



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

ASSEMBLY
10th extraordinary session
Agenda item 13

92FUND/A.ES.10/13
1 February 2006
Original: ENGLISH

ASSEMBLY
2nd extraordinary session
Agenda item 8

SUPPFUND/A/ES.2/7

STOPIA AND TOPIA

Note by the Director

Summary:

The International Group of P&I Clubs has submitted to the Director a revised Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and a new Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

Under the revised STOPIA 2006, the limitation amount applicable to small tankers would, on a voluntary basis, be increased to 20 million SDR (£16.6 million) for tankers of 29 548 gross tonnage or less for pollution damage in all 1992 Fund Member States. TOPIA 2006 would result in the shipowner indemnifying, on a voluntary basis, the Supplementary Fund for 50% of the compensation amounts paid by it under the Supplementary Fund Protocol.

Action to be taken: Information to be noted.

1 The issue

This document sets out the developments as regards the voluntary compensation package discussed by the 1992 Fund Assembly in October 2005, namely offers by the International Group of P & I Clubs (International Group) set out in the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006, which are contractually binding agreements between shipowners conferring on the 1992 Fund and the Supplementary Fund respectively the right of enforcement.

2 Consideration by the 1992 Fund Assembly in March 2005

2.1 At its March 2005 session, the 1992 Fund Assembly noted the offer by the International Group to the 1992 Fund to increase, on a voluntary basis, the limitation amount applicable to small tankers, to be established by the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), which came into force on 3 March 2005, the date of the entry into force of the Supplementary Fund Protocol (document 92FUND/A/ES.9/24).

2.2 The 1992 Fund Assembly noted that STOPIA, which applied to pollution damage in a State for which the Supplementary Fund Protocol was in force, was a contract between owners of small tankers to increase, on a voluntary basis, the limitation amount applicable to tankers under the 1992 Civil Liability Convention. It was noted that the contract would apply to all ships entered in any of the P&I Clubs which were members of the International Group and reinsured through the

pooling arrangements of the International Group. It was further noted that the effect of STOPIA was that the maximum amount of compensation payable by owners of all ships of 29 548 gross tonnage or less would be 20 million SDR (£16.6 million). The Assembly noted that the 1992 Fund would not be a party to STOPIA, but that STOPIA would confer legally enforceable rights on the 1992 Fund of indemnification from the shipowner involved.

- 2.3 The observer delegation of the International Group stated that the Clubs had amended their rules to the effect that ships of up to 29 548 gross tons would automatically be entered into STOPIA and that although shipowners could opt out if they so wished, it was unlikely that they would, since to do so would not result in a reduction in premium. That delegation stated that 97% by tonnage of the world's tanker fleet, corresponding to some 5 000 vessels, would be covered by STOPIA, including nearly 200 Japanese coastal tankers not covered by the International Group's pooling agreement. That delegation further stated that ships insured with underwriters that were not members of the International Group, but which had reinsurance with the Group, would also be covered by STOPIA.
- 2.4 The 1992 Fund Assembly noted that 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 exceeded the limitation amount applicable to the ship in question under the 1992 Civil Liability Convention. It was also noted that if the incident involved a ship to which STOPIA applied, 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. It was further noted that 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.
- 2.5 The 1992 Fund Assembly noted that STOPIA was not a contract between the 1992 Fund and shipowners, but a unilateral offer by shipowners, which conferred on the Fund the right of enforcement. It was also noted that although STOPIA only applied to pollution damage occurring in States that were members of the Supplementary Fund, it would be the 1992 Fund that would be indemnified and so contributors to the 1992 Fund would be the beneficiaries, whether or not they were located in a Supplementary Fund Member State.
- 2.6 The International Group had proposed that a new Clause 6A should be added to the Memorandum of Understanding (MOU) between the International Group and the 1992 Fund in order to implement STOPIA. However, the Assembly decided that, since STOPIA was a unilateral offer, there was no need to include the proposed new Clause in the MOU. The Director was instructed to address any necessary administrative, technical and legal issues in respect of STOPIA by an exchange of letters between the International Group of P&I Clubs and the 1992 Fund (document 92FUND/A/ES.9/28, paragraph 26.14).

3 Exchange of letters in March 2005

- 3.1 In a letter from the International Group of P&I Clubs to the Director dated 22 March 2005 certain undertakings were given to the 1992 Fund in relation to the original STOPIA. The letter is reproduced at Annex I.
- 3.2 The undertakings given by the International Group are nearly the same as those set out in the proposed additional Clause 6A of the MOU. After careful examination, and having taken legal advice, the Director considered that the undertakings were satisfactory. He therefore sent a letter of acknowledgement to the International Group in which he stated that the 1992 Fund had taken note of the undertakings set out in the letter. The Director's letter is reproduced at Annex II.
- 3.3 The 1992 Fund Assembly was informed of the exchange of letters at its October 2005 session (document 92FUND/A.10/31).

4 Implementation of the original STOPIA

During 2005 the Director and the International Group held several discussions regarding what kind of information should be provided by the International Group to the 1992 Fund, pursuant to the undertakings given by the International Group. The Director and the International Group agreed that the 'Entered Ship' list maintained by each Club, which included the name of the vessel, the registered owner, the gross tonnage, the flag, the IMO number and the vessel type, should be provided monthly to the 1992 Fund by the International Group. This information is being provided.

