



## CO-OPERATION WITH P & I CLUBS

### Note by the Director

<b>Summary:</b>	The framework for co-operation with the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) is discussed.
<b>Action to be taken:</b>	Information to be noted.

- 1 The 1971 Fund has over the years co-operated closely with the insurer of the shipowner's third party liability insurer (normally one of the P & I Clubs) in its claim settlement procedures. The investigation of an incident and the assessment of the damage caused are normally carried out jointly by the P & I Club and the 1971 Fund. 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). A special Memorandum was signed in 1985 governing co-operation between the Japan Ship Owners' Mutual Protection and Indemnity Association (JPIA) and the 1971 Fund (1985 Memorandum). The 1985 Memorandum contains certain provisions covering the payment of claims (paragraphs 4 - 7) for which there are no corresponding provisions in the 1980 Memorandum. These Memoranda are reproduced in Annexes I and II.
- 2 At its 1st extraordinary session, the 1992 Fund Assembly agreed that it would be appropriate to extend the scope of the 1980 Memorandum to cover also co-operation between the P & I Clubs and the 1992 Fund, and authorised the Director to agree with the International Group on the text of letters to be exchanged to this effect (document 92FUND/A/ES.1/22, paragraph 12.1).
- 3 By an exchange of letters, agreement was reached with the International Group of P & I Clubs as follows:

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.

- 4 The reason for a special Memorandum having been signed in 1985 covering co-operation between the JPIA and the 1971 Fund is that JPIA was not at that time a member of the International Group of P & I Clubs. JPIA is now a full member of the International Group and is therefore covered by the 1980 Memorandum and by the exchange of letters referred to in paragraph 3 above.
- 5 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 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. The Assembly authorised the Director to agree with JPIA on the text of such letters (document 92FUND/A/ES.1/22, paragraph 12.2).
- 6 The Director has held further discussions with JPIA. JPIA has expressed the view that, since it is now a full member of the International Group of P & I Clubs, it is not necessary to have a special Memorandum covering co-operation between JPIA and the 1992 Fund. It would, in JPIA's view, be more appropriate if the same Memorandum were to apply to JPIA as to the other members of the International Group. In the light of these discussions the Director takes the view that the 1980 Memorandum of Understanding between the International Group of P & I Clubs and the 1971 Fund, together with the agreement on the application of the Memorandum to the 1992 Fund, would in general be sufficient to ensure co-operation between JPIA and the 1992 Fund.
- 7 The Director discussed with JPIA whether to proceed to an exchange of letters which would deal with certain aspects which are not covered by the Memorandum signed by the International Group of P & I Clubs, in particular the waiver of the shipowner's obligation to constitute the limitation fund and the co-operation between JPIA and the 1992 Fund in recourse actions. Such a letter from the 1992 Fund to JPIA could read as follows:
  - 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.
  - 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.
  - 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.
  - 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, within six months after JPIA has requested it to do so, the sum paid minus the sum equivalent to the limit of the owner's liability under the Law on Compensation for Oil Pollution Damage. The 1992 Fund shall also pay interest on the

amount to be reimbursed from the date of JPIA's payment to 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.

- 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.

**Action to be taken by the Assembly**

**8** The Assembly is invited:

- a) to take note of the information contained in this document; and
- b) to authorise the Director to agree with JPIA on the text of letters to be exchanged.

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## 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

### 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

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