group and the 1992 Fund. The Assembly decided since STOPIA was a unilateral offer, there was no need to include the proposed new Clause 6A in the Memorandum of Understanding. The Director was instructed to address any necessary administrative, technical and legal issues in respect of STOPIA by an exchange of letters between the International Group of P&I Clubs and the 1992 Fund.

In the light of the position taken by the Assembly, the International Group of P & I Clubs has sent to the 1992 Fund a letter dated 22 March 2005 containing certain undertakings on behalf of the International Group in relation to STOPIA.

The 1992 Fund has taken due note of the undertakings set out in the letter.

Yours sincerely


Måns Jacobsson
Director

* * *

92FUND/A/ES.10/14, SUPPFUND/A/ES.2/8, 71FUND/AC.18/5, Annex IV

ANNEX V

Memorandum of Understanding with JPIA

Whereas the International Oil Pollution Compensation Fund (IOPC Fund) and the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) have recognised, based on their experience in dealing with a number of oil pollution incidents in Japan since 1979, that it is desirable for third party claims arising out of oil pollution from vessels entered with JPIA to be settled out of court,

Whereas the IOPC Fund and JPIA have recognised that if an oil spill should occur measures should be taken without any delay in order to prevent or minimise pollution damage,

Whereas it is recognised that the owner of a vessel is entitled to claim compensation from the IOPC Fund for costs of measures to prevent or minimise pollution damage (preventive measures) and for his clean-up costs in accordance with the Law on Compensation for Oil Pollution Damage, the Japanese legislation giving effect to the International Convention on Civil Liability for Oil Pollution Damage, 1969, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention),

Whereas the IOPC Fund and JPIA have agreed that a speedy payment of compensation is essential to mitigate undue financial hardship to victims of oil pollution,

Now, therefore, the IOPC Fund and JPIA agree as follows:

- 1 Should any oil spill occur from a vessel entered with JPIA, JPIA shall encourage the owner of the vessel to take appropriate measures to prevent or minimise pollution damage.
- 2 JPIA shall notify the IOPC Fund, as soon as reasonably possible, of any incident which is likely to involve the IOPC Fund, as well as the cover by JPIA applicable to the vessel at the time of the incident.
- 3 Any settlement of the third party claims and the owner's claim for his costs of preventive measures and his clean-up costs shall be made with the mutual consent of the IOPC Fund and JPIA.
- 4 When JPIA has settled claims with the consent of the IOPC Fund, JPIA will pay the third party claims and the owner's claim for his costs of preventive measures and for his clean-up costs in full provided, however, that the total amount payable by JPIA shall not exceed the sum equivalent to the cover in respect of the vessel concerned under JPIA's policy effective at the time of each particular incident. The IOPC Fund shall reimburse JPIA the sum paid thereby, minus the sum equivalent to the limit of the owner's liability under the Law on Compensation for Oil Pollution Damage. Should the aggregate amount of the established claims of third parties and the owner exceed the said cover, the IOPC Fund shall pay the balance required to satisfy the claimants. However, the total amount to be paid by the IOPC Fund in respect of any one incident shall, in no event, exceed the maximum amount of compensation payable by the IOPC Fund under Article 4 of the Fund Convention.
- 5 The IOPC Fund agrees to facilitate out of court settlement of claims mentioned in paragraph 3 above, subject to the terms and conditions stipulated in the "General Undertaking" issued by JPIA which is attached to this memorandum.

