

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 7	IOPC/JUL11/7/5	
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	1992 Fund Assembly	92AES16	
	1992 Fund Executive Committee	92EC52	
1992 Fund Working Group	92WG6/3	•	

1992 FUND SIXTH INTERSESSIONAL WORKING GROUP

FUNDING OF INTERIM PAYMENTS

Submitted by the International Group of P&I Clubs

Summary:	The International Group of P&I Clubs welcomes and supports the Director's proposal that the establishment of a Consultation Group may be an appropriate forum to examine further the issue of the funding of interim payments and the proposals that have been tabled to date, including the proposed draft Memorandum of Understanding (MoU) between the International Group and the 1992 Fund, and an Assembly Resolution.
Action to be taken:	<u>1992 Fund sixth intersessional Working Group</u> Information to be noted.

1 Introduction/Background information

The International Group of P&I Clubs (International Group) notes document IOPC/JUL11/7/2 submitted by the Director on the funding of interim payments and the discussions that have taken place since the previous meeting of the Working Group between the IOPC Funds' Secretariat and the International Group. The International Group has already commented in some detail to previous Working Group sessions and therefore offers only the following brief comments on both the proposals listed in section 5 of document IOPC/JUL11/7/2 and on some of the differences of opinion that currently exist between the International Group and the IOPC Funds' Secretariat on the issue.

2 The practice and problems regarding interim payments under the 1992 Civil Liability Convention (1992 CLC) and 1992 Fund Convention

2.1 The International Group notes the statement in paragraph 2.5 of document IOPC/JUL11/7/2 that 'the problem now facing the shipowner and its P&I Club is that some Member States' national courts may not recognise these subrogated rights', ie those rights that exist by virtue of Article V.5 of the 1992 CLC. Whilst this has been of concern to the International Group, it is not the International Group's only concern with regard to the funding of interim payments by the Clubs.

2.2 It is apparent from the International Group's pooling and reinsurance arrangements, which are helpfully set out in paragraph 2.6 (1) of document IOPC/JUL11/7/2, that in the event of a double payment, the reinsurers' exposure would be increased from US\$84 million to US\$228 million. This would have a major impact on the Clubs' ability to continue to obtain sufficient reinsurance in the future to meet the requirements under the Convention.

3 MoU proposal

3.1 Document IOPC/JUL11/7/2 refers to the MoU as seeking to transfer risk from the Club to the 1992 Fund. Although the level of exposure described in the preceding paragraph is a new factor, the International Group Clubs' concerns about the risks of overpayment are well known and have been

raised with the Funds on several occasions in the past. However, the International Group has not looked at this as an exercise to transfer risk. The primary aim is to place the arrangements for interim payments on a sounder footing in a way that will benefit all concerned, not least the claimants.

- 3.2 In addition, no risk of overpayment or double payment exists for the 1992 Fund if proper releases are obtained. However the risks of overpayment or double payment exist for the shipowner and Club even with proper releases because the owner has the obligation to deposit a limitation fund in court, whereas the 1992 Fund has not.
- 3.3 The International Group remains of the view that the draft MoU proposed by the International Group between the two paying parties (1992 Fund and the International Group Clubs) is not just a 'form of insurance policy for the shipowner and its P&I Club' as suggested in paragraph 3.2 of document IOPC/JUL11/7/2. The International Group believes that an approach such as that proposed in the MoU is in the interests of all concerned parties including the 1992 Fund. The main purpose of the proposed MoU is to establish that the full amount of the owner's interim payments counts towards the maximum compensation available. This is a quite separate risk from that of overpayments resulting from an underestimate of the total admissible claims.

4 Differences of interpretation

- 4.1 The International Group agrees with the Director that the current disagreement between the two parties centres on the interpretation and application of the Conventions. There are two particular issues on which the International Group and the Director currently hold divergent views.
- 4.2 Firstly, the International Group disagrees with the Director's view on the effect of the shipowner's right of limitation. Shipowners' right of limitation derives from the traditional principle of maritime law and, under the CLC, is also a balancing factor to the strict nature of liability. There is no obligation on the part of shipowners or Clubs to make interim payments. If shipowners and Clubs stop making interim payments then there would be no risk of double payment.
- 4.3 Secondly, the International Group disagrees with the Director's view that payments made by the Club are solely in respect of the shipowner's and Club's liability under the 1992 CLC and that payments by the 1992 Fund are solely in respect of the Fund's liability under the 1992 Fund Convention. The International Group's view remains clear in that payments funded by one of the contributing parties are made on behalf of both parties for the reasons explained to previous Working Group sessions.

5 The way forward

- 5.1 The view of the International Group is that a MoU is one way of reconciling current practice with the underlying legal regime in the Conventions. The International Group also notes with interest the Director's proposal that an Assembly Resolution may address the International Group's concerns and welcomes the opportunity to discuss this proposal further. The underlying differences with regard to the interpretation of the Conventions will still need to be overcome whether the form of any agreement that is reached is a MoU or an Assembly Resolution.
- 5.2 The International Group welcomes and supports the Director's proposal for the establishment of a Consultation Group and welcomes the opportunity to participate in such a Group

6 Action to be taken

1992 Fund sixth intersessional Working Group

The 1992 Fund sixth intersessional Working Group is invited to take note of the information contained in this document.
