

STOPIA AND TOPIA

Summary of Schemes

STOPIA

The Small Tanker Oil Pollution Indemnification Agreement is an agreement among tanker owners which establishes STOPIA 2006.

The scheme provides for the owner of a ship involved in an oil pollution incident to reimburse the 1992 IOPC 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. The scheme therefore applies to incidents involving ships of gross tonnage below that figure, for which the liability limits under CLC 92 could be as low as SDR 4.51 million.¹

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 of P&I Associations, and reinsured through the Group pooling arrangements. Ships of this description, referred to as 'relevant ships', are automatically entered in the scheme as a condition of Club cover. Their owners become parties to the agreement and are referred to as 'Participating Owners'.

Relatively few ships insured by an International Group Club are not reinsured through the Group's pooling arrangements. Such ships are not automatically entered in the scheme but may be entered by written agreement between the Club and the owner.²

An explanatory memorandum accompanying the agreement records that the scheme reflects the desire of shipowners to support the international system of compensation for oil pollution from tankers; that it is intended to put in place binding contractual arrangements to ensure that the overall costs of claims falling within this system are shared approximately equally with oil receivers; that it is intended, together with the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006, to encourage widest possible ratification of the Supplementary Fund Protocol; and that it has been drawn up in recognition of the potential additional burden imposed by the Protocol on receivers of oil.

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. The scheme therefore 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.³

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 authorized under the scheme to enter into ancillary arrangements conferring on the 1992 Fund a right of direct action against the relevant Club in respect of any claim under the scheme. These and other arrangements to support the operation of the scheme have been put in place in the Memorandum of Understanding (MoU) between the 1992 Fund and the International Group (2006 revision).

¹ SDR 4.51m is the minimum liability limit under CLC 92 for any ship, however small.

² These arrangements apply chiefly to a limited number of Japanese coastal (Naiko) tankers insured by the Japan P&I Club and reinsured by separate arrangements. The Japan P&I Club has encouraged the owners of such tankers to agree to participate in the scheme. As at 20 August 2016 the number of ships in this category was 404: Note by the IOPC Funds Secretariat, IOPC/OCT16/4/3, para. 2.2.2.

³ See the Contracts (Rights of Third Parties) Act 1999.

The arrangements contained in the MoU include provision for the 1992 Fund to be provided every six months with the names of all ships which are entered in International Group Clubs and also entered in STOPIA 2006.⁴

The first incident giving rise to indemnification under STOPIA 2006 occurred a few months after it took effect when the Philippines registered tanker *Solar 1* (998 gt), laden with a cargo of 2,081 tonnes of industrial fuel oil, sank on 11 August 2006 in heavy weather some 10 nautical miles south of Guimaras Island, Republic of the Philippines. The liability limit of the ship under CLC 92 was the minimum figure of SDR 4.51 million, and accordingly the 1992 Fund was entitled to indemnification in respect of the difference between that figure and the total amount of established claims, up to SDR 20 million. As the 1992 Fund remained legally liable to compensate claimants to the extent that the established claims exceeded the CLC 92 limit, it was agreed between the Director of the Fund and the shipowner's P&I Club that the Fund would assume responsibility for compensation once the Club's payments had reached the CLC 92 limit, and that the Fund would then seek regular reimbursement from the Club until the STOPIA limit of SDR 20 million was reached; reimbursement was made by the Club on receipt of invoices from the Fund at two-weekly intervals.⁵

The maximum amount payable under STOPIA by the participating owner is relatively small in comparison with the maximum exposure under TOPIA.⁶ It is to be expected that incidents giving rise to liability on the part of the Supplementary Fund, and of the participating owner under TOPIA, will be relatively rare events – none has occurred since the scheme came into operation. By contrast, small ships constitute a large part of the world's tanker fleet and have accounted for a significant proportion of oil pollution claims experience. Whilst the pattern of future claims experience remains to be seen, it is possible that the aggregate of payments under STOPIA will, over time, have a significant impact on the apportionment of the cost of oil spills between shipping and oil industry interests.⁷

TOPIA

The Tanker Oil Pollution Indemnity Agreement is an agreement among tanker owners which establishes TOPIA 2006. The scheme entered into effect simultaneously with STOPIA, and the two schemes have many provisions in common.

TOPIA establishes an indemnity arrangement similar to STOPIA between P&I Clubs and their members and the Supplementary Fund. The scheme provides for the participating owner of the ship involved in an incident affecting a Supplementary Fund member state to indemnify the Supplementary Fund for 50 per cent of any amount it has paid, or expects to pay, in respect of the incident.⁸ It does not provide for any indemnification of the 1992 Fund.

In other respects TOPIA has much in common with STOPIA, including many common provisions and cover under Club rules against liability under the schemes.⁹

⁴ As at 20 August 2016 the total number tankers insured by International Group Clubs was 6,584, of which 6,462 (98.1%) were entered in STOPIA 2006. For various statistics relating to ships entered in the schemes see Note by the IOPC Funds Secretariat, IOPC/OCT16/4/3.

⁵ 92FUND/EXC.42/8, para. 4..

⁶ Under STOPIA the maximum liability of the participating owner to the 1992 Fund is SDR 15.49m (SDR 20m less SDR 4.51m). Under TOPIA the maximum liability to the Supplementary Fund is SDR 273.5m: see below.

