International Oil Pollution Compensation Funds

Guidance for Member States

Measures to facilitate the claims handling process

International Oil Pollution Compensation Fund 1992

2014 Edition

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Preface

This Guidance document contains measures which Member States might wish to consider in preparation for, or in the event that they suffer, pollution damage as a result of an oil spill. Such measures are aimed at facilitating the claims handling process following an incident. The text was developed by the 1992 Fund sixth intersessional Working Group and adopted by the 1992 Fund Administrative Council, acting on behalf of the Assembly, at its 11th session held in October 2013.

The measures and examples presented in this document draw upon the experience of those Member States which have had the misfortune to have suffered a major spill, of P&I Clubs and of the International Tanker Owners Pollution Federation Limited (ITOPF) whose day-to-day business involves dealing with spills and their aftermath. It also draws on the experience of the IOPC Funds' Secretariat, having handled almost 150 incidents since the establishment of the first IOPC Fund (the 1971 Fund) in 1978.

The measures which each Member State chooses to use will be determined by the State after taking account of the particular circumstances of the incident, the legal issues and other factors unique to that State and incident.

A number of other publications to assist both States and Claimants are available via the publications page of the IOPC Funds' website at www.iopcfunds.org.

introduction

What are the IOPC Funds?

The International Oil Pollution Compensation Funds (IOPC Funds) are two intergovernmental organisations (the 1992 Fund and the Supplementary Fund) established by States for the purpose of providing compensation for victims of oil pollution damage resulting from spills of persistent oil from tankers.

The current international compensation regime is based on two Conventions: the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention), together with the Protocol of 2003 to the 1992 Fund Convention (Supplementary Fund Protocol).

Who can claim compensation and how?

Anyone who has suffered pollution damage in a State party to the Conventions may make a claim against the shipowner or the IOPC Funds for compensation. Information on the States which are currently Members of the IOPC Funds is available at www.iopcfunds.org. Compensation is only available in respect of claims that fulfil specific criteria, which are set out in the 1992 Fund's Claims Manual.

The October 2013 session of the 1992 Fund Administrative Council, where the text of this Guidance for Member States was adopted.

How can this Guidance document help a Member State following an oil pollution incident?

It is suggested that the following measures, which are expanded upon in the subsequent sections of this document, be considered by Member States when dealing with an oil pollution incident:

- Standing last in the queue;
- Subrogation of claims settled by the State;
- Cooperation agreements between Member States and the shipowner's insurer;
- Reimbursement of overpayment of interim payments;
- Memorandum of Understanding (MoU) with domestic insurance bodies;
- Grouping claims/claimants;
- National experts list;
- Expert mediation panel;
- MoU between Member State, the shipowner's insurer and the 1992 Fund;
- Access to statistical data;
- Standard reference prices;
- Coordination between IOPC Funds' delegates and national response agencies; and
- Use of social security systems.

The following model texts are also provided at the annex to assist Member States:

- Annex I
  Central features of an agreement between a Member State, the shipowner and the P&I Club
- Annex II
  Model MoU between the Member State and the insurance industry
- Annex III
  Model MoU between the 1992 Fund and the insurance industry
- Annex IV
  Model MoU between the Member State, the shipowner's insurer and the 1992 Fund

The measures which each Member State chooses to use will be determined by the State after taking account of the particular circumstances of the incident, the legal issues and other factors unique to that State and incident. The measures listed in this document may be used singularly or in combination which may have greater effectiveness overall.

Given that the measures adopted may affect the claims management process, Member States might wish to consult with the shipowner's insurer and/or the Director of the IOPC Funds prior to applying any of the measures.

Member States are encouraged to provide feedback on the use of any of the measures to the Director of the IOPC Funds in order that experience and best practice may be included and disseminated to other Member States. In addition, Member States are encouraged to provide information on any new, modified or alternative measures employed in incidents, not only where the IOPC Funds are involved but also where they are not.

Measures for Member States to consider taking

1. STANDING LAST IN THE QUEUE

1.1 The initiatives taken by Member States involved in past incidents to overcome difficulties encountered in the application of the international Conventions and the precedents set have allowed the regime to evolve in a practical and pragmatic way that has served claimants well. One such initiative was for government claimants to 'stand last in the queue' (SLQ). This device has been exercised by the Governments of the United Kingdom, Japan, France and, most recently, the Republic of Korea, in major incidents affecting those States. SLQ is particularly useful when the value of established claims is likely to exceed funds available under the international Conventions and claims risk being pro-rated (a far less likely scenario for States in which the Supplementary Fund Protocol is now in force).

1.2 The purpose of SLQ is to increase the level of payments to non-governmental claimants or to avoid pro-rating altogether. However, for SLQ to be meaningful, government claims must form a significant proportion of all claims against the IOPC Funds so as to leave sufficient monies for other claimants and, as far as possible, avoid pro-rating. The effect is a *de facto* acceptance that in cases where the 1992 Fund's limit is likely to be exceeded, claims are not treated equally and that government claims will be sacrificed for the benefit of non-government claimants. Through governments standing last in the queue with their claims, and in incidents where the maximum available to pay compensation to the victims of the spill is not sufficient to cover all the losses, private non-government claimants can be confident that at least a substantial proportion of their claims will be met.