- 6 JPIA agrees to repay in full any amount paid by the IOPC Fund under this agreement if it is held by the competent court that the owner is not entitled to limit his liability under the Law on Compensation for Oil Pollution Damage. The IOPC Fund shall notify the owner and JPIA of the Pound Sterling amount of the sum in yen advanced by the IOPC Fund under this memorandum. Repayment shall be made by JPIA in Pounds Sterling and shall include interest in Pounds Sterling at a rate 1% above the lowest London clearing bank base rate for the period from the date of the receipt of each amount by JPIA to the date of repayment, provided, however, that such a repayment shall in no event exceed the sum equivalent to JPIA's cover on the vessel under JPIA's policy effective at the time of each particular incident.
- 7 The IOPC Fund will indemnify the owner or JPIA in accordance with Article 23 of the Law on Compensation for Oil Pollution Damage as soon as the owner's right to limit his liability under the said Law is established.
- 8 Wherever possible and practicable, JPIA and the IOPC Fund shall co-operate in the use of lawyers, surveyors and other experts necessary to determine the liability of the owner or of JPIA for the pollution damage. The costs incurred shall be pro-rated between the owner or JPIA, on the one hand, and the IOPC Fund, on the other, in accordance with the respective amounts of their ultimate liability for compensation for pollution damage.
- 9 On payment of compensation or indemnification by the IOPC Fund to JPIA, the IOPC Fund shall acquire by subrogation the rights that the person so compensated or indemnified may enjoy under Japanese law.
- 10 When JPIA or the IOPC Fund takes recourse action against a third party, both parties will co-operate wherever possible and practicable in pursuing such actions. The costs incurred for such actions and the monies recovered therefrom will be shared between JPIA, the IOPC Fund and other parties concerned, if any, in accordance with a formula to be agreed upon for each case.
- 11 Notwithstanding the preceding paragraphs, if either the IOPC Fund or JPIA considers it necessary to deal with a specific case in a different way than that laid down in this memorandum, each party shall notify the other to that effect. The IOPC Fund and JPIA shall, in such a case, enter into discussions in order to find a suitable way of dealing with the case which is satisfactory to both parties.
- 12 This Memorandum shall be effective when signed on behalf of JPIA and the IOPC Fund. Either party may terminate this Memorandum by giving six months' prior notice to the other party.

This 25th day of November 1985.

Signed

General Undertaking

Oil spills from vessels entered with the
Japan Shipowners' Mutual Protection and Indemnity Association

Dear Sirs

In consideration of the International Oil Pollution Compensation Fund (IOPC Fund) agreeing to facilitate the out-of-court settlement of claims arising out of oil pollution incidents involving any vessel entered with the Japan Shipowners' Mutual Protection and Indemnity Association (JPIA), JPIA hereby generally confirms that a limitation action shall be instituted before the competent court in Japan and a limitation fund in the sum corresponding to the amount of the shipowner's liability under the Japanese Law on Compensation for Oil Pollution Damage shall be constituted by the owner of such a vessel with the said court in accordance with that Law if and when the owner is called upon to do so by the IOPC Fund; JPIA guarantees the owner's payment of the sum constituting the limitation fund with the said court in accordance with the said Law.

If it is held by the competent court that the owner is not entitled to limit his liability, JPIA undertakes to repay, to the IOPC Fund, the amount paid by the IOPC Fund, in accordance with paragraph 6 of the Memorandum of Understanding signed by JPIA and the IOPC Fund on 25 November 1985, provided, however, that JPIA's liability hereunder shall not exceed the sum corresponding to the cover on the said vessel under JPIA's policy effective at the time of the relevant incident.

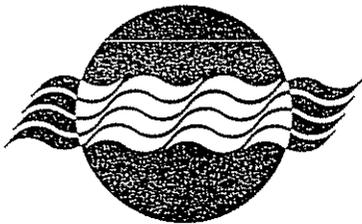
This general undertaking is without prejudice to the defences and rights available to the owner and/or JPIA under the Law on Compensation for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

This 25th day of November 1985

Signed

Japan Shipowners' Mutual Protection and Indemnity Association

* * *



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

FONDS INTERNATIONAL
D'INDEMNISATION DE 1992
POUR LES DOMMAGES DUS
À LA POLLUTION PAR LES
HYDROCARBURES

FONDO INTERNACIONAL
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS 1992

Our ref PNI-3731/00so/ac

20 December 2000

Mr Koji Toyoda
President
Japan P&I Club
2-15-14, Nihonbashi-Ningyocho, Chuouku,
Tokyo 103-0013,
JAPAN

Dear Mr Toyoda,

Cooperation between the JPIA and the 1992 Fund

I refer to previous discussions and am pleased to inform you that, as authorised by the 1992 Fund Assembly, I confirm on behalf of the 1992 Fund that the cooperation between JPIA and the 1992 Fund shall be governed by the provisions set out below, in addition to the Memorandum of Understanding signed in 1980 by the International Group of P & I Clubs and the 1971 Fund and the exchange of letters in December 1996 extending the Memorandum to cover also the 1992 Fund.

