



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 4	IOPC/OCT15/4/6	
Original: ENGLISH	23 September 2015	
1992 Fund Assembly	92A20	●
1992 Fund Executive Committee	92EC65	
Supplementary Fund Assembly	SA11	●

INTERIM PAYMENTS

Note by the Secretariat

Summary:

At its 6th session held in October 2009, the 1992 Fund Administrative Council decided to establish an intersessional Working Group to consider the procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants could not prove their losses, and also to consider the question of the funding of interim payments to claimants.

In April 2013, the Working Group decided to close the Group, having made good progress in discussing the problems of assessing a large number of small claims, changes to the Claims Manual, and the toolbox which was available to Member States in the event of an oil spill in their jurisdiction. However, it was noted that the Director and the International Group of P&I Associations (International Group) would continue to discuss the issues relating to interim payments with the aim of finding a solution which was acceptable to them both and would submit a recommendation to the 1992 Fund Assembly at a future session.

At its April 2015 session, the 1992 Fund Administrative Council noted that no agreement had been reached between the Director and the International Group but that a further meeting would be held between the Director and the International Group in May 2015 and stated that it was in the interests of both parties to find a solution. At that same session, the Director was also requested to examine Regulation 7 of the Internal Regulations of the 1992 Fund, in consultation with the Audit Body, and to report back with proposed changes to the governing bodies in October 2015.

Recent developments:

In May and June 2015, the Director met with the International Group to discuss proposed amendments to the text of the existing Memorandum of Understanding (MoU), which currently provides details of cooperation on claims-handling procedures and costs of joint experts in respect of incidents involving an International Group P&I Club, the 1992 Fund and the Supplementary Fund as the case may be. The parties agreed that there were two areas which required further work, namely the immunities of the 1992 Fund and Supplementary Fund and the concept of 'established claims'.

In September 2015, the Director met again with the International Group to continue the discussions on the proposed amendments to the MoU. The two areas now requiring further discussion are the jurisdiction clause within the MoU and the concept of 'established claim'.

Given the importance and sensitivity of the issues involved, the Director proposes to establish a Consultation Group of a limited number of Member States to work with him and the International Group to:

- (i) Examine the issues which need to be resolved in respect of interim payments;
- (ii) discuss a new text of a MoU between the International Group and the 1992 Fund and Supplementary Fund which would contain the terms and conditions under which interim payments would be made in future; and
- (iii) make recommendations to the governing bodies at their October 2016 sessions.

Action to be taken: 1992 Fund Assembly and Supplementary Fund Assembly

- (i) Decide whether to establish a Consultation Group of a limited number of 1992 Fund Member States to work with the Director and the International Group to examine the issues which need to be resolved in respect of interim payments with a view to making recommendations to the governing bodies at their October 2016 sessions; and
- (ii) If the decision to establish the Consultation Group is taken, consider the draft mandate and composition of the Consultation Group contained at Annex II.

1 Background information

- 1.1 At its 6th session held in October 2009, the 1992 Fund Administrative Council decided to establish an intersessional Working Group (the 6th intersessional Working Group) to consider the procedures for the assessment of large numbers of claims for relatively small amounts, in particular where claimants could not prove their losses, and also the question of the funding of interim payments to claimants.
- 1.2 Since that date, the 1992 Fund Assembly has been addressing the complex legal and technical issues of subrogation rights and interim payments. In July 2011, the Working Group established a Consultation Group of a small number of Member States, the Comité Maritime International (CMI), the International Group of P&I Associations (International Group) and the Secretariat to further consider the complex issues.
- 1.3 The Consultation Group met in July and October 2011 to discuss how to proceed and, as a result of the discussions, the Director and the International Group decided to jointly commission a study to address, *inter alia*, the following issues:
- (i) the practice that had been followed by the P&I Clubs and the IOPC Funds in making interim payments under the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention, and previously under the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention;
 - (ii) the problems faced by P&I Clubs when making interim payments; and
 - (iii) the possible solutions to the problems identified in (ii) above.
- 1.4 The Secretariat and the International Group engaged the services of Mr Måns Jacobsson (a former Director of the IOPC Funds) and the late Mr Richard Shaw of CMI to carry out the study. At its April 2012 meeting, the Working Group considered the results of the legal analysis conducted by

Mr Jacobsson and Mr Shaw (document [IOPC/APR12/10/1](#)) as well as a draft Assembly Resolution proposed by the International Group but no agreement was reached.

