EXPLANATORY NOTE

December 2018

INTRODUCTION

Compensation for pollution damage caused by spills from oil tankers is governed by an international regime elaborated under the auspices of the International Maritime Organization (IMO). The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and the International Oil Pollution Compensation Fund, 1971 (1971 Fund) ceased to exist with effect from 31 December 2014. A large number of States have also denounced the 1969 Civil Liability Convention. Therefore, this note deals with the 'new regime', i.e. the 1992 Civil Liability Convention and the 1992 Fund Convention.

The **1992 Civil Liability Convention** governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit its liability to an amount which is linked to the tonnage of its ship.

The **1992 Fund Convention**, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. The **International Oil Pollution Compensation Fund 1992**, generally referred to as the **1992 Fund**, was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organisation established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The IOPC Funds headquarters is based in London.

As at 31 December 2018, 137 States had ratified or acceded to the 1992 Civil Liability Convention, and 115 States had ratified or acceded to the 1992 Fund Convention. The States Parties are listed in the Annex.

1992 CIVIL LIABILITY CONVENTION

Scope of application

The 1992 Civil Liability Convention applies to **oil pollution damage** resulting from spills of **persistent** oil from **tankers**.

The 1992 Civil Liability Convention covers pollution damage suffered in the **territory, territorial sea or exclusive economic zone (EEZ)** or equivalent area of a State Party to the Convention. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application.

'Pollution damage' is defined as loss or damage caused by contamination. In the case of environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment.

The notion of pollution damage includes measures, wherever taken, to prevent or minimise pollution damage in the territory, territorial sea or EEZ or equivalent area of a State Party to the Convention (**'preventive measures'**). Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

The 1992 Civil Liability Convention covers spills of **cargo and/or bunker oil** from laden, and in some cases unladen seagoing vessels constructed or adapted to carry oil in bulk as cargo (but not to dry cargo ships).

Damage caused by **non-persistent oil**, such as gasoline, light diesel oil, kerosene etc., is not covered by the 1992 Civil Liability Convention.

Strict liability

The owner of a tanker has strict liability (i.e. the owner is liable also in the absence of fault) for pollution damage caused by oil spilled from its tanker as a result of an incident. The owner is exempt from liability under the 1992 Civil Liability Convention only if it proves that:

(a) the damage resulted from an act of war or a grave natural disaster; or
(b) the damage was wholly caused by sabotage by a third party; or
(c) the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

Limitation of liability

The shipowner is normally entitled to limit its liability under the 1992 Civil Liability Convention. The limits were increased by some 50.37% on 1 November 2003 as follows. The increased limits apply to incidents occurring on or after that date:

(a) for a ship not exceeding 5 000 units of gross tonnage, SDR 4 510 000 (USD 6.27 million) [1];
(b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, SDR 4 510 000 (USD 6.27 million) plus SDR 631 (USD 878) for each additional unit of tonnage; and
(c) for a ship of 140 000 units of tonnage or over, SDR 89 770 000 (USD 124.9 million).

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[1] The unit of account in the 1992 Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this document, the SDR has been converted into US dollars at the rate of exchange applicable on 28 December 2018 i.e. SDR 1 = USD 1.39079.

If it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the shipowner is deprived of the right to limit its liability.

Channelling of liability

Claims for pollution damage under the 1992 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner, members of the crew, the pilot, the charterer (including bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or preventive measures. The owner is entitled to take recourse action against third parties in accordance with national law.

Compulsory insurance

The owner of a tanker carrying more than 2 000 tonnes of persistent oil as cargo is obliged to maintain insurance to cover its liability under the 1992 Civil Liability Convention. Tankers must carry a certificate on board attesting the insurance coverage. When entering or leaving a port or terminal installation of a State Party to the 1992 Civil Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to the 1992 Civil Liability Convention.

Claims for pollution damage under the 1992 Civil Liability Convention may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.

Competence of courts

Actions for compensation under the 1992 Civil Liability Convention against the shipowner or its insurer may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

1992 FUND CONVENTION

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1992 Fund Convention who do not obtain full compensation under the 1992 Civil Liability Convention for one of the following reasons:

(a) the shipowner is exempt from liability under the 1992 Civil Liability Convention because it can invoke one of the exemptions under that Convention; or
(b) the shipowner is financially incapable of meeting its obligations under the 1992 Civil Liability Convention in full and its insurance is insufficient to satisfy the claims for compensation for pollution damage; or
(c) the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.

