



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

ASSEMBLY  
9th extraordinary session  
Agenda item 26

92FUND/A/ES.9/24  
7 February 2005  
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## SMALL TANKER OIL POLLUTION INDEMNIFICATION AGREEMENT (STOPIA)

### Note by the Director

<b>Summary:</b>	The International Group of P&I Clubs has presented an offer of an increase, on a voluntary basis, of the limitation amount applicable to small tankers and proposed the addition to the Memorandum of Understanding governing the co-operation between the P&I Clubs, on the one hand, and the 1971 and 1992 Funds, on the other, of a new clause relating to the implementation of this offer.
<b>Action to be taken:</b>	To consider whether to accept the offer and, if so, to approve the proposed additional clause to the Memorandum of Understanding.

### 1 The issue

The Director has received a letter from the Chairman of the International Group of P&I Clubs concerning an offer to the 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).

### 2 STOPIA

2.1 STOPIA, which will apply to pollution damage in a State for which the Supplementary Fund Protocol 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 would apply to all ships 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. The effect of STOPIA would be that the maximum amount of compensation payable by owners of all ships of 29 548 gross tonnage or less would be 20 million SDR (£16 million). The 1992 Fund would not be a party to the agreement, but the agreement would confer legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved.

2.2 The 1992 Fund would, in respect of ships covered by STOPIA, continue 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. If the incident involves a ship to which STOPIA applies, the 1992 Fund would be entitled to

indemnification by the shipowner of the difference between the shipowner's liability under the 1992 Civil Liability Convention and 20 million SDR. The 1992 Fund would be entitled to indemnification even if the Supplementary Fund would not be called upon to pay compensation in respect of the incident.

- 2.3 The submission by the International Group includes an Explanatory Note. The letter from the Group's Chairman, the text of the STOPIA Agreement and the Explanatory Note are reproduced at Annex I.
- 2.4 The Director has examined the text of STOPIA and taken legal advice on a number of issues. He considers that the text submitted by the International Group is, from a legal point of view, acceptable to the 1992 Fund.
- 2.5 The Assembly is therefore invited to consider whether to accept the offer of STOPIA, which the International Group will put into effect from 3 March 2005.

### **3 Memorandum of Understanding**

- 3.1 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 and the 1971 Fund (1980 Memorandum). This Memorandum is reproduced at Annex II.
- 3.2 The scope of the Memorandum was extended in 1996 by an exchange of letters to cover also the co-operation between the International Group and the 1992 Fund.
- 3.3 The International Group has proposed that a new Clause 6A should be added to the Memorandum in order to implement STOPIA. The proposed text of Clause 6A is at Annex III. The text has been discussed between the International Group and the Director.
- 3.4 The Director and the International Group are considering a revision of the entire Memorandum of Understanding 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. It will also be considered whether other amendments should be made in the light of experience. A proposal for a revised text will be submitted to the governing bodies of the three Organisations in due course.
- 3.5 The present text of the Memorandum only refers to the 1971 Fund and only pertains to the 1992 Fund through the exchange of letters, whereas the proposed text of Clause 6A refers directly to the 1992 Fund. This is not ideal from a legal and technical point of view. However, in view of the time constraints, the Director proposes that, pending a revision of the entire Memorandum, and on the assumption that the offer contained in STOPIA is accepted by the Assembly, the proposed Clause 6A be approved for insertion in the Memorandum at this stage.

### **4 Action to be taken by the Assembly**

The Assembly is invited:

- (a) to take note of the information contained in this document;
- (b) to consider the offer contained in STOPIA; and
- (c) to consider the proposed text of a new Clause 6A to be added to the Memorandum of Understanding.

ANNEX I

**INTERNATIONAL GROUP OF P&I CLUBS**  
**Peek House, 20 Eastcheap**  
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D.J.L. Watkins

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Mr. Mans Jacobsson  
Director  
The International Oil Pollution Compensation Fund 1992  
Portland House  
Stag Place  
London  
SW1E 5PN

28<sup>th</sup> January 2005

Dear Mr. Jacobsson,

**Small Tanker Oil Pollution Indemnification Agreement (STOPIA)**

I am writing on behalf of the International Group of P&I Clubs to request you to put before the Assembly of the International Oil Pollution Compensation Fund 1992 the text of the legally binding agreements which give effect to the Group's offer, originally made to the Fund Assembly in October 2001, to increase the maximum amount of compensation payable in respect of small tankers under the 1992 Civil Liability Convention (CLC 92).