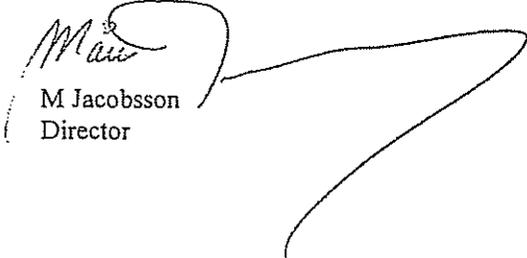
1. When JPIA requests the 1992 Fund to waive the requirement to establish the limitation fund, the Director will submit this request to the Executive Committee.
2. If the Executive Committee decides to waive the requirement to establish the limitation fund, the 1992 Fund will, without delay, inform JPIA of the decision. Should the Committee decide not to waive this requirement, the 1992 Fund will also inform JPIA thereof without delay.
3. In case the requirement to establish the limitation fund is waived by the 1992 Fund, the conversion into Japanese yen of the limitation amount shall be made on the basis of the value of that currency by reference to the Special Drawing Right on the date of the Executive Committee's adoption of the Record of Decisions of the session at which the Committee took the decision to waive this requirement.
4. When JPIA has settled claims with the consent of the 1992 Fund, JPIA will pay the third party claims and the owner's claim for his costs of preventive measures and for his clean-up costs in full provided, however, that the total amount payable by JPIA shall not exceed the sum equivalent to the limitation amount applicable to the vessel under Article V.1 of the 1992 Civil Liability Convention plus US\$2 000 000. The 1992 Fund shall reimburse JPIA the sum paid thereby, minus the sum equivalent to the limit of the owner's liability under the Law on Compensation for Oil Pollution Damage, within six months after JPIA has requested it to do so. The 1992 Fund shall also pay interest on the amount to be reimbursed from the date of JPIA's payment until the date of repayment. The Yen index at the date of JPIA's payment of the Tokyo Inter Bank Offer Rate for 3 months shall be applied for the calculation of the amount of interest to be paid.

Portland House Stag Place London SW1E 5PN United Kingdom
Telephone: +44-20-7592 7100 Telefax: +44-20-7592 7111
E-mail: info@iopcfund.org Web: <http://www.iopcfund.org>

5. When JPIA or the 1992 Fund takes recourse action against a third party, both parties will co-operate wherever possible and practicable in pursuing such actions. The costs incurred for such actions and the monies recovered therefrom will be shared between JPIA, the 1992 Fund and other parties concerned, if any, in accordance with a formula to be agreed upon in each case.
6. This Exchange of Letters will apply to spills from any ship as defined in the 1992 Civil Liability Convention, whether a coastal or ocean-going vessel, entered with JPIA provided that the pollution damage occurred in Japanese territory, territorial waters or exclusive economic zone.
7. JPIA and the 1992 Fund may give the other party six months notice that the procedures set out above will no longer apply in respect of incidents occurring after the expiry of that six months period.

I would appreciate it if you could confirm JPIA's agreement to this text.

Yours sincerely


M Jacobsson
Director

* * *



THE JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION

TELEPHONE:TOKYO (03) 3662-7220
FACSIMILE:TOKYO (03) 3662-7400
E-mail:clsims-dpl@c-club.or.jp

2-15-14, NIHONBASHI-NINGYOCHO,
CHUOH-KU, TOKYO 103-0013, JAPAN

Our Ref.

Your ref PNI-3731/00so/ac

16 January 2001

Dr. M. Jacobsson
Director
International Oil Pollution Compensation Fund 1992
Portland House, Stag Place,
London SW1E 5PN
United Kingdom

Dear Dr. Jacobsson,

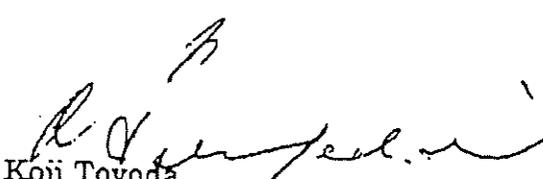
Cooperation between JPIA and the 1992 Fund

I acknowledge receipt of your letter of 20 December 2000.

I confirm on behalf of the Japan Ship Owners' Mutual Protection & Indemnity Association that the cooperation between JPIA and the 1992 Fund shall be governed by the provisions set out in your above letter, in addition to the Memorandum of Understanding signed in 1980 by the International Group of P&I Clubs and the 1971 Fund and the exchange of letters in December 1996 extending the Memorandum to cover also the 1992 Fund.

I hope that the pact would become useful tool to ensure reasonable and prompt settlements of claims for compensation in respect of oil pollution damage caused by our entered vessels in Japanese waters.

Yours sincerely


Koji Toyoda
Director General