5 Consideration by the 1992 Fund Assembly in October 2005

- 5.1 At its October 2005 session, the 1992 Fund Assembly considered the final report of the third intersessional Working Group on the review of the international compensation regime (document 92FUND/A.10/7).
- 5.2 During its consideration, the 1992 Fund Assembly recalled that the International Group of P&I Clubs had established STOPIA. It was also recalled that at the March 2005 meeting of the Working Group the International Group had put forward an alternative proposal establishing the Tanker Oil Pollution Indemnification Agreement (TOPIA) whereby those Clubs would indemnify the Supplementary Fund in respect of 50% of the amounts paid in compensation by the Supplementary Fund. It was further recalled that TOPIA had been put forward as an alternative to STOPIA and that if the TOPIA proposal were to have been accepted, the International Group would have required the simultaneous implementation of TOPIA and withdrawal of STOPIA.
- 5.3 The 1992 Fund Assembly noted that the International Group had proposed that if the decision was taken to revise the 1992 Conventions, STOPIA would only apply in States that were parties to the Supplementary Fund Protocol, but that if the decision to revise the Conventions were to be put on hold, the Clubs would then be prepared to:
- (a) extend the contractually binding STOPIA to all States parties to the 1992 Civil Liability Convention; and
 - (b) apply TOPIA to States parties to the Supplementary Fund Protocol.
- 5.4 It was noted that it was the view of the International Group that the sharing of the financial responsibilities of all States parties to the Supplementary Fund Protocol would be more balanced by an additional binding contractual agreement such as TOPIA. It was noted, however, that these proposals had been made in order to preserve the existing system and would not be available if revision were to proceed in relation to any issue, although this did not, in the International Group's view, preclude a review in 2010 in the light of experience of the voluntary system.
- 5.5 In his summing up the Chairman stated that while there was only a slightly bigger majority in favour of the proposal by the Greek delegation not to revise the regime, it was clear that there was insufficient support for a proposal by a group of 11 States to instruct the Working Group to prepare treaty texts on certain items retained by the Working Group for further consideration. The Chairman therefore concluded that the Working Group's mandate had been carried out and that it was time to terminate its activities and to remove the revision of the Conventions from the Assembly's agenda. He stated that this left on the table the proposal by the International Group of P&I Clubs and the positive step by the Clubs to extend STOPIA to all States party to the 1992 Civil Liability Convention, although some delegations had objected to the language used by the International Group and the pre-conditions attached to the proposal. The Chairman invited the International Group to revise the proposal in consultation with the Fund Secretariat and with OCIMF for consideration by the Assembly.
- 5.6 The observer delegation of the International Group stated that the offer to extend the scope of STOPIA could be implemented in the short term and would effectively revise the limits of the

1992 Civil Liability Convention. That delegation also stated that it was committed to achieving a 50:50 sharing of compensation costs and agreed to revise the voluntary agreements to make the language more acceptable. That delegation further stated that since the 50:50 sharing of compensation costs involved financial exposure at the higher reinsurance level, for which there was sufficient capacity in the market, it would not be possible to put this in place before 20 February 2006 (the date of renewal of P&I insurance).

- 5.7 The Director was instructed to collaborate with the International Group of P&I Clubs, acting on behalf of the shipping industry, and the Oil Companies International Marine Forum (OCIMF) before the voluntary agreement package was submitted to the Assembly for consideration at its next session and provide technical and administrative advice with a view to consolidating the package and ensuring that it was legally enforceable (document 92FUND/A.10/37, paragraph 8.31).

6 Developments since October 2005

- 6.1 As instructed by the 1992 Fund Assembly, the Director held meetings in December 2005 and January 2006 with the International Group of P&I Clubs, acting on behalf of the shipping industry, and OCIMF concerning the development of a voluntary package. The Director understands that the International Group discussed the issues involved with the International Chamber of Shipping (ICS) and the International Association of Independent Tanker Owners (INTERTANKO).
- 6.2 During the discussions with the International Group and OCIMF, the Director made it clear that he had no mandate to agree on behalf of the 1992 Fund and the Supplementary Fund to a particular text and that any acceptance of the offers under STOPIA 2006 and TOPIA 2006 was for the Assemblies of the 1992 Fund or the Supplementary Fund to decide, and that any observations on his part should be seen only as comments of a technical or editorial nature.
- 6.3 As a result of these discussions, the International Group has developed a revised STOPIA, to be referred to as the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, and a second agreement, the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006. The International Group submitted these Agreements to the Director on 1 February 2006. The Group's submission and the texts of the agreements, together with explanatory notes, are reproduced at Annexes III - V.
- 6.4 The International Group has informed the Director that STOPIA 2006 and TOPIA 2006 have been submitted to the Boards of the International Group of P & I Clubs. The Director understands that it is expected that approvals will be given by the Boards within a short period of time.
- 6.5 The Director has been informed that ICS, INTERTANKO and OCIMF support the texts of STOPIA 2006 and TOPIA 2006 as presented.

7 Short overview of STOPIA 2006 and TOPIA 2006

7.1 STOPIA 2006

- 7.1.1 STOPIA 2006, which will apply to pollution damage in States for which the 1992 Fund Convention 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 small tankers 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. Ships insured by an International Group Club but not covered by the pooling arrangement may agree with the Club concerned to be covered by STOPIA 2006. Certain Japanese coastal tankers have already agreed to be bound in this way. The effect of STOPIA 2006 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 (£16.6 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.

- 7.1.2 The 1992 Fund would, in respect of ships covered by STOPIA 2006, 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.
- 7.1.3 The main substantive difference between the original STOPIA and STOPIA 2006 is that, whereas the original STOPIA only applied to pollution damage in Supplementary Fund Member States, STOPIA 2006 would apply also to pollution damage in all other 1992 Fund Member States.

7.2 TOPIA 2006

- 7.2.1 TOPIA 2006 applies to all tankers 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. Under TOPIA 2006, the owner of the ship involved in the incident would indemnify the Supplementary Fund for 50% of the compensation it pays under the Supplementary Fund Protocol for oil pollution in Supplementary Fund Member States.
- 7.2.2 The Supplementary Fund would, in respect of incidents covered by TOPIA 2006, continue to be liable to compensate claimants as provided in the Supplementary Fund Protocol. If the incident involves a ship to which TOPIA 2006 applied, the Supplementary Fund would be entitled to indemnification by the shipowner of 50% of the compensation payment it had made to claimants.