1.3 In the *Sea Empress* (United Kingdom, 1996), *Nakhodka* (Japan, 1997), *Erika* (France, 1999) and *Hebei Spirit* (Republic of Korea, 2007) incidents, the affected governments stood last in the queue for settlement of claims for government costs. That is to say that these governments did not pursue their claims until non-government claims had been satisfied and if there had been no monies remaining, they would have forgone compensation. In the *Sea Empress* and *Nakhodka* incidents, the Governments of the United Kingdom and Japan, respectively, were eventually able to recover all their assessed costs. In the case of the *Erika*, the French Government recovered part of its costs from the 1992 Fund and recovered the remaining costs from Total, the cargo owner and charterer of the ship. However, Total, who also volunteered to stand last in the queue, was unable to recover any of its costs having stood behind the French Government in the queue for compensation. In the Republic of Korea, the Korean Government has also followed this approach in respect of the *Hebei Spirit* incident and has stood last in the queue behind other claimants which allowed assessment efforts to be focussed initially on non-government claimants.

1.4 The following worked examples summarise the costs of a fictitious incident and are intended to illustrate the point made above that government claims must form a significant proportion of the overall costs in order for non-government claimants to benefit. In scenario 1 the Government incurred some 45% of the total costs claimed. Non-government claimants would have benefitted from their claims being settled at 100% of the assessed amount rather than 70% as would have been the case had the Government not stood last in the queue.
In scenario 2, using the exact same total claimed but noting that in this case the majority of costs were incurred by non-government entities, government claims make up just 5% of the total. As a result the level of payment is raised only marginally from 70% to 75% if the Government stands last in the queue.

SLQ worked examples

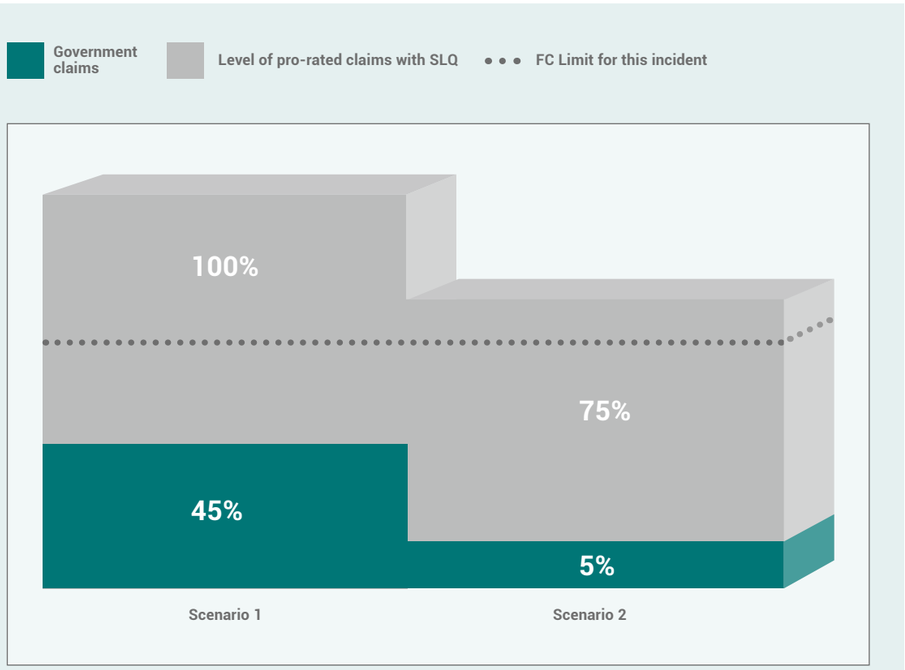
Scenario 1:

		Cost in millions
Government claims	Aerial surveillance	5
	At-sea response	27
	Shoreline clean up	140
	Post spill studies and restoration	12
	Government subtotal	**184**
Non-Government claims	Fisheries	165
	Tourism	75
	Miscellaneous	11
	Non-government subtotal	**251**
	Total claimed	**435**
	Fund Convention Limit for this incident	310
Government's proportion of total claims		45% (significant portion)
Maximum level of payment of all claims		70% pro-rata payment
Maximum possible level of payment if government claims declared SLQ		**100% payment**

Scenario 2:

		Cost in millions
Government claims	Aerial surveillance	5
	At-sea response	7
	Post spill studies and restoration	12
	Government subtotal	**24**
Non-Government claims	At-sea response	20
	Shoreline clean up	140
	Fisheries	165
	Tourism	75
	Miscellaneous	11
	Non-government subtotal	**411**
	Total claimed	**435**
	Fund Convention Limit for this incident	310
Government's proportion of total claims		5% (limited portion)
Maximum level of payment of all claims		70% pro-rata payment
Maximum possible level of payment if government claims declared SLQ		**75% pro-rata payment**

1.5 The chart below shows the effect of SLQ in relation to the proportion of government claims for the same two scenarios set out on page 7.



