



International Oil Pollution  
Compensation Funds

<b>Agenda Item 4</b>	IOPC/APR17/4/4	
<b>Date</b>	1 March 2017	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES21	●
<b>1992 Fund Executive Committee</b>	92EC68	
<b>Supplementary Fund Assembly</b>	SAES5	●

## INTERIM PAYMENTS

### AGREEMENT ON STANDARD TERMS RELATING TO INTERIM PAYMENTS

#### Note by the Director

<b>Summary:</b>	At the October 2016 sessions, the Agreement between the International Group of P&I Clubs and the IOPC Funds on standard terms relating to interim payments was approved by the 1992 Fund Assembly and the Supplementary Fund Assembly. The 1992 Fund Assembly and Supplementary Fund Assembly also authorised the Director of the IOPC Funds to sign the Agreement.
	The Agreement on Standard Terms relating to Interim Payments (2016) was signed by both parties on 21 December 2016.
<b>Action to be taken:</b>	<u>1992 Fund Assembly and Supplementary Fund Assembly</u>  Information to be noted.

#### 1 Background information

- 1.1 At the October 2016 sessions, the Agreement between the International Group of P&I Clubs and the IOPC Funds on standard terms relating to interim payments was approved by the 1992 Fund Assembly and the Supplementary Fund Assembly. The 1992 Fund Assembly and Supplementary Fund Assembly also authorised the Director to sign the Agreement.
- 1.2 The Agreement on Standard Terms relating to Interim Payments (2016) was signed by the Chairman of the International Group of P&I Clubs and the Director on 21 December 2016.
- 1.3 The Agreement on Standard Terms relating to Interim Payments (2016) and its appendix are reproduced at the Annex of this document.

**2      Action to be taken**

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to take note of the information contained in this document.

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## ANNEX

### AGREEMENT ON STANDARD TERMS RELATING TO INTERIM PAYMENTS (2016)

(For use between International Group Clubs and the IOPC Funds)

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

1. The terms and conditions set out in the appendix to this Agreement shall be known as the 'Standard Terms relating to Interim Payments (2016)', or by the abbreviated name the 'Interim Payment Standard Terms'.
2. These terms are available for use in incidents which involve ships entered in the Clubs and which give rise to claims involving (or potentially involving) the 1992 Fund and, if applicable, the Supplementary Fund, and may be modified by agreement between the parties involved.
3. The Standard Terms shall apply in any particular incident only if expressly so agreed by the Club insuring the ship involved in the incident and by the 1992 Fund (together with the Supplementary Fund, if also potentially involved). In such a case the Standard Terms shall govern the rights and obligations of these parties with respect to interim payments, and they shall take effect subject to any modifications or additions which may be agreed with respect to the incident.

Dated

21 DECEMBER

2016

For the International Group of P&I Clubs

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

Signed



Hugo Wynn-Williams  
Chairman

Signed



José Maura  
Director

## APPENDIX

### STANDARD TERMS RELATING TO INTERIM PAYMENTS (2016)

#### (For use between International Group Clubs and the IOPC Funds)

The objectives, concerns and safeguards summarised in Section I below are set out by way of explanatory background, and regard is to be had to them in interpreting and applying the terms and conditions in Section II.

#### Section I

**The main objective** of the terms and conditions set out in Section II is to promote the efficient working of the compensation system; to enable claims exceeding the 1992 Civil Liability Convention (1992 CLC) limit to be paid more speedily than if the 1992 CLC alone applied, and avoid the complexity and delay of a formal distribution of a limitation fund given the availability of supplemental compensation from the IOPC Funds.

The purpose of the arrangements that follow is to make compensation available to the victims of pollution as promptly as possible, whilst ensuring that the total amount paid is ultimately borne by the Club/shipowner and the IOPC Funds in the proportions envisaged by the 1992 CLC and the 1992 Fund Convention.

**The main concerns** stem from the fact that interim payments are not prescribed by the Conventions and therefore rest on agreement between the paying parties. Where established claims exceed the limit under the 1992 CLC, each claimant is entitled to receive part of their claim under the 1992 CLC and a further proportion from the 1992 Fund. However the practice has been that interim payments are not apportioned between the Club and the Fund but are made by one or the other. These exceed the amounts for which the paying party is liable to the parties paid.