7.3 Review

STOPIA 2006 and TOPIA 2006 provide that a review shall be carried out in 2016 of the experience of pollution damage claims during the period 2006 – 2016, and thereafter at five-yearly intervals, in consultation with representatives of oil receivers and the 1992 Fund and the Supplementary Fund, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system has been borne respectively by shipowners and by oil receivers since 20 February 2006 and consider the efficiency, operation and performance of the agreements. The agreements also provide that, if the review reveals that either shipowners or oil receivers have borne a proportion exceeding 60% of the overall costs of such claims, measures shall be taken for the purpose of maintaining an approximately equal apportionment. Examples of such measures are given in the agreements.

7.4 Entry into force

- 7.4.1 STOPIA 2006 and TOPIA 2006 will apply to incidents occurring after noon GMT on 20 February 2006.
- 7.4.2 The agreements are to continue until the current international compensation system is materially and significantly changed. There are also provisions for the termination of the agreements in certain circumstances which may be expected to make them no longer workable.

8 Director's assessment

- 8.1 It should be noted that STOPIA 2006 and TOPIA 2006 are not contracts between the 1992 Fund/the Supplementary Fund and shipowners, but unilateral offers by shipowners which confer on the respective Fund the right of enforcement.

- 8.2 After careful examination of STOPIA 2006 and TOPIA 2006, and having taken legal advice, the Director considers that the texts of the agreements are satisfactory from the respective Fund's point of view.

9 Implementation of the undertakings in STOPIA 2006 and TOPIA 2006

The implementation of the undertakings given by shipowners to the 1992 Fund and the Supplementary Fund under STOPIA 2006 and TOPIA 2006 requires an agreement between the Funds and the International Group. This issue is dealt with under the agenda item Co-operation with P&I Clubs (document 92FUND/A/ES.10/14 and SUPPFUND/A/ES.2/8).

10 Action to be taken by the Assemblies

The Assemblies are invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions in respect of STOPIA 2006 and TOPIA 2006 as they may deem appropriate.

* * *

ANNEX I

INTERNATIONAL GROUP OF P&I CLUBS
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London EC3M 1EB

Secretary & Executive Officer
D.J.L. Watkins

Telephone: 020 7929 3544
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Mr. Mans Jacobsson
International Oil Pollution Compensation Fund
Portland House
Stag Place
London SW1E 5PN

22nd March 2005

FILE: P0419. COPY:	
DCN#: 3144.	
RECEIVED: 22 MAR 2005	
SEEN BY:	<i>MJ</i>
COMMENTS:	

Dear Mr. Jacobsson,

STOPIA

The International Group of P&I Clubs hereby gives the following undertakings to the International Oil Pollution Compensation Fund 1992 (1992 Fund) in relation to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA):

- (i) The following terms in this Undertaking 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 Undertaking 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

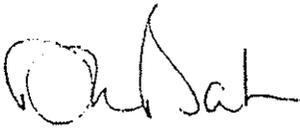
STOPIA at a later date; or

- (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 (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 (iv)(c) above or otherwise, of the Ship's non-entry (or cesser of entry) in STOPIA.
- (vii) For the avoidance of doubt, this Undertaking 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.

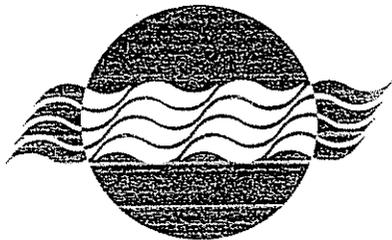
- (viii) Rights of direct action conferred by this Undertaking shall apply irrespective of whether the Relevant Ship is required by Article VII of the Liability Convention to carry a certificate of insurance.
- (ix) Notwithstanding Clause X(B) of STOPIA, the International Group undertakes to consult 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 Undertaking shall cease to have any effect in the event that STOPIA is terminated in its entirety in accordance with Clause VIII thereof.
- (xi) Any claims or disputes in relation to this Undertaking shall be governed by English law and be subject to the exclusive jurisdiction of the English High Court of Justice.

Yours sincerely,



 D.J.L. Watkins

ANNEX II



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

FONDS INTERNATIONAL
D'INDEMNISATION DE 1992
POUR LES DOMMAGES DUS
À LA POLLUTION PAR LES
HYDROCARBURES

FONDO INTERNACIONAL
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS 1992

Our ref. POL/19-962/05jlm

23 March 2005

Mr DJL Watkins
Secretary & Executive Officer
International Group of P & I Clubs
Peek House
20 Eastcheap
London EC3M 1EB

Dear Mr Watkins

STOPIA

As you may be aware, at its 9th extraordinary session held during the period 15-22 March 2005, the Assembly of the International Oil Pollution Compensation Fund 1992 took note of the information contained in document 92FUND/A/ES.9/24 regarding the offer by the International Group of P&I Clubs to the International Oil Pollution Compensation Fund 1992 (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), which came into force on 3 March 2005, the date of the entry into force of the Supplementary Fund Protocol.

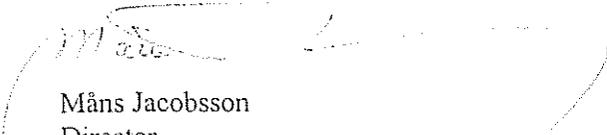
The Assembly decided that since STOPIA was a unilateral offer, it was sufficient for the 1992 Fund to note the content of STOPIA and instructed the Director to inform the International Group of P & I Clubs accordingly

The Assembly noted that the International Group of P & I Clubs had proposed that a new clause 6A should be added to the Memorandum of Understanding signed in 1980 by the 1971 Fund and the International Group and extended in 1996 by an exchange of letters to cover also the co-operation between the International Group and the 1992 Fund. The Assembly decided since STOPIA was a unilateral offer, there was no need to include the proposed new Clause 6A in the Memorandum of Understanding. The Director was instructed to address any necessary administrative, technical and legal issues in respect of STOPIA by an exchange of letters between the International Group of P&I Clubs and the 1992 Fund.