1.6 At the time the decision is made to set a level for pro-rating the settlement of claims, the 1992 Fund Executive Committee usually adopts a cautious approach allowing a safety margin of some 5-10% on top of the anticipated aggregate amount claimed. As time progresses and claims are assessed and settled, the level of payments is reviewed by the Executive Committee and may be raised in a number of steps as the level of confidence in the total amount claimed and assessed increases.

1.7 Once all non-government claims have been settled there is sometimes sufficient money remaining to settle government claims at least in part or, as seen in the cases of *Sea Empress* and *Nakhodka,* in full. It often takes several years to settle all the non-government claims and so it is most important that the time elapsed after the incident is not too long before government claims are examined. Rather than waiting to see if there is sufficient money remaining, claims and supporting documentation should be submitted as soon as possible. With the passage of time, governments may find it more and more difficult to provide the necessary additional documentation to satisfy queries raised by the IOPC Funds' experts and to locate personnel who were involved at the time and who may also be able to assist in answering these queries.

1.8 The downside of SLQ is that the Government of the Member State in question risks not receiving compensation for the losses it has incurred to the benefit of the private citizens and companies in that country.

2. SUBROGATION OF CLAIMS SETTLED BY THE STATE

2.1 In the *Prestige* incident, off the Spanish coast in 2002, the insurer of the vessel followed the provisions of the 1992 Civil Liability Convention (1992 CLC) and deposited the ship's limitation fund with the Corcubión Court in Spain. Since this discharged the shipowner's liability, no further payments were due from the shipowner or his insurer and this had the potential effect of excluding any payments of compensation to claimants until the limitation fund could be distributed. In order to avoid this situation, the Spanish Government settled claims against the shipowner and the 1992 Fund.

2.2 In June 2003 and July 2004 the Spanish Government adopted legislation in the form of two Royal Decrees making available a total amount of €249.5 million to compensate, in full, certain categories of claimants who had suffered pollution damage. To receive compensation the claimants had to renounce the right to claim compensation in any other way in relation to the *Prestige* incident. The Spanish Government appointed a team of national experts to assess these claims with the assistance of experts engaged by the shipowner's insurer, the London P&I Club, and the 1992 Fund. However, it was not until 2013 that the Spanish Government was in a position to commence proceedings to reclaim these subrogated claims from the limitation fund in court.

2.3 This approach demonstrates one way in which the potentially lengthy wait for the distribution of the limitation fund can be overcome. It allows for the rapid settlement of claims shortly after an incident and avoids victims of an oil spill being subject to undue financial hardship. However, a government risks being unable to recover all the compensation it has paid to claimants if there is a difference in the outcome between government assessments and those of the Club and Fund. This would be of particular concern if government assessments were to be made on the basis of different criteria to those applied by the 1992 Fund.

3. COOPERATION AGREEMENTS

3.1 After the *Hebei Spirit* incident in the Republic of Korea, the Government of the Republic of Korea, the shipowner and the P&I insurer of the *Hebei Spirit*, the Skuld Club, made two cooperation agreements, the second of which was concluded in July 2008. The Club was concerned that Korean courts dealing with the limitation proceedings might not fully take into account payments already made by the Club and that it would therefore run the risk of paying compensation in excess of the limitation amount. Under this agreement, the Skuld Club undertook to pay claimants 100% of the assessed amounts up to the shipowner's limit of liability under the 1992 CLC, namely 89.77 million SDR. In return, to ensure that all claimants would receive compensation in full, the Korean Government undertook to pay in full all claims as assessed by the Club and Fund once the 1992 CLC and 1992 Fund Convention limits were reached as well as all amounts awarded by judgements under the 1992 CLC and 1992 Fund Convention in excess of the Fund limit. The Korean Government further undertook to deposit the amount already paid out by the Skuld Club to claimants in court should the Limitation Court order the limitation fund to be deposited in court.

3.2 This second cooperation agreement provides a possible model for future incidents where there are both large numbers of small claims and a risk that the 1992 Fund limit will be exceeded in a country that has not yet ratified the Supplementary Fund Protocol. The arrangement described above allowed the Skuld Club to pay assessed amounts up to the ship's CLC limit without further delay. Such an arrangement could be useful in future incidents in settling large numbers of small claims because the P&I Clubs have the facility to pay claims relatively quickly. However, it should be noted that the agreement still required claims to have been properly assessed before payments could be made.

3.3 The salient features of the second cooperation agreement and the principles upon which it ›

relied are set out in Annex I and may be used as the basis for cooperation between a Member State, the shipowner and the shipowner's insurer.