In October 2001, the International Group expressed its support both for increasing the total amount of available compensation via the Supplementary Fund Protocol, and for maintaining the principle of sharing the cost of compensation equitably between oil receivers and tanker owners. In view of the fact that the burden of any increased compensation payable under the Supplementary Fund Protocol would fall entirely upon oil receivers, the Boards of the International Group Clubs agreed to put in place legally binding contracts which would have the effect of increasing the maximum amount of compensation paid in respect of smaller tankers from SDR 4.5 million to SDR 20 million. This will mean in effect that the minimum limit for all tankers of 29,548 gt or less will increase to SDR 20 million. As outlined in October 2001, the basis upon which the scheme will operate is that it will only apply in the event of a tanker spill affecting a State in which the Supplementary Fund Protocol is in force and when liability is imposed upon the shipowner under CLC 92. The flag of the vessel or

the ownership of the cargo are not relevant. Provided that the amount of compensation payable exceeds the shipowners' limit under CLC 92, the scheme will operate even if there is no claim upon the Supplementary Fund. Because the indemnity is payable to the 1992 Fund, all contributors to the 1992 Fund will benefit when STOPIA applies. The scheme is based upon the liability and compensation system established by the 1992 Conventions and shipowners and their Clubs reserve the right to withdraw the scheme if and when any material change to the provisions regarding tanker owners' liabilities is made.

I attach the two legally binding agreements which we intend to put into effect from the 3<sup>rd</sup> March 2005 in those States where the Supplementary Fund Protocol is in force.

The first agreement, STOPIA (Small Tanker Oil Pollution Indemnification Agreement) is an agreement between tanker owners to indemnify the 1992 Fund in respect of the Fund's liability for the difference between the shipowner's limit of liability under CLC92 and SDR 20 million. Although the 1992 Fund is not a party to this agreement, legally enforceable rights of indemnification are created for the benefit of the 1992 Fund.

The second agreement takes the form of additional provisions to be inserted into the Memorandum of Understanding (MOU) which has been in existence between the 1992 Fund and the International Group of P&I Clubs for many years. Under these new provisions, the Clubs undertake to provide cover against the liabilities incurred by their members to indemnify the 1992 Fund in accordance with STOPIA and to give the 1992 Fund the right of direct action against the insuring Club in respect of those liabilities. The Clubs also undertake to provide for automatic entry of relevant vessels in STOPIA and to advise the Fund of the names of all such vessels.

We appreciate that the Assembly may require time to consider the proposed MOU amendments, and in order to ensure that the scheme is operational from the 3<sup>rd</sup> March 2005 when the Supplementary Fund Protocol takes effect, the International Group is prepared to treat the proposed amendments to the Memorandum of Understanding as provisionally in force until such time as they receive the formal approval of the Assembly.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'A.J. Groom', written in a cursive style.

A.J. Groom

**SMALL TANKER OIL POLLUTION  
INDEMNIFICATION AGREEMENT  
(STOPIA)**

HAMBURG HONG KONG LE HAVRE LONDON PARIS PIRAEUS SHANGHAI SINGAPORE

## EXPLANATORY NOTE

This Note explains the purpose behind the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) and gives a short summary of its main features. It does not form part of the Agreement but is intended to serve as an informal guide for those interested in understanding how it is intended to operate.

The Agreement establishes the STOPIA Scheme, the object of which is to provide a mechanism for shipowners to pay an increased contribution to the funding of the international system of compensation for oil pollution from ships, as established by the 1992 Civil Liability Convention, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol. The Scheme reflects the desire of shipowners to support efforts to ensure the continuing success of this international system. It is also intended to encourage widest possible ratification of the Protocol, and has been drawn up in recognition of the potential additional burden imposed by the Protocol on receivers of oil.