In order to become Parties to the 1992 Fund Convention, States must also become Parties to the 1992 Civil Liability Convention.

The 1992 Fund does not pay compensation if:

(a) the damage occurred in a State which was not a Member of the 1992 Fund; or
(b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or
(c) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined (i.e. a seagoing vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo).

Limit of compensation

The maximum amount payable by the 1992 Fund in respect of an incident occurring before 1 November 2003 was SDR 135 million (USD 187.8 million), including the sum actually paid by the shipowner (or its insurer) under the 1992 Civil Liability Convention. The limit was increased by some 50.37% to SDR 203 million (USD 282.3 million) on 1 November 2003. The increased limit applies only to incidents occurring on or after this date.

Competence of courts

Actions for compensation under the 1992 Fund Convention against the 1992 Fund may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

Experience in past incidents has shown that most claims are settled out of court.

Organisation of the 1992 Fund

The 1992 Fund has an **Assembly**, which is composed of representatives of all Member States. The Assembly is the supreme organ governing the 1992 Fund, and it holds regular sessions once a year. The Assembly elects an **Executive Committee** comprising 15 Member States. The main function of this Committee is to approve settlements of claims.

The 1992 Fund shares a Secretariat with the Supplementary Fund. The joint Secretariat is headed by a Director and has at present 27 staff members.

Financing of the 1992 Fund

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150 000 tonnes of crude oil and heavy fuel oil (**contributing oil**) in a State Party to the 1992 Fund Convention.

Basis of Contributions

The levy of contributions is based on reports of oil receipts in respect of individual contributors. Member States are required to communicate every year to the 1992 Fund the name and address of any person in that State who is liable to contribute, as well as the quantity of contributing oil received by any such person. This applies whether the receiver of oil is a Government authority, a State-owned company or a private company. Except in the case of associated persons (subsidiaries and commonly controlled entities), only persons having received more than 150 000 tonnes of contributing oil in the relevant year should be reported.

Oil is counted for contribution purposes each time it is **received** at a port or terminal installation in a Member State after carriage by sea. The term received refers to receipt into tankage or storage immediately after carriage by sea. The place of loading is irrelevant in this context; the oil may be imported from abroad, carried from another port in the same State or transported by ship from an off-shore production rig. Also oil received for transhipment to another port or received for further transport by pipeline is considered received for contribution purposes.

Payment of contributions

Annual contributions are levied by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. The amount levied is decided each year by the Assembly. The 1992 Fund has a General Fund which covers expenses for administration. The General Fund also covers compensation payments and claims-related expenditure, to the extent that the aggregate amount payable by the Fund does not exceed a given amount per incident (SDR 4 million). If an incident gives rise to substantial payments of compensation and claims-related expenditure by the 1992 Fund, a Major Claims Fund is established to cover payments in excess of the amount payable from the General Fund for that incident.

The Director issues an invoice to each contributor, following the decision taken by the Assembly to levy annual contributions. Each contributor pays a specified amount per tonne of contributing oil received. A system of deferred invoicing exists whereby the Assembly fixes the total amount to be levied in contributions for a given calendar year, but decides that only a specific lower total amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

The contributions are payable by the individual contributors directly to the 1992 Fund. A State is not responsible for the payment of contributions levied on contributors in that State, unless it has voluntarily accepted such responsibility.

Level of contributions

Payments made by the 1992 Fund in respect of claims for compensation for oil pollution damage may vary considerably from year to year, resulting in fluctuating levels of contributions. The following table sets out the most recent contributions levied by the 1992 Fund to both the General Fund and Major Claims Funds, covering the period 2013–2018. Further information and a detailed history of contributions levied by the 1992 Fund is available here.