4. REIMBURSEMENT OF OVERPAYMENT OF INTERIM PAYMENTS

4.1 A possible development either in addition to, or as part of, a cooperation agreement as described in section 3 would involve a Member State and a shipowner's P&I Club reaching agreement under which the government guaranteed repayment of any overpaid interim payments made by the P&I Club. Interim payments are sometimes made on the basis of interim assessments while queries raised by the experts engaged jointly by the P&I Club and the 1992 Fund (Club/Fund experts) are addressed and it can be said with confidence that a claim will be established at a higher amount than the interim assessment. Clearly, such circumstances should not lead to an overpayment.

4.2 The 2013 edition of the 1992 Fund Claims Manual includes a 'fast track' process where small claims may be settled on the basis of a brief investigation by the Fund and the experts of the circumstances of the loss. The investigation must include confirmation that such losses did actually occur and that there was a clear link of causation to the incident. The intention of this amendment is to facilitate the rapid settlement of small claims. However, the process could equally lead to an interim rather than final settlement. An agreement on reimbursement of overpaid interim payments, backed by guarantee, would provide the facility for small claims to be paid quickly, recalling that P&I Clubs are usually able to transfer funds relatively swiftly. It should be noted that the government concerned would be obliged to repay the shipowner's P&I Club any amounts if, in the light of a more comprehensive investigation, it were found that interim payments had been overly generous or that claims were unproven. If, however, after a full investigation, further payments were due, final settlement of each claim could be made but within the longer timeframe of a comprehensive investigation.

5. MEMORANDUM OF UNDERSTANDING (MOU) WITH DOMESTIC INSURANCE BODIES

5.1 Some Member States may wish to work with their national insurance industries to offer the resources and personnel of domestic insurers to assist the 1992 Fund following an incident. This measure is intended to facilitate the mobilisation of additional experts to meet the common concern expressed following many incidents, namely the lack of suitably qualified and experienced experts.

5.2 If a Member State were willing to make the resources of the domestic insurance industry available to the 1992 Fund, the specific details of the arrangements agreed between the 1992 Fund and the insurer/loss adjusting company would form the basis of one of two required MoUs (see Annexes II and III). The first MoU, attached at Annex II, provides a framework for agreement between the Member State and the insurance industry, whereas Annex III provides a draft MoU proposing cooperation between the 1992 Fund and a specific insurer/loss adjusting company.

6. GROUPING CLAIMS/ CLAIMANTS

6.1 There is a tendency for large numbers of small claims to be submitted by large groups of individuals with similar losses. Grouping such claimants into categories allows a large number of similar claims to be assessed as one body of claims against the same criteria with the outcome that grouped claims can be dealt with more quickly than if they were presented individually. In addition and particularly for small claims, the cost of assessing these claims individually is likely to exceed the assessed value. Member States may therefore wish to consider facilitating the grouping of claimants or working together with the P&I Club and the IOPC Funds to identify categories of claims which could be treated in this way.

6.2 The IOPC Funds have a long experience of dealing with claims presented by groups of claimants, in particular, fishery associations such as those in the *Nakhodka* incident, which had many hundreds or even thousands of members. Under such arrangements, the Chairman of the association and his staff would normally discuss settlement of claims on behalf of the membership, on the basis of a power of attorney or an authorisation provided to the Chairman by each member. This has the great advantage that the association is responsible for the equitable distribution of the compensation awarded. The Chairman and his staff will be aware of which members are no longer, or only slightly, active and which members are the most industrious and will be in a position to allocate compensation accordingly.

6.3 In the case of the *Hebei Spirit* incident, of the 59 000 hand gatherer claimants in the artisanal fisheries sector, only a small proportion belonged to fishery associations. In any event, the individual loans and subrogated rights to the Korean Government meant that it was not possible to group these claimants, resulting in the enormous effort to assess each claim. However, the grouping of claimants against certain criteria in the *Solar 1* incident (Philippines, 2006) allowed substantial numbers of claims to be reviewed and either assessed and paid quickly or, for those found to be invalid, to be screened out of the claims handling process.

7. NATIONAL EXPERT LIST/EXPERT MEDIATION PANEL

7.1 Member States may wish to prepare a list of national experts able to assist claimants in the compilation of claims and advise on, amongst other things, the types of claim admissible under the 1992 Fund Convention and the materials necessary to support a claim. Such national experts would need to be well-versed in the requirements of the IOPC Funds for the submission of claims and the criteria used to assess them, as set out in the Claims Manual.

7.2 The IOPC Funds draw upon the expertise of both national and international experts to assist in the assessment of claims and both are selected on the basis of their competence and experience in the field in which claims are being assessed. The provision of a list of national experts to the Funds' Secretariat with details of their qualifications and experience would provide a larger pool of expertise from which the Secretariat could draw following an incident.

7.3 Member States may also wish to submit details of experts they believe would be well-qualified ›

Local experts engaged by the 1992 Fund surveying pollution damage to oyster farms following the Hebei Spirit incident (Republic of Korea)

to sit on an expert mediation panel to decide on disputes between claimants and the IOPC Funds. It should be emphasised that, in common with P&I Clubs, the Funds always focus on trying to agree settlements without recourse to court actions. However, for claims where there is no disagreement on admissibility but where disputes have arisen regarding interpretation of supporting evidence and the resulting level of compensation offered, setting up an expert mediation panel could provide a means of avoiding protracted and expensive legal proceedings.