- 1.5 The Director and the International Group held a number of constructive and useful meetings since October 2013 on the issue of interim payments with the aim of finding a solution which would be agreeable to both the IOPC Funds and the International Group. Options discussed included a possible amendment to the 2006 MoU between the International Group and the Funds^{<1>} (see Annex I to this document) which does not contain any provisions on interim payments, and the adoption of an Assembly Resolution.
- 1.6 At the October 2014 session of the 1992 Fund Assembly, the International Group indicated that given the circumstances surrounding the winding up of the 1971 Fund and the conclusion of the *Nissos Amorgos* incident, it did not wish to raise Member States' expectations regarding the provision of interim payments by International Group P&I Clubs in the future. The International Group stated that there was a greater probability that International Group P&I Clubs would follow the approach set down in the 1992 Civil Liability Convention (1992 CLC) and establish a limitation fund for distribution as the court saw fit, which could result in the funds that the Club provided being unavailable to claimants until a considerable time after the incident.
- 1.7 At its April 2015 session, the 1992 Fund Administrative Council considered the document submitted by the Director (document [IOPC/APR15/4/4](#)) which highlighted the differences between 'interim payments' and 'provisional payments' and noted that interim payments made by P&I Clubs were generally paid very soon after an incident occurred. It noted that, while initially they might be paid with the intention of alleviating the financial losses suffered by claimants, they might also be paid with the intention of settling claims, by means of a final payment in return for a signed receipt and release form from the claimant, which subrogated the claimants' rights back to the P&I Club.
- 1.8 The Administrative Council noted that 'provisional payments', as provided for within Article 18.7 of the 1992 Fund Convention and Regulations 7.9-7.14 of the 1992 Fund Internal Regulations, were primarily designed to mitigate undue financial hardship.
- 1.9 The 1992 Fund Administrative Council instructed the Director to examine Regulation 7 of the Internal Regulations of the 1992 Fund, in consultation with the Audit Body, and to report back with proposed changes to the governing bodies in October 2015.
- 1.10 The Administrative Council also noted the positive response to the proposed meeting to be held between the Director and the International Group in May 2015 and noted that it was in the interests of both parties to find a solution.

2 Discussions with the International Group

- 2.1 In May and June 2015 the Director met with the International Group to discuss proposed amendments to the text of the existing MoU, which currently provides details of cooperation on claims-handling procedures and costs of joint experts in respect of incidents involving an International Group P&I Club and the 1992 Fund. Following the meetings, the parties agreed to meet again in early September 2015, to further discuss proposed amendments to the MoU.
- 2.2 In September 2015, the Director met again with the International Group to continue the discussions on the proposed amendments to the MoU. The discussions revealed that there were two areas where further work was still required namely, the jurisdiction clause within the MoU and the concept of 'established claim'.
- 2.3 The issues to consider are delicate and require careful consideration, and accordingly, the Director and the International Group wish to continue with their efforts to attempt to find an amicable agreement which could be proposed to the governing bodies.

<1> Memorandum of Understanding between the International Group and the 1992 Fund and Supplementary Fund signed on 19 April 2006.

3 Examination of Regulation 7 of the Internal Regulations

- 3.1 In accordance with the instructions given to the Director by the Administrative Council, the need to examine Regulation 7 of the Internal Regulations was highlighted by the Director to the Audit Body at its June 2015 meeting. The next meeting of the Audit Body will take place in December 2015, at which time the Director and Audit Body will consider the matter further.
- 3.2 In the meantime, if there were to be an oil spill affecting a 1992 Fund Member State where the possibility of the 1992 Fund making provisional payments might arise, the Director would convene an extraordinary session of the 1992 Fund Executive Committee to request authority to pay in excess of the amounts he is authorised to pay under Regulation 7.4 of the Internal Regulations.