In the light of the position taken by the Assembly, the International Group of P & I Clubs has sent to the 1992 Fund a letter dated 22 March 2005 containing certain undertakings on behalf of the International Group in relation to STOPIA.

The 1992 Fund has taken due note of the undertakings set out in the letter.

Yours sincerely


Måns Jacobsson
Director

* * *



International Group of P&I Clubs

BY COURIER
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FILE: FOU 19 COPY:	
DCN#: 1102	
RECEIVED: - 1 FEB 2006	
SEEN BY:	
COMMENTS	

1 February 2006

Dear Director

The October Assembly agreed to accept the proposal made by the International Group of P&I Clubs to put in place contractually binding agreements which are designed to share the burden of compensation for claims under the Conventions.

I now have pleasure in enclosing the texts of STOPIA and TOPIA.

Yours sincerely

C. S. Harridge

PP Alistair Groom
 Chairman

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Encs

ANNEX IV

**SMALL TANKER OIL POLLUTION
INDEMNIFICATION AGREEMENT
(STOPIA) 2006**

EXPLANATORY NOTE

This Note explains the purpose behind the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 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 STOPIA 2006, 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 (CLC 92), the 1992 Fund Convention and the 2003 Supplementary Fund Protocol.

An earlier version of STOPIA came into force on 3 March 2005 but has since been amended. The text set out in this document is a revised version which applies to Incidents which occur on or after 20 February 2006. The original version continues to apply in respect of any Incidents prior to that date.

The Scheme reflects the desire of shipowners to support efforts to ensure the continuing success of this international system. It also reflects the commitment they gave to the Assembly of the International Oil Pollution Compensation Fund 1992 (the 1992 Fund), at its 10th Session in October 2005, to put in place binding contractual schemes to ensure that the overall costs of claims falling within this system are shared approximately equally with oil receivers. STOPIA 2006, together with the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006, is designed to achieve this. It is also intended to encourage widest possible ratification of the Supplementary Fund Protocol, and has been drawn up in recognition of the potential additional burden imposed by the Protocol on receivers of oil.

STOPIA 2006 provides for shipowners to make payments to the 1992 Fund which are designed to adjust the financial effect of the limitation of liability provisions in CLC 92. 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 the owner of a ship involved in an oil pollution incident to reimburse the 1992 Fund for any compensation it pays as a result of the ship's liability limit under CLC 92 being less than SDR 20 million. That amount is equivalent to the liability limit under CLC 92 for a ship of 29,548 gross tons. STOPIA 2006 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 rare 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 2006 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 their Rules to provide shipowners with cover against liability to pay Indemnification under STOPIA 2006. 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 agreed between the 1992 Fund and the International Group of P&I Clubs.

Whilst the above are the main features of the Scheme, its twelve 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 2006.

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. The clause also contains provisions to prevent any recourse claim being prejudiced by a technical argument that Indemnification has reduced the loss for which the 1992 Fund may claim recovery. For these reasons it is stipulated that Indemnification does not accrue until notice is given that no recourse (or further recourse) proceedings are contemplated, and in the meantime the 1992 Fund is entitled to receive payment or payments on account equal to the amount of Indemnification which it expects to fall due. Such payments are to be made at the same time as payment of the levies on contributors to the 1992 Fund.

Clause V deals in more detail with recourse against third parties. Credit is to be given to the Participating Owner for any sums recovered, but the 1992 Fund retains an absolute discretion as to the commencement, conduct and any settlement of such proceedings. Any recoveries made from third parties are to be apportioned “top down”, i.e. the shipowner benefits from them only after the 1992 Fund has recouped amounts for which it is liable in excess of the Indemnification.

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 expiry of the time period 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 to consult with the 1992 Fund in good time prior to any decision to amend the Scheme.

Clause VIII provides for a review to be carried out after ten years, and thereafter at five year intervals, in consultation with the 1992 Fund, the Supplementary Fund and representatives of oil receivers, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system has been borne respectively by shipowners and by oil receivers, and provides for measures which may be taken (including possible amendments of STOPIA 2006) for the purpose of maintaining an approximately equal apportionment.

Clause IX deals with the duration of the Scheme, which is to apply to any Incident occurring after noon GMT on 20 February 2006, and is to continue until the current international compensation system is materially and significantly changed. The Clause also provides for termination of the Agreement in certain circumstances which may be expected to make the Agreement no longer workable. The Clubs have agreed to consult with the 1992 Fund prior to any decision to terminate STOPIA 2006.

Under Clause X 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 2006 without prejudicing his Club cover in respect of oil pollution risks.

Clause XI sets out the legal rights of the 1992 Fund under the Scheme, 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 XII 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) 2006

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 adopted to supplement the 1992 Fund Convention by providing for additional compensation to be available from a Supplementary Fund for Pollution Damage 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.

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, and “CLC 92 State” means a State in respect of which the said Convention is in force.
- (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.
- (M) “Recourse Conclusion Notice” has the meaning set out in Clause V(C).
- (N) “Relevant Ship” has the meaning set out in Clause III(B).
- (O) “Scheme” means the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 as established by this Agreement.
- (P) “Supplementary Fund” means the Fund established by the Protocol.
- (Q) “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.
- (R) “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) 2006.
- (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 2006 SCHEME

- (A) This Agreement is made to establish STOPIA 2006 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 Clause III(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 X.