⁷ Clause VIII of the scheme provides for a review of claims experience after ten years, and thereafter every five years, with a view to possible amendments for the purpose of maintaining an approximately equal apportionment.

⁸ Under TOPIA the maximum liability of the participating owner to the Supplementary Fund is SDR 273.5m, being 50 per cent of the maximum amount available from the Supplementary Fund, namely SDR 547m (SDR 750m less SDR 203m available under the 1992 Fund Convention).

⁹ One particular respect in which TOPIA differs from STOPIA is that TOPIA excludes liability to pay indemnification for any amounts paid for 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).

All tankers insured by International Group Clubs and reinsured through its pooling arrangements are entered in the scheme.¹⁰ At the end of 2016 there had been no incident involving the Supplementary Fund or any payment under TOPIA.

2016 Review and Amendments

Both Agreements contain provisions enabling authorising the International Group, as agent for all Participating Owners, to give effect to amendments agreed on their behalf by Club Boards.¹¹

Both Agreements also provided for a review to be carried out, in the light of claims experience in the ten years from the introduction of the schemes, in order to establish the approximate proportions in which the cost of claims for pollution damage under the 1992 Civil Liability and Fund Conventions had been borne in this period respectively by shipowners and oil receivers, and to consider the efficiency, operation and performance of the Agreements.¹²

Review

In accordance with the review provisions the International Group of P&I Associations initiated a review in 2016, invited the IOPC Funds' Secretariat and Oil Companies International Marine Forum (OCIMF) to participate, and shared with them the relevant claims data. This was as follows:

- Number of cases in which indemnification paid under STOPIA 2006: one (the *Solar I*);
- Number of cases in which indemnification paid under TOPIA 2006: none (on account of no cases having engaged the Supplementary Fund);
- Number of cases involving tankers entered in International Group Clubs: 348;
- Total cost borne by shipowners and International Group Clubs: US\$256.8 million;
- Number of cases involving the 1992 IOPC Fund: 2;
- Total cost borne by 1992 Fund in these cases: US\$41.7 million;
- Proportions borne respectively by shipowners and oil receivers: 86%/14%.

Both Agreements provide that if either shipowners or oil receivers have paid more than 60% of the total cost then measures are to be taken to adjust the financial burden with a view to maintaining an approximately equal apportionment.¹³

However the International Group took into consideration that a substantial part of the cost borne by the shipping industry consisted of payments in the *Hebei Spirit* incident (Republic of Korea, 2007),

Indemnification under STOPIA falls within the retention level of the International Group's pooling arrangements, but indemnification under TOPIA, combined with the owner's other liabilities in respect arising from the incident, could exceed that level and involve the Group's reinsuring underwriters.

¹⁰ In 2016 some 404 tankers were not entered in the scheme because they were not reinsured through the International Group's pooling arrangements. Although TOPIA makes provision for such ships to be entered in the scheme by written agreement between the shipowner and his Club, and a number of such agreements have been concluded with respect to STOPIA, generally they have not been concluded in relation to TOPIA on the grounds that the ships concerned are of small size and are considered most unlikely to cause pollution resulting in claims exceeding the maximum compensation available from the 1992 Fund: see IOPC/OCT16/4/3, para. 2.3.3.

¹¹ STOPIA and TOPIA Cl. VII.

¹² Cl. VIII.

¹³ Cl. VIII(C).

and that the same incident would give rise to substantial payments by the 1992 Fund to be taken into account in the next review.

In these circumstances, after consulting the relevant shipowner representative bodies (ICS and INTERTANKO) it decided not implement any of the measures referred to in the Agreements.¹⁴

Amendments

As part of the review of STOPIA 2006 and TOPIA 2006 in 2016 it was decided that the schemes should be amended in order to –

- (i) provide for all future reviews to be carried out at intervals of ten years instead of five years;
- (ii) ensure that the claims data from all previous reviews was taken into account in reviews carried out in future; and
- (iii) address the risk of sanctions legislation affecting the ability of International Group P&I Clubs to reimburse the 1992 Fund and Supplementary Fund under STOPIA 2006 and TOPIA 2006 respectively.

Changes (i) and (ii) have been implemented by amending Clause VIII(A) in both Agreements.¹⁵

The amendment concerning sanctions risks involves new wording in Clause I of the Agreements, where such risks are defined consistently with their treatment under Club rules and the Clubs' pooling and reinsurance arrangements, and in Clause IV, to cover circumstances where sanction risks affect payment under the schemes and/or recoveries from insurers or reinsurers.¹⁶

These amendments came into effect on 20 February 2017.

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¹⁴ See *STOPIA 2006 and TOPIA 2006 – Review of Agreements*, Note dated 23 September 2016 submitted to the IOPC Funds by the International Group of P&I Associations, IOPC/OCT16/4/3/1.

¹⁵ For the new text see *STOPIA 2006 and TOPIA 2006 – Review - Amendments*, Note dated 29 September 2016 submitted to the IOPC Funds by the International Group of P&I Associations, IOPC/OCT16/4/3/2/Rev.1., para. 2.5.

¹⁶ For the new sanctions provisions see IOPC/OCT16/4/3/2/Rev.1, Annex I.