STOPIA is designed to compensate for this additional burden by adjusting the financial effect of the limitation of liability provisions in CLC 92 in respect of incidents causing pollution damage in States where the Supplementary Fund Protocol is in force. The Scheme reflects the fact that CLC 92 provides for the liability limit of the shipowner to be calculated by reference to the tonnage of the ship, subject to a minimum limit of SDR 4.51 million for ships of 5,000 gross tons or less. Given that the 1992 Fund pays compensation where claims exceed the CLC 92 limit, incidents involving small tankers may result in the 1992 Fund bearing a relatively high proportion of the compensation payable, and paying compensation in a larger number of incidents than would be the case if the minimum limit under CLC 92 were higher. Against this background the Scheme provides for shipowners to bear the cost of oil spills up to a minimum level of SDR 20 million. That amount is equivalent to the liability limit under CLC 92 for a ship of 29,548 gross tons. STOPIA therefore re-apportions the ultimate cost of oil spills involving ships up to that size.

The Scheme is established by a legally binding Agreement between the owners of ships in this category which are insured against oil pollution risks by P&I Clubs in the International Group. In all but a relatively small number of cases, ships of this description will automatically be entered in the Scheme as a condition of Club cover. Their owners will be parties to the Agreement and are referred to as "Participating Owners".

As the Scheme is contractual it does not affect the legal position under the 1992 Conventions, and the victims of oil spills continue to enjoy their existing rights against the 1992 Fund. For this reason the Scheme provides for the owner of the ship involved in an incident to pay Indemnification to the 1992 Fund, rather than to pay extra sums directly to claimants.

Although the 1992 Fund is not a party to STOPIA the Agreement is intended to confer legally enforceable rights on the 1992 Fund, and it expressly provides that the 1992 Fund may bring proceedings in its own name in respect of any claim under the Scheme. The Scheme is governed by English law, and English legislation enables legally enforceable rights to be conferred in this manner.

Insurers are not parties to the Agreement, but all Clubs in the International Group have amended (or agreed to amend) their Rules to provide shipowners with cover against liability to pay Indemnification under STOPIA. The Clubs are also authorised under the Scheme to enter into ancillary arrangements enabling the 1992 Fund to enjoy a right of direct action against the relevant Club in respect of any claim under the Scheme. It is envisaged that these and other terms supporting the operation of the Scheme will be incorporated in a revised version of the current Memorandum of Understanding between the 1992 Fund and the International Group of P&I Clubs.

Whilst the above are the main features of the Scheme, its eleven clauses address numerous matters of detail. Clause I sets out various definitions, most of which are intended to dovetail with the terminology and provisions of the relevant international conventions. Clauses II and III contain

general provisions relating to the Scheme and provide for it to apply to “Relevant Ships”. Apart from a relatively small category of ships mentioned below, all tankers will be Relevant Ships if they are of 29,548 tons or less and are insured by an International Group Club. The Scheme provides that the owner of any such ship shall become a party to the Agreement when made a party by his Club in accordance with its Rules, and normally this will result in him automatically becoming a party as a condition of cover against oil pollution risks. The Agreement also provides for any Relevant Ship which he owns to be entered automatically in the Scheme.

An exception to these arrangements relates to ships which are insured by an International Group Club but are not reinsured through the Group’s Pooling arrangements. A ship in this category is not automatically entered in the Scheme, but may nonetheless be deemed to be a Relevant Ship (and be entered in the Scheme) by written agreement between the owner and his Club. Certain Japanese coastal tankers are insured outside the International Group Pooling arrangements, but it appears that fewer than 200 of these exceed 200 gross tons. By contrast, some 6,000 tankers are expected to be entered in STOPIA.

Clause IV sets out the precise circumstances in which the Participating Owner of a Relevant Ship is liable to pay Indemnification to the 1992 Fund, and it includes detailed provisions affecting the calculation of the precise amount payable.

Clause V deals with recourse against third parties, and provides for Indemnification of the 1992 Fund to be postponed until a final conclusion has been reached in any recourse action it decides to bring against other potentially responsible parties. Credit is to be given for any sums recovered, but the 1992 Fund retains an absolute discretion as to the commencement, conduct and any settlement of such proceedings. In the event of Indemnification being paid before recourse proceedings have been completed, provision is made for it to be treated as an interest-free loan until the proceedings are over. (This is to avoid the recourse claim being prejudiced as a result of the defendant being able to argue that Indemnification has reduced the loss for which the 1992 Fund may claim recovery.)

Clause VI contains time bar provisions designed to dovetail with the 1992 Conventions (and to allow the 1992 Fund a further 12 months in which to claim Indemnification after the time limit for claims against it under the 1992 Fund Convention).