4 Director's considerations

- 4.1 Considerable progress has been made on the question of the funding of interim payments to claimants. The legal analysis conducted by Mr Jacobsson and Mr Shaw in April 2012 is particularly important since it clarifies the practice in respect of interim payments developed over the years by P&I Clubs members of the International Group and the IOPC Funds.
- 4.2 Litigation in 2014 between the Gard Club and the 1971 Fund in respect of the *Nissos Amorgos* incident prevented these discussions from continuing. However, now that the litigation is over, discussions have resumed.
- 4.3 There are two areas where further work is required, namely the jurisdiction clause within the MoU and the concept of 'established claim'.
- 4.4 The current MoU signed in 2006 provides that any claims or disputes shall be subject to the exclusive jurisdiction of the English High Court. A question to be resolved is how to reconcile a jurisdiction clause in the MoU with the immunity granted to the 1992 Fund and Supplementary Fund by the Headquarters Agreements between the Government of the United Kingdom and the 1992 Fund and the Supplementary Fund.
- 4.5 Another area where further work is required is the concept of 'established claim' within the MoU and, in particular, whether a final judgement of a competent court in proceedings against the owner and/or the Club, where the Fund has been notified of them in accordance with Article 7.6 of the 1992 Fund Convention, can be considered an established claim.
- 4.6 These two areas are clearly legally complex and difficult and require careful consideration.
- 4.7 In order to make progress on this matter, the Director proposes the establishment of a Consultation Group of a limited number of 1992 Fund Member States to work with him and the International Group to examine the issues which need to be resolved in respect of interim payments and to make recommendations to the governing bodies at their October 2016 sessions.
- 4.8 A draft mandate and composition of the Consultation Group is at Annex II.

5 Action to be taken

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited:

- (i) to take note of the information contained in this document;
- (ii) to decide whether to establish a Consultation Group of a limited number of 1992 Fund Member States to work with the Director and the International Group to examine the issues which need

- to be resolved in respect of interim payments with a view to making recommendations to the governing bodies at their October 2016 sessions; and
- (iii) if the decision to establish the Consultation Group ((ii) above) is taken, consider the draft mandate and composition of the Consultation Group contained at Annex II.

* * *

**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

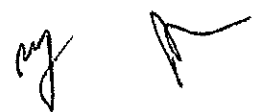
The Clubs (together or individually, as the case may be) shall encourage and recommend that each of their Members promptly take or cause to be taken or co-operate in taking preventive measures (as defined in Article I(7) of the 1992 Civil Liability Convention) when there is an escape or discharge of 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



ANNEX I

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

- A. As regards the implementation of the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006^{<1>}, 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 at the time of the incident.
- 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

^{<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.

ANNEX I

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 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

- A. As regards the implementation of the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006^{<2>}, 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.

<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.

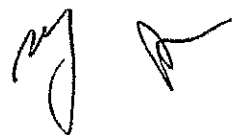


ANNEX I

- D. Each Club shall through the International Group Secretariat notify the Supplementary Fund as soon as practicable of
- (a) 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
 - (b) 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.
- 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 non-entry (or 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

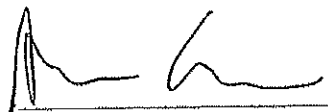
- A. This Memorandum shall enter into force when signed on behalf of the International Group of P & I Clubs and the Funds.
- B. The International Group and the Funds may terminate this Memorandum by giving six months' prior written notice to the other party.

Dated 19 April 2006

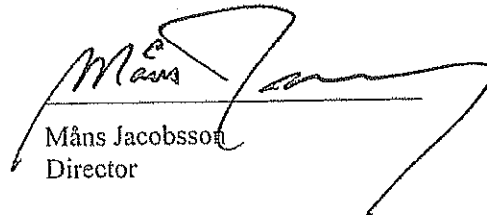
For the International Group of P&I Clubs

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

Signed



Alistair Groom
Chairman



Måns Jacobsson
Director

ANNEX I

SCHEDULE

- (1) AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC. of 60 Broad Street, 37th Floor, New York, NY 10004, United States of America;
- (2) ASSURANCEFORENINGEN GARD (GJENSIDIG) of P.O. Box 1563 Myrene, 4801 Arendal, Norway;
- (3) ASSURANCEFORENINGEN SKULD (GJENSIDIG) of P.O. Box 1376 Vika, N-0114 Oslo, Norway;
- (4) THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION LIMITED of New City Court, 20 St. Thomas Street, London, SE1 9RR, England;
- (5) GARD P&I (BERMUDA) LIMITED of PO Box HM 665, Hamilton HMCX, Bermuda;
- (6) THE JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION of 2-15-14 Nihonbashi - Ningyocho, Chuo-ku, Tokyo 103, Japan;
- (7) THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION LIMITED of 50 Leman Street, London, E1 8HQ, England;
- (8) THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED of The Quayside, Newcastle-upon-Tyne, NE1 3DU, England;
- (9) THE SHIPOWNERS' MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG) of 99 Grand-Rue, L-1661 Luxembourg;
- (10) SKULD MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (BERMUDA) LIMITED of Clarendon House, Church Street, Hamilton, Bermuda;
- (11) THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION (BERMUDA) LIMITED of Dallas Building, 7 Victoria Street, P.O. Box HM 1743, Hamilton, Bermuda;
- (12) THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION (EUROPE) LIMITED of International House, 1 St. Katharine's Way, London, E1 9UN, England;
- (13) THE STANDARD STEAMSHIP OWNERS' PROTECTION AND INDEMNITY ASSOCIATION (LONDON) LIMITED of International House, 1 St. Katharine's Way, London, E1 9UN, England;
- (14) THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LIMITED of Clarendon House, Church Street West, Hamilton, Bermuda;
- (15) THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED of Aquatical House, 39 Bell Lane, London, E1 7LU, England;
- (16) SVERIGES ANGFARTYGS ASSURANS FORENING of Gullbergs Strandgata 6, S-0122 Goteborg, Sweden;