IV. INDEMNIFICATION OF THE 1992 FUND

- (A) Where, as a result of an Incident, an Entered Ship causes Pollution Damage in respect of which (i) liability is incurred under the Liability Convention by the Participating Owner of that Ship and (ii) the 1992 Fund has paid or expects to pay compensation under the 1992 Fund Convention, the said Owner shall indemnify the 1992 Fund in an amount calculated in accordance with this Clause.
- (B) 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.
- (C) The amount for which Indemnification is payable by the Participating Owner to the 1992 Fund shall be the amount of compensation which the 1992 Fund has paid or expects to pay for Pollution Damage, provided always that:
- (1) Indemnification shall not exceed in respect of any one Incident an amount equivalent to 20 million units of account less the amount of the Owner's

liability under the Liability Convention as limited by Article V, paragraph 1 thereof; and

- (2) the deduction referred to in Clause IV(C)(1) above shall be made irrespective of whether the Participating Owner is entitled to avail himself of limitation.
- (D) Liability to pay Indemnification hereunder shall not affect any rights which the Participating Owner or his Club may have to recover from the 1992 Fund any amounts in respect of the Incident, whether in their own right, by subrogation, assignment or otherwise. For the avoidance of doubt, any such amounts shall be included in the amount of compensation referred to in Clause IV(C) above.
- (E) Unless otherwise agreed with the 1992 Fund –
- (1) the entitlement of the 1992 Fund to receive Indemnification from the Participating Owner accrues when it gives a Recourse Conclusion Notice as defined in Clause V(C) below;
 - (2) prior to that time the 1992 Fund shall be entitled to receive from the Participating Owner such payment or payments on account of Indemnification as the 1992 Fund considers to be equal to the anticipated amount of Indemnification;
 - (3) payment of any amounts which the 1992 Fund is entitled to receive under this Agreement shall be made concurrent with payment of the levies on contributors for the Incident concerned in accordance with Articles 10 and 12 of the 1992 Fund Convention.
- (F) (1) Any payment on account under Clause IV(E) above is made on the conditions that –
- (i) it is credited by the 1992 Fund to a special account relating solely to Indemnification in respect of the Incident concerned;
 - (ii) any surplus of the amount(s) paid by the Participating Owner remaining after all compensation payments by the 1992 Fund have been made shall be refunded to the Participating Owner; and
 - (iii) in so far as a surplus consists of amounts recovered by way of recourse from third parties it shall be credited to the Participating Owner in accordance with Clause V below.
- (2) Nothing in this Clause IV(F) shall prevent the 1992 Fund from making use of any sums paid to it under this Agreement in the payment of claims for compensation arising from the Incident concerned; nor shall it require the 1992 Fund to hold such sums (or any balance thereof) in a separate bank account or to invest them separately from other assets of the 1992 Fund.
 - (3) Save where the 1992 Fund has been notified to the contrary, the Club insuring the Participating Owner shall be deemed to be authorized to act on his behalf in receiving any refund under this Clause.

- (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) Without prejudice to Clause V(A) above –
 - (1) payment by the Participating Owner under this Agreement is made on the condition that he shall, in respect of any amount paid as Indemnification (or as payment on account thereof), acquire by subrogation any rights of recourse that the 1992 Fund may enjoy against third parties, to the extent of the Participating Owner's interest in the benefit of any recoveries from such parties in accordance with this Agreement;
 - (2) 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;
 - (3) 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 costs of funding such action, or as to the allocation of any recoveries made.
- (C) For the purposes of this Agreement, a Recourse Conclusion Notice is 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. Such a conclusion may include a decision by the 1992 Fund not to take a recourse action, or to discontinue any such action already commenced.
- (D) Payment by the Participating Owner under this Agreement is made on the conditions that –
 - (1) if the 1992 Fund decides to take recourse action against any third party it will, unless otherwise agreed, either (a) seek recovery of compensation it has paid or expects to pay without deduction of any sums paid under this Agreement by the Participating Owner, or (b) on request, execute documentation as described in Clause V(D)(2) below;
 - (2) if the 1992 Fund decides not to take a recourse action (or to discontinue any such action already commenced) against any third party in respect of the incident, the 1992 Fund will, on request, execute such reasonable documentation as may be required to transfer (or affirm the transfer) to the Participating Owner and/or his Club, by subrogation, assignment or otherwise, any rights of recourse which the 1992 Fund may have against that third party, to the extent of any interest which the Participating Owner and/or his Club may have in recovering from that party any amounts paid under this Agreement;

(3) 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 sums after deduction of -

- (i) any costs incurred by the 1992 Fund in recovering the said sums; and
- (ii) an amount equal to the compensation which the 1992 Fund has paid or expects to pay for Pollution Damage in respect of the Incident, insofar as this exceeds the amount paid under this Agreement by the Participating Owner.

(E) 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 under Clause V(C) above; in receiving any sums payable to the Participating Owner under Clause V(D) 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 year 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) Subject to Clause IX(A) below, any amendment of this 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. REVIEW

(A) During the year 2016 a review shall be carried out of the experience of claims for Pollution Damage in the ten years to 20 February 2016. The purpose of the review will be (1) to establish the approximate proportions in which the overall cost of such claims under the Liability Convention and/or the 1992 Fund Convention and/or the Protocol has been borne respectively by shipowners and by oil receivers in the period since 20

February 2006; and (2) to consider the efficiency, operation and performance of this Agreement. Such a review shall be repeated every five years thereafter.