Clause VII deals with amendment of the Scheme and enables changes to be made by the International Group acting as agent for all Participating Owners. No amendment is to have retrospective effect, and the Clubs have agreed that new arrangements in a revised Memorandum of Understanding should provide for consultation with the 1992 Fund in good time prior to any decision to amend the Scheme.

Clause VIII provides for the Scheme to enter into effect simultaneously with the entry into force of the Supplementary Fund Protocol. Provision is also made for termination of the Agreement in certain circumstances, notably in the event of developments which materially and significantly change the system of compensation established by the current international regime. Again, the Clubs have agreed to consult with the 1992 Fund prior to any decision to terminate STOPIA.

Under Clause IX a Participating Owner may withdraw from the Scheme, and the terms on which he may do so are set out. However it is anticipated that the owner of a Relevant Ship will not normally be able to withdraw from STOPIA without prejudicing his Club cover in respect of oil pollution risks.

Clause X sets out the legal rights under the Scheme of the 1992 Fund, and the authority of the International Group to agree ancillary arrangements with the 1992 Fund in respect of direct actions. The Clubs have agreed to bear direct liability on a similar basis to that prescribed by CLC 92.

Finally the Agreement provides by Clause XI that it is to be governed by English law and that the English High Court of Justice shall have exclusive jurisdiction in relation to any disputes thereunder.

## **SMALL TANKER OIL POLLUTION INDEMNIFICATION AGREEMENT (STOPIA)**

### **INTRODUCTION**

The Parties to this Agreement are the Participating Owners as defined herein.

The Participating Owners recognize the success of the international system of compensation for oil pollution from ships established by the 1992 Civil Liability and Fund Conventions, and they are aware that it may need to be revised or supplemented from time to time in order to ensure that it continues to meet the needs of society.

A Protocol has been drawn up and adopted to supplement the 1992 Fund Convention by providing for additional compensation to be available from a Supplementary Fund in States which opt to accede to the Protocol. The Parties wish to encourage the widest possible ratification of the Protocol, with a view to facilitating the continuance of the existing compensation system in its current form (but as supplemented by the Protocol).

In consideration of the potential additional burden imposed by the Protocol on receivers of oil, the Participating Owners have agreed to establish the scheme set out herein, whereby the Participating Owners of tankers below a specified tonnage will indemnify the International Oil Pollution Compensation Fund 1992 ("the 1992 Fund") for a portion of its liability to pay compensation under the 1992 Fund Convention for pollution damage caused by such tankers in States in respect of which the Protocol establishing the Supplementary Fund is in force.

This Agreement is intended to create legal relations and in consideration of their mutual promises Participating Owners of each Entered Ship have agreed with one another and do agree as follows -

### **I. DEFINITIONS**

- (A) The following terms shall have the same meaning as in Article I of the Liability Convention:  
"Incident", "Oil", "Owner", "Person", "Pollution Damage", "Preventive Measures", "Ship".
- (B) "1992 Fund" means the International Oil Pollution Compensation Fund 1992 as established by the 1992 Fund Convention.
- (C) "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, as amended and/or supplemented from time to time, and any domestic legislation giving effect thereto.
- (D) "Club" means a Protection and Indemnity (P&I) Association in the International Group; "the Owner's Club" means the Club by which a Relevant Ship owned by him is insured, or to which he is applying for Insurance; "his Club", "Club Party" and similar expressions shall be construed accordingly.
- (E) "Entered Ship" means a Ship to which the Scheme applies, and "Entry" shall be construed accordingly.
- (F) "Indemnification" means the indemnity payable under Clause IV of this Agreement.
- (G) "Insurance", "insured" and related expressions refer to protection and indemnity cover against oil pollution risks.
- (H) "International Group" means the International Group of P&I Clubs.



- (I) “Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage, 1992, as amended from time to time, and any domestic legislation giving effect thereto.
- (J) “Participating Owner” means the Owner of an Entered Ship who is a Party.
- (K) “Party” means a party to this Agreement.
- (L) “Protocol” means the Protocol of 2003 to Supplement the 1992 Fund Convention, and any domestic legislation giving effect thereto; and “Protocol State” means a State in respect of which the said Protocol is in force.
- (M) “Relevant Ship” has the meaning set out in Clause III(B).
- (N) “Scheme” means the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) as established by this Agreement.
- (O) “Supplementary Fund” means the Fund established by the Protocol.
- (P) “Tons” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969; the word “tonnage” shall be construed accordingly.
- (Q) “Unit of account” shall have the same meaning as that set out in Article V, paragraph 9 of the Liability Convention.