7.4 A standing list of experts from Member States could be drawn up based on information provided to the Secretariat for this purpose. At the request of one or more Member States affected by an incident, these experts could, if the concerned parties (claimant, P&I Club and IOPC Funds) agree, be called upon to look into possible compromise solutions which could then be proposed to the parties. The costs of these experts would be covered by the IOPC Funds.

8. MODEL MOU BETWEEN MEMBER STATE, THE SHIPOWNER'S INSURER AND THE 1992 FUND

8.1 For the compensation regime to be effective and to provide compensation to victims of oil pollution damage promptly, the claims handling process must be seamless and efficient. There are a number of factors that determine how quickly a claim can be processed<1> but putting in place a clear mechanism to facilitate the handling of claims is likely to improve a claimant's experience of the process. A mechanism which includes not only those parties responsible for paying compensation but also representatives of the Member State affected by the incident is likely to lead to greater cooperation and to a process in which claimants can have confidence that their concerns will receive a fair hearing.

8.2 To this end a standardised or model MoU is proposed that could be used to facilitate coordination between the concerned Member State, the shipowner's insurer and the 1992 Fund. The framework for a model MoU which would be adjusted to accommodate the circumstances of the incident is shown at Annex IV. The intention of this MoU would be, for example, to provide strategic management of the claims handling process, to create an open channel of communication between the parties, to establish a basis for regular coordination meetings, and to ensure that every assistance was offered to national and international experts working on the assessment of claims. An MoU that addresses the various stages of the claims handling process would provide parties with a starting point for discussion and save valuable time during the early stages of an incident when it is most important to establish good relationships and trust. Effective communication of this strategy for managing claims to the claimants and other interested parties such as national media is likely to be a crucial part of engendering confidence in the claims handling process amongst the affected community.

8.3 Another potential area in which Member States may be able to assist the shipowners' insurer and the 1992 Fund's experts would be to facilitate contact with claimants and reassure them that by providing information and cooperating with the experts, claims can be dealt with more quickly.

9. ACCESS TO STATISTICAL DATA

As noted above, in the event of a major incident the shipowner's insurer and the 1992 Fund jointly engage both national and international experts to advise them on the reasonable level of losses in the sectors affected. Member States can assist these experts by enabling access to requested information sources whether they be, for example, offices of national statistics, tax authorities, fishery associations or regional tourist offices or to data held by any other public body. This data will be used by experts appointed to validate claims.

<1> See document IOPC/JUN10/5/6.

10. STANDARD REFERENCE PRICES

10.1 This proposal is for Member States to prepare and maintain an up-to-date database of the prices of commodities at risk of oil pollution damage or, alternatively, a database of the sources of such information which would be made available to Club/Funds' experts in the event of an incident. Examples might include information on the market price of marine products, replacement costs of fishing and aquaculture gear. Reference prices might include equipment typically used in shoreline clean-up operations such as tractors, excavators, vacuum trucks and road vehicles of various capacities, etc. In France, for example, such resources are catalogued in the, so called, Red Book,<2> in which rates and charges acceptable for government-contracted services and works are set out. This type of information would allow one component of response costs and the value of losses suffered to be determined without the need for protracted research and associated delays in assessment of claims.

10.2 Pre-determined costs of government spill-response assets (vessels, aircraft, specialised equipment and personnel) might also be included by establishing a pre-agreed schedule of rates. The MoU concluded between the Maritime and Port Authority of Singapore and ITOPF and supported by the International Group of P&I Associations and the 1992 Fund provides a useful model which other administrations may choose to follow. The agreement documents reasonable rates for vessels and specialist equipment in advance of an incident in Singapore waters.

<2> ' Méthode pour la détermination des charges d'emploi des principaux matériels de génie civil ' published by Fédération nationale de travaux publics.

10.3 Where a database of pre-determined rates has not been established in advance of an incident, Member States may still assist by making such information readily available at the time of the incident.

11. COORDINATION BETWEEN IOPC FUNDS' DELEGATES AND NATIONAL RESPONSE AGENCIES

11.1 Government departments most familiar with the workings of the international compensation regime and representing Member States at meetings of the Funds' governing bodies are very often not the same ministries or agencies directly involved with the response to an incident. The latter might be best referred to as 'practitioners' involved in the day-to-day issues of spill response and subsequent preparation of claims and in many cases are employed by government departments or agencies not present at IOPC Funds' meetings.

11.2 It is these practitioners with whom the Club/Funds' experts work with during the claims assessment process and with whom the Club and Funds are most likely to deal when settling claims. There is frequently disquiet on the part of such response agencies at the level of detail required to assess a claim and similarly there can sometimes be a mismatch between expectations and the compensation that is provided under the Conventions. In order to promote a wider understanding of how the compensation regime functions and the constraints within which it works to settle claims, Member States might therefore wish to encourage fostering a close working relationship between those agencies or departments attending IOPC Funds' meetings and those government organisations responsible for submitting claims for spill response costs, if such a link does not already exist.