- (B) Representatives of oil receivers, and the Secretariat of the 1992 Fund and Supplementary Fund, are to be invited to participate in any review under this Clause on a consultative basis. The Participating Owners authorize the International Group to act on their behalf in the conduct of any such review.
- (C) If a review under this Clause reveals that in the period since 20 February 2006 either shipowners or oil receivers have borne a proportion exceeding 60% of the overall cost referred to in Clause VIII(A) above, measures are to be taken to adjust the financial burden of such cost with the object of maintaining an approximately equal apportionment.
- (D) Such measures may include -
 - (1) amendment of this Agreement to provide for an increase or reduction in the amount of Indemnification payable under this Agreement;
 - (2) amendment of this Agreement to improve its efficiency, operation and performance;
 - (3) the conclusion or amendment of any other contractual agreement relating to the apportionment of the cost of oil pollution between shipowners and oil receivers; and
 - (4) any other measure or measures considered appropriate for the purpose of maintaining an approximately equal apportionment.
- (E) If a review under this Clause reveals that either shipowners or oil receivers have borne a proportion exceeding 55% but not exceeding 60% of the overall cost referred to in Clause VIII(A) above, measures as referred to above may be (but are not bound to be) taken.

IX. DURATION AND TERMINATION

- (A) This Agreement shall apply to any Incident occurring after noon GMT on 20 February 2006.
- (B) Unless previously terminated in accordance with the provisions set out below, this Agreement shall continue in effect until the entry into force of any international instrument which materially and significantly changes the system of compensation established by the Liability Convention, the 1992 Fund Convention and the Protocol.
- (C) Each Participating Owner agrees that the International Group shall be authorized to terminate this Agreement on behalf of all Participating Owners if -
 - (1) the Clubs cease to provide Insurance of the liability of Participating Owners to pay Indemnification under this Agreement; or

- (2) the performance of the Agreement becomes illegal in a particular State or States (in which case this Agreement may be terminated in respect of such State or States whilst remaining in effect in respect of other States); or
 - (3) the International Group's reinsurers cease to provide adequate cover against the liabilities provided for by this Agreement, and cover for this risk is not reasonably available in the world market on equivalent terms; or
 - (4) the International Group is disbanded; or
 - (5) 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) due to any event or circumstance which prevents the performance of this Agreement and which is not within the reasonable contemplation of the Participating Owners.
- (D) Termination of this Agreement shall not take effect until three months after the date on which the 1992 Fund is notified thereof in writing by the International Group.
- (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.

X. 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 he or his Club 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.

XI. 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. Such proceedings may include an action brought by the 1992 Fund against a Participating Owner to determine any issue relating to the construction, validity and/or performance of this Agreement.
- (B) Notwithstanding Clause XI(A) and Clause VII(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), or proceedings to determine any issue of construction, validity and/or performance of this Agreement, 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.

XII. 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.

* * *

ANNEX V

**TANKER OIL POLLUTION
INDEMNIFICATION AGREEMENT
(TOPIA) 2006**

EXPLANATORY NOTE

This Note explains the purpose behind the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 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 TOPIA 2006 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 (CLC 92), 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 also reflects the commitment they gave to the Assembly of the International Oil Pollution Compensation Fund 1992, at its 10th Session in October 2005, to put in place binding contractual schemes to ensure that the overall costs of claims falling within this system are shared approximately equally with oil receivers. TOPIA, together with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, is designed to achieve this. It is also intended to encourage widest possible ratification of the Supplementary Fund Protocol, and has been drawn up in recognition of the potential additional burden imposed by the Protocol on receivers of oil.

TOPIA provides for shipowners to indemnify the Supplementary Fund for 50% of the compensation it pays under the Protocol for Pollution Damage caused by tankers in Protocol States.

The Scheme is established by a legally binding Agreement between the owners of tankers 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 Protocol, and the victims of oil spills continue to enjoy their existing rights against the 1992 Fund and Supplementary Fund. For this reason the Scheme provides for the owner of the ship involved in an incident to pay Indemnification to the Supplementary Fund, rather than to pay extra sums directly to claimants.

Although the Supplementary Fund is not a party to TOPIA, the Agreement is intended to confer legally enforceable rights on the Supplementary Fund, and it expressly provides that the Supplementary 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 TOPIA. The Clubs are also authorised under the Scheme to enter into ancillary arrangements enabling the Supplementary 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 agreed between the Supplementary Fund and the International Group of P&I Clubs.

Whilst the above are the main features of the Scheme, its twelve 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 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.

Clause IV sets out the precise circumstances in which the Participating Owner is liable to pay Indemnification to the Supplementary Fund, and it includes detailed provisions affecting the calculation of the precise amount payable. The clause also contains provisions to prevent any recourse claim being prejudiced by a technical argument that Indemnification has reduced the loss for which the Supplementary Fund may claim recovery. For these reasons it is stipulated that Indemnification does not accrue until notice is given that no recourse (or further recourse) proceedings are contemplated, and in the meantime the Supplementary Fund is entitled to receive payment or payments on account equal to the amount of Indemnification which it expects to fall due. Such payments are to be made at the same time as payment of the levies on contributors to the Supplementary Fund. Clause IV also stipulates that Indemnification shall be payable for Pollution Damage caused by terrorist risks only to the extent, if any, that such amounts are covered by any insurance or reinsurance in force at the time of the Incident. This is due to the restrictions shipowners face in obtaining liability insurance cover for risks of this type.

Clause V deals in more detail with recourse against third parties. Credit is to be given to the Participating Owner for any sums recovered, but the Supplementary Fund retains an absolute discretion as to the commencement, conduct and any settlement of such proceedings.

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

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 to consult with the Supplementary Fund in good time prior to any decision to amend the Scheme.

Clause VIII provides for a review to be carried out after ten years, and thereafter at five year intervals, in consultation with the 1992 Fund, the Supplementary Fund and representatives of

oil receivers, to establish the approximate proportions in which the overall cost of oil pollution claims under the international compensation system has been borne respectively by shipowners and by oil receivers, and provides for measures which may be taken (including possible amendments of TOPIA) for the purpose of maintaining an approximately equal apportionment.