## **II. GENERAL**

- (A) This Agreement shall be known as the Small Tanker Oil Pollution Indemnification Agreement (STOPIA).
- (B) The Owner of any Relevant Ship shall be eligible to become a Party and shall do so when made a Party by the Club insuring that Ship as the Rules of that Club may provide.

## **III. THE STOPIA SCHEME**

- (A) This Agreement is made to establish STOPIA for payment of Indemnification to the 1992 Fund on the terms set out herein.
- (B) A Ship shall be eligible for Entry in the scheme if:
  - (1) it is of not more than 29,548 Tons;
  - (2) it is insured by a Club; and
  - (3) it is reinsured through the Pooling arrangements of the International Group.

Such a ship is referred to herein as a “Relevant Ship”.

- (C) Any Relevant Ship owned by a Participating Owner shall automatically be entered in the Scheme upon his becoming a Party to this Agreement in accordance with Clause II(B) above.
- (D) A Ship which is not a Relevant Ship by reason of the fact that it is reinsured independently of the said Pooling arrangements may nonetheless be deemed to be a Relevant Ship by written agreement between the Owner and his Club.

- (E) Once a Relevant Ship has been entered in the Scheme it shall remain so entered until
- (1) it ceases to be a Relevant Ship (as a result of tonnage re-measurement and/or of ceasing to be insured and reinsured as stated in Paragraph (B) above); or
  - (2) it ceases to be owned by a Participating Owner; or
  - (3) the Participating Owner has withdrawn from this Agreement in accordance with Clause IX.

#### **IV. INDEMNIFICATION OF 1992 FUND**

- (A) Where as a result of an Incident an Entered Ship causes Pollution Damage in a Protocol State in respect of which liability is incurred both under the Liability Convention by the Participating Owner of that Ship and under the 1992 Fund Convention by the 1992 Fund, the said Owner shall indemnify the 1992 Fund up to an amount calculated in accordance with Paragraph (E) below.
- (B) Pollution Damage in a Protocol State means:
- (1) Pollution Damage caused:
    - (i) in the territory, including the territorial sea, of a Protocol State; and/or
    - (ii) in the exclusive economic zone of a Protocol State, established in accordance with international law, or, if such a State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured; and/or
  - (2) the costs of Preventive Measures, wherever taken, to prevent or minimize such Pollution Damage.
- (C) Indemnification shall not be payable for:
- (1) the costs of any Preventive Measures to the extent that the Participating Owner is exonerated from liability under Article III, paragraph 3 of the Liability Convention, and for which the 1992 Fund is liable by virtue of Article 4, paragraph 3 of the 1992 Fund Convention;
  - (2) any other Pollution Damage to the extent that liability is incurred by the 1992 Fund but not by the Participating Owner.
- (D) Indemnification due under this Agreement shall be payable irrespective of whether any payments are made from the Supplementary Fund in respect of the Incident.
- (E) The amount for which Indemnification is payable by the Participating Owner shall be the aggregate amount of compensation paid by the 1992 Fund for Pollution Damage in a Protocol State, provided always that –
- (1) for the purpose of this Clause IV(E) the aggregate amount of compensation paid by the 1992 Fund shall be the total amount of compensation paid by the 1992 Fund less

any sums recovered by the 1992 Fund in recourse action pursuant to Clause V below (net of the costs of such recourse action);

- (2) the Indemnification amount shall not exceed in respect of any one Incident an amount equivalent to 20 million units of account less –
  - (i) the amount of the Owner's liability under the Liability Convention as limited by Article V, paragraph 1 thereof; and
  - (ii) any amounts which he or his Club is entitled to recover from the 1992 Fund in respect of the Incident, whether in their own right, by subrogation, assignment or otherwise.
- (F) The deduction referred to in Paragraph (E)(2)(i) above shall be made irrespective of whether the Participating Owner is entitled to avail himself of limitation.
- (G) For the purposes of this Agreement the conversion of units of account into national currency shall be made in accordance with Article V, paragraph 9 of the Liability Convention.