12. USE OF SOCIAL SECURITY SYSTEMS

12.1 Although payments under a comprehensive social security system are made on entirely different criteria to those applied to payments made under the Conventions, the social security system of a Member State may still form a very useful source of information to the 1992 Fund's experts. As an example, in the initial stages of an incident when gross figures are being developed to gauge the potential financial impact of the incident, generalised information such as typical income levels of a particular sector of the economy, numbers of individuals engaged in the sector, numbers of households supported and trends (is the sector in decline or growing) can all help to provide a useful indication of the envelope within which overall costs are likely to fall and where they might sit relative to the CLC or Fund limits.

12.2 Member States may also see merit in allowing access to certain pertinent information which could, for instance, allow the IOPC Funds' experts to ascertain at an early stage, whether a claimant was involved in one specific sector, eg fisheries or tourism. Such information may indicate whether the claimant could potentially have a claim which was admissible in principle, and may also assist in the grouping of claims.

13. INFORMATION PROVIDED BY THE IOPC FUNDS

13.1 The IOPC Funds and other bodies involved in payment and assessment of compensation make available information, publications, guides and training materials which Member States may find useful. In the case of the IOPC Funds, the website includes information on all past incidents, decisions of the governing bodies and information for claimants (www.iopcfunds.org). A wide range of publications are available to download or to request in hard copy via the publications page of that website.

13.2 The contact details of the Secretariat of the IOPC Funds are as follows:

International Oil Pollution Compensation Fund 1992
23rd Floor
Portland House
Bressenden Place
London
SW1E 5PN
United Kingdom

Telephone: +44 (0)20 7592 7100
Fax: +44 (0)20 7592 7111
E-mail: info@iopcfunds.org

14. OTHER SOURCES OF USEFUL INFORMATION

International Group of P&I Associations:
www.igpandi.org

International Tanker Owners Pollution Federation Limited: www.itopf.com

Annexes

ANNEX I

Central Features of an agreement between a Member State, the Shipowner and the P&I Club

Based on the Second Cooperation Agreement concluded following the *Hebei Spirit* incident, Republic Of Korea (2007)

1. The Parties

The three parties to the agreement are:

(i) The Owners of the vessel;

(ii) The P&I insurer of the vessel involved; and

(iii) The government of the affected Member State represented by the competent Ministry.

2. Preamble

2.1 The circumstances of the incident are briefly described; its cause and the consequences of the resulting widespread pollution leading to substantial clean-up costs and economic losses to the people in the affected areas.

2.2 The applicable national law enacting the two Conventions, the 1992 CLC and the 1992 Fund Convention, is identified under which the vessel owners accept strict liability up to the applicable 1992 CLC limit. It is also noted that additional compensation is available under the 1992 Fund Convention up to an overall limit of 203 million SDR (including the CLC limit) but, should admissible claims exceed this combined limit, the compensation payable to claimants would be apportioned pro-rata.

2.3 In order to avail themselves of the right to limitation under 1992 CLC the Owners are required under national law to commence limitation proceedings and establish a Limitation Fund with the competent Court.

2.4 In an incident involving a substantial number and magnitude of claims there is likely to be a considerable delay before the Limitation Fund can be distributed by the Court. The parties to the Agreement wish to facilitate payment of compensation as quickly as possible. In addition if the aggregate of all admissible claims is anticipated to exceed the overall limit of both Conventions, the 1992 Fund Executive Committee is likely to restrict any interim payments of compensation to a percentage of assessed amounts.

2.5 The P&I Club states that it is willing to make compensation payments without delay up to a total amount not exceeding the CLC limit. It is willing to establish a Limitation Fund by guarantee rather than a cash deposit, subject to safeguards to ensure that all claimants receive the same proportion of their admissible claims and that the total amount paid by the Club does not exceed that total amount which would have been payable into the Court in national currency had no interim payments been made and had a Limitation Fund been established at the commencement of Limitation Proceedings by means of a cash deposit. The Member State therefore enters into the Agreement with the Owners and the Club for the purpose of providing the Club with such safeguards.

3. The Agreement

3.1 The Club agrees to continue, together with the 1992 Fund, to review and assess claims for compensation in accordance with the Fund's criteria for the admissibility of claims.

3.2 The Club agrees to provide the funds required for the prompt payment of compensation in respect of claims which it and the 1992 Fund has approved as admissible.

3.3 Payment by the Club is conditional upon the execution by the claimant of documentation showing the amount assessed and approved by the Club and the 1992 Fund as well as a receipt and release transferring to the Owners, the Club and the 1992 Fund, the benefit of his rights of compensation under 1992 CLC and Fund Convention up to the amount of the payment.

3.4 The aggregate amount paid by the Club under 3.2 above, together with any other amounts paid by the Club as compensation for pollution damage caused by the incident, is not to exceed a maximum amount of the applicable CLC limit.

