

INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
16th session  
Agenda item 4

FUND/EXC.16/6  
4 August 1986

Original: ENGLISH

CLAIMS SETTLEMENT PROCEDURE  
FOR INCIDENTS IN JAPAN

Note by the Director

1 At its 14th session, the Executive Committee authorized the Director to deal with incidents occurring in Japan in accordance with a procedure described in paragraphs 10 to 16 of document FUND/EXC.14/4/1. The proposed procedure was based on the practice developed by the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the IOPC Fund on the basis of an agreement entered into on 10 August 1979 in connection with the MIYA MARU N°8 incident, the first of the IOPC Fund's Japanese incidents.

2 A solution to certain problems of a practical nature in connection with the Japanese incidents had been discussed between the Director and JPIA. On the occasion of his visit to Japan in November 1985, the Director and JPIA reached agreement on the procedure to be followed. This procedure is governed by two documents of 25 November 1985, a "Memorandum of Understanding" signed by the IOPC Fund and JPIA and a "General Undertaking" issued by JPIA.

3 The Memorandum of Understanding lays down general principles of co-operation between JPIA and the IOPC Fund in respect of claim settlements and the payment of compensation and indemnification. It is mainly a codification of the procedure that had already been applied and which, in its turn, was based on the above-mentioned agreement entered into in connection with the MIYA MARU N°8 incident. It is similar, to a large extent, to the corresponding Memorandum of Understanding of 5 November 1980 signed by the IOPC Fund and the International Group of P & I Clubs (document FUND/A/ES.1/3, Attachment).

4 In the General Undertaking JPIA guarantees the payment into court of the shipowner's limitation amount if and when the IOPC Fund requests such a payment to be made. JPIA also guarantees to

refund the amounts that the IOPC Fund may have paid to claimants in respect of claims relating to a particular incident if it were held by the competent court that the shipowner was not in fact entitled to limit his liability.

5 The texts of the Memorandum of Understanding and the General Undertaking are annexed to this document.

Action to be Taken by the Executive Committee

6 The Executive Committee is invited to take note of the information contained in this document.

\* \* \*

ANNEXMemorandum of Understanding

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.

JK. m7

- 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.

*J.K. May*

- 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 preceeding 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.

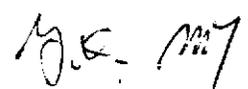
This 25th day of November 1985

International Oil Pollution  
Compensation Fund

  
.....  
Director

Japan Ship Owners' Mutual Protection  
and Indemnity Association

  
.....  
Director



To: The International Oil Pollution Compensation Fund

General Undertaking

Oil Spills from Vessels Entered with the  
Japan Shipowners' Mutual Protection and Indemnity Association  
-----

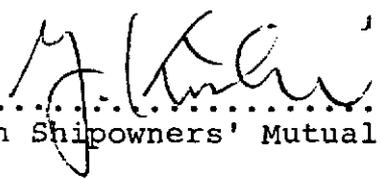
Dear Sirs

In consideration of the International Oil Pollution Compensation Fund's (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



.....  
Japan Shipowners' Mutual Protection and Indemnity Association

\_\_\_\_\_