Clause IX deals with the duration of the Scheme, which is to apply to any Incident occurring after noon GMT on 20 February 2006, and is to continue until the current international compensation system is materially and significantly changed. The Clause also provides for termination of the Agreement in certain circumstances which may be expected to make the Agreement no longer workable. The Clubs have agreed to consult with the Supplementary Fund prior to any decision to terminate TOPIA.

Under Clause X 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 TOPIA without prejudicing his Club cover in respect of oil pollution risks.

Clause XI sets out the legal rights of the Supplementary Fund under the Scheme, 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 XII 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.

TANKER OIL POLLUTION INDEMNIFICATION AGREEMENT (TOPIA) 2006

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 adopted to supplement the 1992 Fund Convention by providing for additional compensation to be available from a Supplementary Fund for Pollution Damage 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 will indemnify the Supplementary Fund for 50% of its liability to pay compensation under the Protocol for Pollution Damage.

This indemnity is restricted in respect of Pollution Damage caused by terrorist risks, in recognition of the restrictions on cover against such risks in liability insurance available to shipowners.

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) “Recourse Conclusion Notice” has the meaning set out in Clause V(C).
- (N) “Relevant Ship” has the meaning set out in Clause III(B).
- (O) “Scheme” means the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 as established by this Agreement.
- (P) “Supplementary Fund” means the Fund established by the Protocol.
- (Q) “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.
- (R) “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 Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.
- (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 TOPIA 2006 SCHEME

- (A) This Agreement is made to establish TOPIA for payment of Indemnification to the Supplementary Fund on the terms set out herein.
- (B) A Ship shall be eligible for Entry in the scheme if:
 - (1) it is insured by a Club; and
 - (2) 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 ceasing to be insured or reinsured as stated in Clause III(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 X.

IV. INDEMNIFICATION OF THE SUPPLEMENTARY FUND

- (A) Where, as a result of an Incident, an Entered Ship causes Pollution Damage in respect of which (1) liability is incurred under the Liability Convention by the Participating Owner of that Ship and (2) the Supplementary Fund has paid or expects to pay compensation under the Protocol, the said Owner shall indemnify the Supplementary Fund in an amount calculated in accordance with this Clause.
- (B) 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 Supplementary Fund is liable by virtue of the Protocol;
 - (2) any other Pollution Damage to the extent that liability is incurred by the Supplementary Fund but not by the Participating Owner.
- (C) The amount for which Indemnification is payable by the Participating Owner to the Supplementary Fund shall be 50% of the amount of compensation which the

Supplementary Fund has paid or expects to pay for Pollution Damage caused by the Incident.

- (D) Liability to pay Indemnification hereunder shall not affect any rights which the Participating Owner or his Club may have to recover from the Supplementary Fund any amounts in respect of the Incident, whether in their own right, by subrogation, assignment or otherwise. For the avoidance of doubt, any such amounts shall be included in the amount of compensation referred to in Clause IV(C) above.
- (E) Unless otherwise agreed with the Supplementary Fund –
 - (1) the entitlement of the Supplementary Fund to receive Indemnification from the Participating Owner accrues when it gives a Recourse Conclusion Notice as defined in Clause V(C) below;
 - (2) prior to that time the Supplementary Fund shall be entitled to receive from the Participating Owner such payment or payments on account of Indemnification as the Supplementary Fund considers to be equal to the anticipated amount of Indemnification;
 - (3) payment of any amounts which the Supplementary Fund is entitled to receive under this Agreement shall be made concurrent with payment of the levies on contributors for the Incident concerned in accordance with Articles 10 and 12 of the Protocol.
- (F) (1) Any payment on account under Clause IV(E) above is made on the conditions that –
 - (i) it is credited by the Supplementary Fund to a special account relating solely to Indemnification in respect of the Incident concerned;
 - (ii) any surplus of the amount(s) paid by the Participating Owner remaining after all compensation payments by the Supplementary Fund have been made shall be refunded to the Participating Owner; and
 - (iii) in so far as a surplus consists of amounts recovered by way of recourse from third parties it shall be credited to the Participating Owner in accordance with Clause V below.
 - (2) Nothing in this Clause IV(F) shall prevent the Supplementary Fund from making use of any sums paid to it under this Agreement in the payment of claims for compensation arising from the Incident concerned; nor shall it require the Supplementary Fund to hold such sums (or any balance thereof) in a separate bank account or to invest them separately from other assets of the Supplementary Fund.
 - (3) Save where the Supplementary Fund has been notified to the contrary, the Club insuring the Participating Owner shall be deemed to be authorized to act on his behalf in receiving any refund under this Clause.
- (G) No Indemnification shall be payable under this Agreement for any amounts paid by the Supplementary Fund in respect of Pollution Damage caused by any act of terrorism

save to the extent, if any, that such amounts are covered by any insurance or reinsurance in force at the time of the Incident. This provision shall apply irrespective of whether the Owner is exonerated from liability under the Liability Convention by virtue of Article III, paragraph 2 thereof.

- (H) In the event of any dispute as to whether or not any act constitutes an act of terrorism for the purposes of this Agreement, Indemnification by the Participating Owner hereunder shall in any event be contingent on liability being accepted or established on the part of his Club to indemnify him in respect thereof.

V. RECOURSE AGAINST THIRD PARTIES

- (A) Any decisions as to whether the Supplementary 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 Supplementary Fund.