3.5 For the purpose of the Agreement, the CLC limit is to be converted into national currency at the exchange rate prevailing on the date when the Limitation Fund is established.

3.6 In the event of the Club or the Owners being required to deposit with the competent Court a cash amount representing the Limitation Fund:

(a) the Club's obligations in respect of payments under the Agreement would cease;

(b) the Club and/or Owners would pay into the Court, the CLC limit converted into national currency less the aggregate amount of compensation paid by the Club and/or Owners to claimants;

(c) the Member State, on receipt of the Club's written request to do so, would pay into the Court such further sum as may be required to bring the total sum paid into the Court to the full amount which the Court required to be deposited in respect of the Limitation Fund; and

(d) if the Court was unable to accept payment by the Member State, then payment would instead be made to the Club so that the Club itself would be able to make a timely payment into the Court of the full amount required.

3.7 The parties agree to cooperate in using best endeavours to conduct the Limitation Proceedings such that the right of the Club and Owners to limit liability is preserved and that claimants' entitlement to compensation is satisfied without the need for a Limitation Fund to be deposited in court.

3.8 The written request to enact the provisions of the Agreement and any other communications relating to the Agreement are to be addressed to the Member State and sent to the competent Ministry.

3.9 The Agreement is governed by the laws of the Contracting State and any dispute arising therefrom is to be subject to the exclusive jurisdiction of the [Contracting State].

4. Signatures

Dated:

Signed

ANNEX II

Model Memorandum of Understanding between the Member State and the insurance industry

1. This Memorandum sets out an agreement between the Government of [.....] ("the Contracting State") and its insurance industry ("the insurers").

2. The Contracting State is a Party to the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) [and the International Oil Pollution Compensation Supplementary Fund 2003 (the Supplementary Fund)] (together the "International Compensation Regime").

3. The International Compensation Regime provides a mechanism for the provision of compensation for persons who suffer damage caused by oil pollution resulting from the escape or discharge of oil from ships (as defined in Article I of the 1992 CLC).

4. The 1992 Fund Secretariat is tasked with administering the 1992 Fund and the Supplementary Fund and approving claims for compensation from claimants affected by the oil spill incident.

5. Often following a major oil spill incident, a large number of claims for compensation are filed with the 1992 Fund Secretariat. This places a large burden on the 1992 Fund Secretariat, which could potentially lead to delays in the assessment of claims process.

6. In order to ease this administrative burden, the Government of the Contracting State proposes to enter into this Memorandum of Understanding with the insurance industry within [Contracting State] in order to prepare for any incident which may impact upon its territory.

7. The Contracting State requests that the insurers make available their resources and personnel in order to assist the 1992 Fund Secretariat with the investigation and assessment of losses arising from the incident as defined in Article I of the CLC, if so requested by the 1992 Fund Secretariat.

8. The costs of the provision of such assistance by the insurers are to be paid for by the 1992 Fund [and the Supplementary Fund if the Contracting State is a Member of the Supplementary Fund].

9. The insurers do hereby acknowledge and recognise that the 1992 Fund Secretariat must apply the criteria ("the relevant criteria") determined by the 1992 Fund Assembly, as specified in the 1992 Fund Claims Manual when assessing claims for compensation. Accordingly, the insurers agree to use and apply the relevant criteria under the direction of the 1992 Fund Secretariat, when retained by the 1992 Fund Secretariat to assist with assessing losses and claims for compensation arising from an incident.

10. The insurer also recognises and agrees that the final decision as to the level of compensation to be paid to claimants rests with the 1992 Fund and therefore any assessments conducted by the insurers or any recommendations made are of an advisory nature only and are subject to the 1992 Fund's and shipowner's insurer's (P&I Club or otherwise) final approval.

11. In a major incident, the time required for all claims to be presented, substantiated and assessed, and for more contentious claims to be finally resolved, may typically run to a period of some years. The Contracting State is convinced of the need for prompt payment of compensation. Accordingly, the aim of retaining the insurers is to enable the swift assessment and payment of claims for compensation to be made. The insurers will therefore use their best endeavours to assist with the process of assessing large numbers of claims using the relevant criteria.

12. The rates for the insurer's services are to be agreed by the 1992 Fund Secretariat with the insurers prior to the insurers commencing work for the 1992 Fund or Supplementary Fund.

13. Any claims or disputes in relation to this Memorandum shall be governed by [Contracting State] law and be subject to the exclusive jurisdiction of the [Contracting State].

Dated:

For the insurer

Signed

For the Government of [Contracting State]

Signed

ANNEX III

Model Memorandum of understanding between the 1992 Fund and the insurance industry

1. This Memorandum sets out an agreement between the International Oil Pollution Compensation Fund 1992 (1992 Fund) and [the loss adjusting company] ("the Company") in relation to the procedures and practices to follow when the Company is retained by the 1992 Fund to assist with the investigation and assessment of losses arising from oil pollution damage following an incident as defined in Article I of the 1992 Civil Liability Convention (1992 CLC).