## **V. RECOURSE AGAINST THIRD PARTIES**

- (A) Any decisions as to whether the 1992 Fund is to take recourse action against any third parties, and as to the conduct of any such action, including any out-of-court settlement, are in the absolute discretion of the 1992 Fund.
- (B) Unless otherwise agreed, payment of Indemnification to the 1992 Fund shall be postponed until such time as the 1992 Fund gives 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. For these purposes a final conclusion may include a decision by the 1992 Fund not to take such action, or to discontinue any such action already commenced.
- (C) Paragraph (B) above shall not prevent the 1992 Fund from commencing proceedings against the Participating Owner and the Club in order to protect its rights hereunder from becoming time-barred.

The Participating Owner and his Club agree to grant to the 1992 Fund any extension of time which the 1992 Fund may reasonably require in respect of the commencement or conduct of such proceedings in circumstances where recourse action is ongoing and/or no notice of final conclusion has been given in accordance with Paragraph (B) above.

- (D) Without prejudice to Paragraph (A) above, the 1992 Fund may consult with the Participating Owner and/or his Club in relation to any recourse action in which they are actual or potential claimants. Nothing in this Agreement shall prevent the 1992 Fund, the Owner and the Club from agreeing on any arrangements relating to such action as may be considered appropriate in the particular case, including any terms as to the apportionment of the costs of funding such action, or as to the allocation of any recoveries made.
- (E) If the 1992 Fund decides not to take recourse action against any third party or, after such action has been taken, decides not to pursue the action, Indemnification is payable on condition that the 1992 Fund will execute such reasonable documentation as may be required to transfer to the Participating Owner and/or his Club, by subrogation, assignment or otherwise, any rights of recourse which it may have against third parties, to the extent of any interest which they may have in recoveries from such parties by virtue of Indemnification paid under this Agreement.

- (F) In the event of the Participating Owner agreeing to pay Indemnification before the 1992 Fund has given notice as mentioned in Paragraph (B) above, such payment shall (unless otherwise agreed) be subject to the condition that it is to be treated as an interest-free loan repayable on demand until such notice is given, whereupon it shall cease to be repayable.
- (G) Indemnification is also paid on the condition that if, after it has been paid, the 1992 Fund for any reason recovers any sums from any third party, the 1992 Fund will account to the Participating Owner for such recoveries (net of any costs incurred by the 1992 Fund in making them), so as to reimburse the Participating Owner any Indemnification paid by him in excess of the amount which would have been payable in accordance with Clause IV(E) above.
- (H) Save where the 1992 Fund has been notified to the contrary, the Club insuring the Participating Owner shall be deemed to be authorised to act on his behalf in receiving notice from the 1992 Fund under Paragraph (B) above; in granting any time extension or extensions under Paragraph (C) above; in receiving any reimbursement pursuant to Paragraph (G) above; and in agreeing all and any other matters relating to the operation of this Clause V.

## **VI. PROCEDURE AND MISCELLANEOUS**

Any rights of the 1992 Fund to Indemnification under this Agreement shall be extinguished unless an action is brought hereunder within four years from the date when the Pollution Damage occurred. However, in no case shall an action be brought after seven years from the date of the Incident which caused the damage. Where this Incident consists of a series of occurrences, the seven years' period shall run from the date of the first such occurrence.

## **VII. AMENDMENT**

- (A) This Agreement may be amended at any time by the International Group acting as agent for all Participating Owners.

Any such amendment to this Agreement will take effect three months from the date on which written notice is given by the International Group to the 1992 Fund.

- (B) Each Participating Owner agrees that the International Group shall be authorized to agree on his behalf to an amendment of this Agreement if -
  - (1) it is so authorized by his Club, and
  - (2) his Club has approved of the amendment by the same procedure as that required for alteration of its Rules.
- (C) Any amendment to the Agreement shall not affect rights and obligations in respect of any incident which occurred prior to the date when such amendment enters into force.

## **VIII. DURATION**

- (A) This Agreement shall enter into effect simultaneously with the entry-into-force of the Protocol.
- (B) Subject to the following provisions of this Clause VIII, this Agreement may be terminated at any time by the International Group acting on behalf of all Participating Owners.