ANNEX I

- (17) THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED of Windsor Place, 18 Queen Street, P.O. Box HM665, Hamilton HMCX, Bermuda; and
- (18) THE WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION (LUXEMBOURG) of 33 Boulevard Prince Henri, Luxembourg.

ANNEX II

MANDATE AND COMPOSITION OF THE CONSULTATION GROUP ON INTERIM PAYMENTS

At its October 2015 session, the 1992 Fund Assembly recalled that, in July 2011, the 6th intersessional Working Group had established a Consultation Group of a small number of Member States, the Comité Maritime International (CMI), the International Group of P&I Associations (International Group) and the Secretariat to further consider the complex legal and technical issues of subrogation rights and interim payments.

The Assembly further recalled that the Consultation Group had met in July and October 2011 to discuss how to proceed and, as a result of the discussions, the Director and the International Group had decided to jointly commission a study to address, *inter alia*, the following issues:

- (i) the practice that had been followed by the P&I Clubs and the IOPC Funds in making interim payments under the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention, and previously under the 1969 Civil Liability Convention (1969 CLC) and the 1971 Fund Convention;
- (ii) the problems faced by P&I Clubs when making interim payments; and
- (iii) the possible solutions to the problems identified in (ii) above.

The Assembly also recalled that the Secretariat and the International Group had engaged the services of Mr Måns Jacobsson (a former Director of the IOPC Funds) and the late Mr Richard Shaw of CMI to carry out the study.

The Assembly further recalled that, at its April 2012 meeting, the Working Group had considered the results of the legal analysis conducted by Mr Jacobsson and Mr Shaw (document IOPC/APR12/10/1) as well as a draft Assembly Resolution proposed by the International Group but that no agreement had been reached.

The Assembly also recalled that the International Group and the Director had held a number of constructive and useful meetings since October 2013 on the issue of interim payments with the aim of finding a solution which would be agreeable to both the International Group and the IOPC Funds. Options discussed had included a possible amendment to the 2006 Memorandum of Understanding between the International Group and the Funds^{<1>} which does not contain any provisions on interim payments, and the adoption of an Assembly Resolution.

The Assembly further recalled, however, that as the subject was complex and difficult, no form of wording suitable to both parties had yet been found and the parties were continuing to discuss the issues.

In order to make progress on this matter, the 1992 Fund Assembly decided to establish a Consultation Group to work with the Director and the International Group on the issue of interim payments with the following mandate and composition:

Mandate

1. To examine the issues which need to be resolved in respect of interim payments.
2. To discuss the text of a new Memorandum of Understanding (MoU) between the International Group and the 1992 Fund and Supplementary Fund which would contain the terms and conditions under which interim payments would be made in future.

^{<1>} Memorandum of Understanding between the International Group and the 1992 Fund and Supplementary Fund signed on 19 April 2006.

3. To make recommendations to the governing bodies at their October 2016 sessions.

Composition

1. The Consultation Group shall be composed of :
[NAMES/STATES TO BE INSERTED]
 2. The Consultation Group may wish to consult with the Chairman of the 1992 Fund Assembly and the Chairman of the Supplementary Fund Assembly.
 3. The Consultation Group may also wish to consult with legal and other experts as required. [NAMES TO BE INSERTED]
 4. The Consultation Group will elect its own Chairman.
 5. The Consultation Group will conduct its work in English and no interpretation facilities will be provided.
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