2. The 1992 Fund and the Company acknowledge that the 1992 Fund must apply the criteria ("the relevant criteria") determined by the 1992 Fund Assembly, as specified in the 1992 Fund Claims Manual when assessing claims for compensation. Accordingly, the Company agrees to use and apply the relevant criteria under the direction of the 1992 Fund, when retained by the 1992 Fund to assist with assessing losses and claims for compensation arising from an incident.

3. The Company also recognises and agrees that the final decision as to the level of compensation to be paid to claimants rests with the 1992 Fund and therefore any assessments conducted by the Company or recommendations made are of an advisory nature only and are subject to the 1992 Fund and shipowner's insurer's (P&I Club or otherwise) final approval.

4. Furthermore, the Company agrees to liaise with the 1992 Fund as to the best use of the Company's resources and personnel, specifically with regard to the geographic areas to be investigated, and the groups of claimants to be considered for compensation. The 1992 Fund will accordingly liaise with the Company as to where the Company should direct its personnel and resources in order to swiftly conduct the investigations and assessments requested by the 1992 Fund.

5. In a major incident the time required for all claims to be presented, substantiated and assessed, and for more contentious claims to be finally resolved, may typically run to a period of some years. The 1992 Fund is convinced of the need for prompt payment of compensation. Accordingly, the aim of retaining the Company is to enable the swift assessment and payment of claims for compensation to be made. The Company will therefore use its best endeavours to assist with the process of assessing large numbers of claims using the relevant criteria.

6. The rates for the Company's services are to be agreed by the 1992 Fund with the Company prior to the Company commencing work for the 1992 Fund.

7. Any claims or disputes in relation to this Memorandum shall be governed by [Contracting State] law and be subject to the exclusive jurisdiction of the [Contracting State].

8. The Company and the 1992 Fund may terminate this Memorandum by giving three months' prior written notice to the other party.

Dated:

For the Company

Signed

For the International Oil Pollution Compensation Fund 1992

Signed

ANNEX IV

Memorandum of understanding between the Member State, the shipowner's insurer and the 1992 Fund

1. This Memorandum sets out an agreement between the Member State ("State"), shipowner's insurer ("Insurer") and the International Oil Pollution Compensation Fund 1992 (1992 Fund) in relation to the common desire and objectives of the "Parties" to support the efficient and prompt handling of claims arising from the incident involving the [*Ships Name*] on [date].

2. The regime that provides compensation for oil pollution damage resulting from spills of persistent oil from tankers is based on two Conventions: the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 CLC) and the International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention) together with its 2003 Supplementary Fund Protocol.

3. For the regime to be effective and to provide compensation to victims of oil pollution damage promptly, the claims handling process must be seamless and efficient. There are a number of factors that determine how quickly a claim can be formulated, submitted and processed. By establishing a clear strategy to facilitate the handling of claims, claimants are more likely to be reassured and, consequently, be more willing to participate in a cooperative process.

4. The Parties to this MoU understand these issues and share the following objectives:

(i) To communicate openly with the victims and assist them to the extent possible;

(ii) To facilitate prompt and efficient processing, payment and settlement of assessed claims;

(iii) To treat all claimants equally and assess all claims in accordance with the same guidelines and criteria; and

(iv) To educate victims on the options for settlement without recourse to legal action and discourage actions or submissions which will delay the assessment and payment of legitimate claims.

5. To the extent practical and relevant to the circumstances of the incident, the Parties agree to:

(i) Establish clear channels of communication and meet periodically to review progress of the claims assessment process. These meetings to be held on a monthly/bimonthly/periodical basis as required and modified as the incident evolves at times and locations to be mutually agreed;

(ii) Develop a clear and coherent strategy and plans for notifying, educating, supporting in the preparation, receiving locally, processing, assessing and settling claims;

(iii) Coordinate the process of communication of the aforementioned strategy and progress reports to relevant government agencies, claimant representatives, claimants and the media at all stages in the process;

(iv) Assist the national and international experts appointed by the Insurer and the 1992 Fund in carrying out their work without undue interference, and ensure they are protected from physical, verbal or written abuse;

(v) Work collaboratively to discourage potentially fraudulent claims which will impede the assessment of legitimate claims and potentially reduce the level of payment to those legitimate claimants; and ›

(vi) Share information, to the extent permitted under privacy and other relevant information legislation, which will assist in the assessment of claims and in the communication of progress in the claims handling process. Specifically the State should provide information on actions which it took which might have resulted in the prevention or restriction of normal business activity and which individual claimants cannot be expected to be able to justify. The Insurer and Fund will provide information on the number and quantum of claims submitted, assessed and settled such that the State may monitor progress.

6. Any claims or disputes in relation to this Memorandum shall be governed by [Contracting State] law and be subject to the exclusive jurisdiction of the [Contracting State].

7. The Parties may terminate this Memorandum by giving three months' prior written notice to the other party.

Dated:

For the State

Signed

Insurer

Signed

International Oil Pollution Compensation Fund 1992

Signed

Guidance for Member States

Notes

Notes

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