- (C) Each Participating Owner agrees that the International Group shall be authorized to terminate this Agreement on his behalf if -
- (1) the Clubs cease to provide Insurance against the liability of Participating Owners to pay Indemnification under this Agreement; or
  - (2) any international instrument is adopted or agreement is reached, or any relevant domestic or regional law is made or adopted (including any binding judicial decision or precedent), which does or will materially and significantly change the system of compensation established by the Liability Convention, the 1992 Fund Convention and the Protocol, and/or the operation of that system in any one or more Protocol States (hereinafter referred to as a “material change”); or
  - (3) termination is authorized by his Club, and his Club has approved of the termination by the same procedure as that required for alteration of its Rules.
- (D) Termination shall not take effect until three months after the date on which the 1992 Fund is notified thereof in writing by the International Group. In the event of termination on the grounds stated in Paragraph (C)(2) above, such notice may specify that termination is take effect -
- (1) at such later date, if any, on which the material change takes effect; and/or
  - (2) either entirely, or in relation only to Pollution Damage in any State or States specified in the notice as being affected by such change.
- (E) The termination of this Agreement shall not affect rights or obligations in respect of any Incident which occurs prior to the date of termination.

## **IX. WITHDRAWAL**

- (A) A Participating Owner may withdraw from this Agreement –
- (1) on giving not less than 3 months’ written notice of withdrawal to his Club; or
  - (2) by virtue of an amendment thereto, provided always –
    - (i) that he exercised any right to vote against the said amendment when his Club sought the approval thereto of its members; and
    - (ii) that within 60 days of the amendment being approved by the membership of his Club he gives written notice of withdrawal to his Club; and
    - (iii) that such withdrawal shall take effect simultaneously with the entry-into-effect of the amendment, or on the date on which his notice is received by his Club, whichever is later.
- (B) If a Participating Owner ceases to be the owner of a Relevant Ship he shall be deemed, in respect of that ship only, to withdraw from this Agreement with immediate effect and shall give written notice to the 1992 Fund that he has ceased to be the owner of that Relevant Ship.
- (C) A Participating Owner withdrawing from this Agreement shall have no further liability hereunder as from the date when his withdrawal takes effect; provided always that no withdrawal shall affect rights or obligations in respect of any Incident which occurs prior to that date.

## **X. LEGAL RIGHTS OF 1992 FUND**

(A) Though not a Party to this Agreement, the 1992 Fund is intended to enjoy legally enforceable rights of Indemnification as described herein, and accordingly the 1992 Fund shall be entitled to bring proceedings in its own name against the Participating Owner in respect of any claim it may have hereunder.

(B) Notwithstanding Paragraph (A) above, the consent of the 1992 Fund shall not be required to any amendment, termination or withdrawal made in accordance with the terms of this Agreement.

(C) The Parties to this Agreement authorize the International Group to agree terms with the 1992 Fund on which a claim for Indemnification under this Agreement in respect of an Entered Ship (or previously Entered Ship) may be brought directly against the Club insuring the Ship at the time of the Incident. They also agree that in the event of the 1992 Fund bringing proceedings to enforce a claim against a Club in respect of an Entered Ship, the Club may require the Participating Owner to be joined in such proceedings.

## **XI. LAW AND JURISDICTION**

This Agreement shall be governed by English law and the English High Court of Justice shall have exclusive jurisdiction in relation to any disputes hereunder.

**January 2005**

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## ANNEX II

### 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 III

#### STOPIA

#### **Additional provisions for the MoU between the Clubs and the 1992 Fund**

**Draft - 27/01/05**

#### 6A. STOPIA

- (i) The following terms in this Clause 6A 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 Clause 6A 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 6A(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 Clause 6A(iv)(c) above or otherwise, of the Ship's non-entry (or cesser of entry) in STOPIA.

- (vii) For the avoidance of doubt, this Clause 6A 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 Clause 6A 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 Clause 6A of this Memorandum shall cease to have any effect in the event that STOPIA is terminated in its entirety in accordance with Clause VIII thereof.
- (xi) The 1992 Fund may terminate Clause 6(A) by giving three months notice to the International Group.
- (xii) Any claims or disputes in relation to Clause 6A of this Memorandum shall be governed by English law and be subject to the exclusive jurisdiction of the English High Court of Justice.