

INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

ASSEMBLY
11th extraordinary session
Agenda item 6

92FUND/A/ES.11/6
20 April 2006
Original: ENGLISH

ASSEMBLY
3rd extraordinary session
Agenda item 6

SUPPFUND/A/ES.3/5

ADMINISTRATIVE COUNCIL
19th session
Agenda item 5

71FUND/AC.19/4

CO-OPERATION WITH P&I CLUBS

Note by the Director

Summary:	At their February/March 2006 sessions, the Assemblies of the 1992 Fund and the Supplementary Fund approved a Memorandum of Understanding between these Funds and the International Group of P&I Clubs regarding joint claims settlement procedures and the undertakings by the Clubs in respect of the new voluntary arrangements of STOPIA and TOPIA. Minor editorial amendments to the text submitted to the Assemblies have been agreed with the International Group of P & I Clubs, and the Memorandum of Understanding has been signed by the parties.
Action to be taken:	Information to be noted.

- 1 At their February/March 2006 sessions the Assemblies of the 1992 Fund and the Supplementary Fund approved a Memorandum of Understanding between these Funds and the International Group of P & I Clubs regarding joint claims settlement procedures and the undertakings by the Clubs in respect of the new voluntary arrangements of STOPIA and TOPIA. The Director was authorised to agree minor editorial amendments to the text with the International Group and to sign the Memorandum on behalf of the Funds (document 92FUND/A/ES.10/18, paragraph 14.2 and SUPPFUND/A/ES.2/9, paragraph 9.2).
- 2 The Director has reached agreement with the International Group on editorial amendments to Clauses 9B, 10D and 10F to ensure consistency with other provisions.
- 3 The Memorandum was signed on 19 April 2006 by the Director and the Chairman of the International Group of P & I Clubs.
- 4 The Memorandum is reproduced at the Annex.
- 5 **Action to be taken by the governing bodies**

The governing bodies are invited to take note of the information contained in the present document.

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ANNEX

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

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

1 Notification of incidents to the 1992 Fund

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

2 Preventive measures

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

3 Consultations

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

4 Claims handling

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



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

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

5 Interpretation of the term "pollution damage"

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

6 Prompt payment of compensation

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

7 Subrogated rights

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

8 Recourse actions against third parties

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



9 **STOPIA 2006**

- 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.



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.



- 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

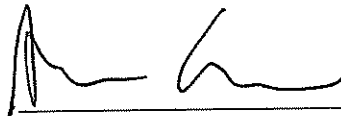
- A. This Memorandum shall enter into force when signed on behalf of the International Group of P & I Clubs and the Funds.
- B. The International Group and the Funds may terminate this Memorandum by giving six months' prior written notice to the other party.

Dated 19 April 2006

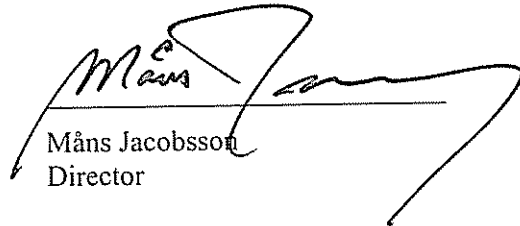
For the International Group of P&I Clubs

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

Signed



Alistair Groom
Chairman



Måns Jacobsson
Director

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 Lemn 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 Clarenden 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;

- (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.