The Club faces the risk of claims being established after it has completed making interim payments as the fact that the Club's payments have reached the 1992 CLC limitation amount does not absolve it of liability for claims established later. It may also have set up a fund in court from which these may be paid. This can result in an imbalance whereby the Club bears a greater proportion of the total claims than envisaged by the Conventions, and the Fund pays one which is correspondingly lower.

**The safeguards** set out in Section II support the efficient working of the compensation system. Any overpayment is to be rectified by a balancing payment in a reconciliation procedure between the Club and the Fund at the end of the case, ensuring that neither party pays compensation in excess of their limit of liability under the 1992 CLC and Fund Convention.



## Section II

### TERMS AND CONDITIONS

1. The following terms and conditions shall apply to any interim payments made in respect of claims for pollution damage in any incident to which the Standard Terms relating to Interim Payments (2016) are made applicable by agreement between the Club insuring the ship involved in the incident and the IOPC Funds. References herein to "the Fund" are references both to the 1992 Fund and, where it is (or might be) involved in an incident, the Supplementary Fund. For these purposes interim payments include any payment of compensation made directly to a claimant, by the Club/shipowner or the Fund, independently of a distribution of the available compensation by the competent court or other authority.
2. Any interim payments by the Club/shipowner in respect of such claims may either be:
  - (a) restricted to the Club/shipowner liability to any claimant under the 1992 CLC; or
  - (b) not so restricted, and set at a level which takes into account the claimant's rights under the international regime as a whole.
3. If the Club/shipowner makes payments restricted in the manner described in paragraph 2(a) above they may do so on such terms as they see fit.
4. If the Club/shipowner makes payments as described in paragraph 2(b) above, and satisfy the conditions in paragraph 6 below, the Fund undertakes to bear responsibility in accordance with paragraph 7 below for payment of claims established thereafter.
5. A claim may be established:
  - (a) by agreement, as a result of the Club/shipowner and the Fund accepting that the claim is admissible for an approved amount; or
  - (b) by a final judgment of the competent court in proceedings against the shipowner and/or the Club and the Fund; or
  - (c) by a final judgment of the competent court in proceedings against the shipowner and/or the Club, provided the Fund is either a party to the proceedings or has been notified of them and is bound by the facts and findings in the judgment in accordance with Article 7.6 of the 1992 Fund Convention (and, if applicable, Article 7.1 of the Supplementary Fund Protocol).
6. The conditions referred to in paragraph 4 above are:
  - (a) Unless otherwise agreed, payments by the Club/shipowners are continued until their total amount, including any sums they may have paid in satisfaction of claim(s) established by final judgment, and/or any sums distributed in respect of such claim(s) from a limitation fund which they may have constituted, is equal to the 1992 CLC limit;
  - (b) save as provided in sub-paragraph (c) below, payments by the Club/shipowner are to be counted for the purposes of this paragraph only if and to the extent that they are made in respect of established claims;