- (B) Without prejudice to Clause V(A) above –

- (1) payment by the Participating Owner under this Agreement is made on the condition that he shall, in respect of any amount paid as Indemnification (or as payment on account thereof), acquire by subrogation any rights of recourse that the Supplementary Fund may enjoy against third parties, to the extent of the Participating Owner's interest in the benefit of any recoveries from such parties in accordance with this Agreement;
- (2) the Supplementary 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;
- (3) nothing in this Agreement shall prevent the Supplementary 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 costs of funding such action, or as to the allocation of any recoveries made.

- (C) For the purposes of this Agreement, a Recourse Conclusion Notice is 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 Supplementary Fund against any third parties in respect of the Incident. Such a conclusion may include a decision by the Supplementary Fund not to take a recourse action, or to discontinue any such action already commenced.

- (D) Payment by the Participating Owner under this Agreement is made on the conditions that –

- (1) if the Supplementary Fund decides to take recourse action against any third party it will, unless otherwise agreed, either (a) seek recovery of compensation it has paid or expects to pay without deduction of any sums paid under this Agreement by the Participating Owner, or (b) on request, execute documentation as described in Clause V(D)(2) below;

- (2) if the Supplementary Fund decides not to take a recourse action (or to discontinue any such action already commenced) against any third party in respect of the incident, the Supplementary Fund will, on request, execute such reasonable documentation as may be required to transfer (or affirm the transfer) to the Participating Owner and/or his Club, by subrogation, assignment or otherwise, any rights of recourse which the Supplementary Fund may have against that third party, to the extent of any interest which the Participating Owner and/or his Club may have in recovering from that party any amounts paid under this Agreement;
 - (3) if, after payment by the Participating Owner has been made, the Supplementary Fund recovers any sums from any third party, 50% of such recoveries (net of the costs incurred in making them) shall be retained by the Supplementary Fund and the remaining 50% shall be paid by the Supplementary Fund to the Participating Owner.
- (E) Save where the Supplementary 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 under Clause V(C) above; in receiving any sums payable to the Participating Owner under Clause V(D) 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 Supplementary 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 year 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 Supplementary 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) Subject to Clause IX(A) below, any amendment of this 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. REVIEW

- (A) During the year 2016 a review shall be carried out of the experience of claims for Pollution Damage in the ten years to 20 February 2016. The purpose of the review will be (1) to establish the approximate proportions in which the overall cost of such claims under the Liability Convention and/or the 1992 Fund Convention and/or the Protocol has been borne respectively by shipowners and by oil receivers in the period since 20 February 2006; and (2) to consider the efficiency, operation and performance of this Agreement. Such a review shall be repeated every five years thereafter.
- (B) Representatives of oil receivers, and the Secretariat of the 1992 Fund and Supplementary Fund, are to be invited to participate in any review under this Clause on a consultative basis. The Participating Owners authorize the International Group to act on their behalf in the conduct of any such review.
- (C) If a review under this Clause reveals that in the period since 20 February 2006 either shipowners or oil receivers have borne a proportion exceeding 60% of the overall cost referred to in Clause VIII(A) above, measures are to be taken to adjust the financial burden of such cost with the object of maintaining an approximately equal apportionment.
- (D) Such measures may include -
 - (1) amendment of this Agreement to provide for an increase or reduction in the amount of Indemnification payable under this Agreement;
 - (2) amendment of this Agreement to improve its efficiency, operation and performance;
 - (3) the conclusion or amendment of any other contractual agreement relating to the apportionment of the cost of oil pollution between shipowners and oil receivers; and
 - (4) any other measure or measures considered appropriate for the purpose of maintaining an approximately equal apportionment.
- (E) If a review under this Clause reveals that either shipowners or oil receivers have borne a proportion exceeding 55% but not exceeding 60% of the overall cost referred to in Clause VIII(A), measures as referred to above may be (but are not bound to be) taken.

IX. DURATION AND TERMINATION

- (A) This Agreement shall apply to any Incident occurring after noon GMT on 20 February 2006.
- (B) Unless previously terminated in accordance with the provisions set out below, this Agreement shall continue in effect until the entry into force of any international instrument which materially and significantly changes the system of compensation established by the Liability Convention, the 1992 Fund Convention and the Protocol.
- (C) Each Participating Owner agrees that the International Group shall be authorized to terminate this Agreement on behalf of all Participating Owners if -

- (1) the Clubs cease to provide Insurance of the liability of Participating Owners to pay Indemnification under this Agreement; or
 - (2) the performance of the Agreement becomes illegal in a particular State or States (in which case this Agreement may be terminated in respect of such State or States whilst remaining in effect in respect of other States); or
 - (3) the International Group's reinsurers cease to provide adequate cover against the liabilities provided for by this Agreement, and cover for this risk is not reasonably available in the world market on equivalent terms; or
 - (4) the International Group is disbanded; or
 - (5) 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) due to any event or circumstance which prevents the performance of this Agreement and which is not within the reasonable contemplation of the Participating Owners.
- (D) Termination of this Agreement shall not take effect until three months after the date on which the Supplementary Fund is notified thereof in writing by the International Group.
- (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.

X. 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 he or his Club shall give written notice to the Supplementary 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.

XI. LEGAL RIGHTS OF SUPPLEMENTARY FUND

- (A) Though not a Party to this Agreement, the Supplementary Fund is intended to enjoy legally enforceable rights of Indemnification as described herein, and accordingly the Supplementary Fund shall be entitled to bring proceedings in its own name against the Participating Owner in respect of any claim it may have hereunder. Such proceedings may include an action brought by the Supplementary Fund against a Participating Owner to determine any issue relating to the construction, validity and/or performance of this Agreement.
- (B) Notwithstanding Clause XI(A) above and Clause VII(A) above, the consent of the Supplementary 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 Supplementary Fund on which a claim for Indemnification under this Agreement in respect of an Entered Ship (or previously Entered Ship), or proceedings to determine any issue of construction, validity and/or performance of this Agreement, 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 Supplementary 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

XII. 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.