- (c) any payment by the Club/shipowner in respect of a claim which is established under the 1992 CLC, but is not legally enforceable against the Fund, shall count for the purposes of this paragraph only up to the amount which the claimant would be entitled to receive from the distribution of a limitation fund under Article V(4) of the 1992 CLC;
  - (d) payments are made on terms approved by the Fund as to receipt and release;
  - (e) the Fund is consulted as to the level at which payments are made, it being accepted that payments will not count for the purposes of this paragraph to the extent that they exceed the level of payments finally approved by the Fund.
7. If and when the Club/shipowner has fulfilled the above conditions the Fund will bear responsibility thereafter to the Club/shipowner for payment of any established claims. This responsibility:
- (a) is subject to its liability limit, and to any restriction on the level of payments to avoid overpayment;
  - (b) applies to the full amounts for which any such claims are established (subject only to sub-paragraph (a) above);
  - (c) is not limited to the proportion of any such claim for which the Fund could be held (or has been held) legally liable under the 1992 Fund Convention and, if applicable, the Supplementary Fund Protocol;
  - (d) is unaffected by full or partial satisfaction of such a claim by payment from any limitation fund or other security which the Club/shipowner may have constituted, or by any other payment which they may be required to make, in which case the amount so paid shall be taken into account in the reconciliation procedure referred to in paragraph 10 below;
  - (e) is without prejudice to any time bar or other defence on which the Fund may be entitled to rely, including the defences mentioned in Article 8 of the 1992 Fund Convention, Article 8 of the Supplementary Fund Protocol and Article X(1)(a) and (b) of the 1992 CLC, but is unaffected by the mere absence of a monetary order requiring the Fund to pay any specified amount in respect of an established claim;
  - (f) is without prejudice to the Fund's right to dispute the shipowner's right of limitation under the 1992 CLC, and to claim from the shipowner by subrogation any amounts paid by the Fund if conduct barring limitation is established;
  - (g) is otherwise unaffected by any dispute as to the shipowner's right of limitation, save where the right is contested by the Fund before the competent court and its position is upheld by a final judgment.
8. It is recognised that the arrangements in paragraphs 4–7 above differ from those which apply if payments by the Club/shipowner and Fund are limited to the proportions of each individual claim for which they are respectively liable under the 1992 Conventions; that these arrangements do not absolve the Club/shipowner of liability to parties whose claims are established after payments have reached the 1992 CLC limit; and that, if such claims are enforced against the Club/shipowner, various factors may impair their ability to recover by subrogation the excess paid over the 1992 CLC limit.
9. In order to avoid any imbalance which may arise for these or other reasons in the apportionment of total compensation payments, a reconciliation procedure is to be carried out at the end of the case, and any balancing payment is to be made which may be necessary



to ensure that the amounts borne by the Club/shipowner are equal to the 1992 CLC limit (or are reimbursed in the circumstances referred to in paragraph 10 below).

10. For the purposes of these terms and conditions claims for pollution damage may be established, and may be the subject of interim payments, without prejudice to any defence of the Club/shipowner that no liability for the damage attaches to the shipowner by reason of Article III(2) of the 1992 CLC. If such a defence is established (either to the satisfaction of the Fund or by final judgment of the competent court in proceedings to which the Fund is a party), and no defence is available to the Fund under Article 4.2 of the 1992 Fund Convention, the reconciliation procedure referred to above shall be adjusted to reimburse the Club/shipowner any amounts they have paid.
  11. Any claims or disputes arising in connection with these terms and conditions shall be governed by English law and be subject to the exclusive jurisdiction of the English High Court of Justice, to which the Club and the Fund submit for the purposes also of enforcement of any final judgment or order.
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### SCHEDULE

- (1) AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC. of One Battery Park Plaza, 31st Floor, New York, NY 10004, United States of America;
- (2) ASSURANCEFORENINGEN SKULD (GJENSIDIG) of P.O. Box 1376 Vika, N-0114 Oslo, Norway;
- (3) THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION LIMITED of Regis House, 45 King William Street, London, EC4R 9AS, England;
- (4) GARD P.&I. (BERMUDA) LIMITED of PO Box HM 3038, Hamilton HMNX, Bermuda;
- (5) THE JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION of 2-15-14 Nihonbashi - Ningyocho, Chuo-ku, Tokyo 103, Japan;
- (6) THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION LIMITED of 50 Leman Street, London, E1 8HQ, England;
- (7) THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED of The Quayside, Newcastle upon Tyne NE1 3DU, England;
- (8) THE SHIPOWNERS' MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG) of 16, Rue Notre-Dame, L-2240 Luxembourg;
- (9) THE STANDARD CLUB LIMITED of Dallas Building, 7 Victoria Street, P.O. Box HM 1743, Hamilton, Bermuda;
- (10) THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED of Aquatical House, 39 Bell Lane, London, E1 7LU, England;
- (11) SVERIGES ANGFARTYGS ASSURANS FORENING of Gullbergs Strandgata 6, S-401 22 Goteborg, Sweden;
- (12) THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED of Windsor Place, 18 Queen Street, P.O. Box HM665, Hamilton HMCX, Bermuda; and
- (13) THE WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION (LUXEMBOURG) of 33 Boulevard Prince Henri, Luxembourg.