Annual contributions	Date due	Fund	Total contribution (£)	Contribution per tonne of contributing oil (£)
2013	01.03.2014	General Fund	3 300 000	0.0021077
		Prestige Major Claims Fund	2 500 000	0.0018429
		Volgoneft 139 Major Claims Fund	7 500 000	0.0048892
2014	01.03.2015	General Fund	3 800 000	0.0024779
2015	01.03.2016	General Fund	4 400 000	0.0029061
2016	01.03.2017	General Fund	9 700 000	0.0062582
		Alfa I Major Claims Fund	6 400 000	0.0041634
2017	01.03.2018	General Fund	1 500 000	0.0009734
		Agia Zoni II Major Claims Fund	26 000 000	0.0168720

Annual contributions	Date due	Fund	Total contribution (£)	Contribution per tonne of contributing oil (£)
2018	01.03.2019	General Fund	5 900 000	0.0037193
		Agia Zoni II Major Claims Fund	10 000 000	0.0064666
		Alfa I Major Claims Fund	1 675 000	0.0010836
Reimbursement				
		Volgoneft 139 Major Claims Fund	− 3 675 000	− 0.0024278

SUPPLEMENTARY FUND PROTOCOL

On 3 March 2005, a third tier of compensation was established by means of a Supplementary Fund under a Protocol adopted in 2003. So far 32 States have ratified or acceded to the Protocol.

The Supplementary Fund provides additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the States that become Parties to the Protocol. As a result, the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund is SDR 750 million (USD 1043 million), including the amounts payable under the 1992 Civil Liability Convention and the 1992 Fund Convention, SDR 203 million (USD 282.3 million).

The Supplementary Fund only pays compensation for pollution damage for incidents which occur after the Protocol has entered into force for the State concerned.

Membership of the Supplementary Fund is optional and any State which is a Member of the 1992 Fund may join the Supplementary Fund. The Supplementary Fund, which is administered by the 1992 Fund Secretariat, has its own Assembly composed of representatives of its Member States.

Annual contributions to the Supplementary Fund will be made in respect of each Member State by any person who, in any calendar year, has received total quantities of oil exceeding 150 000 tonnes after sea transport in ports and terminal installations in that State. However, the contribution system for the Supplementary Fund differs from that of the 1992 Fund in that, for the purpose of paying contributions, at least 1 million tonnes of contributing oil will be deemed to have been received each year in each Member State.

The Supplementary Fund has a General Fund which only covers administrative expenses, and so a Claims Fund will be set up for any incident for which the Supplementary Fund has to pay compensation. No incidents have occurred which have involved the Supplementary Fund.

The most recent contributions levied to the Supplementary Fund were in 2017, when the Supplementary Fund Assembly decided to reimburse £830 000 to contributors in the 19 Member States who paid the 2006 contributions to the General Fund. It also decided to levy contributions of £1.5 million to contributors in the 31 States Parties to the Supplementary Fund Protocol at the time of the April 2017 session of the Assembly, as set out in the following table.

Annual contributions	Oil Year	Date due	Total contribution (£)	Contribution per tonne of contributing oil (£)
2017	2016	01.03.2018	1 500 000	0.0014891[<3>]
Reimbursement				
2006	2005	01.03.2018	-830 000	-0.0010249

STOPIA AND TOPIA

The international liability and compensation regime, created by the 1992 Civil Liability and Fund Conventions, was intended to ensure an appropriate proportion of the economic consequences of marine oil spills from tankers between the shipping and oil industries. In order to address the imbalance created by the establishment of the Supplementary Fund, which will be financed by the oil industry, the International Group of P&I Clubs (a group of 13 mutual insurers that between them provide liability insurance for about 98% of the world's tanker tonnage) introduced two agreements, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

These agreements are voluntarily concluded among shipowners and indemnify the compensation made by the 1992 Fund and the Supplementary Fund in accordance with the Convention. Under STOPIA, the 1992 Fund will be indemnified by the shipowner of the compensation payments it has made to claimants up to SDR 20 million (USD 27.8 million). Under TOPIA 2006, the Supplementary Fund will be indemnified by the shipowner of 50% of the compensation payments it has made to claimants.

In 2016, these agreements were reviewed and amended based on the 10 years' experience of claims since the entry into force of the agreements. The new versions, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 (as amended 2017), became effective on 20 February 2017.

[<3>] At its April 2017 session, the Supplementary Fund Assembly decided to reimburse £830 000 from the General Fund on 1 March 2018 to those contributors in the 19 Member States who contributed to the 2006 levy to the Supplementary Fund. It was noted that a capping levy had been applied to the 2006 levy of contributions in accordance with Article 18.1 (Transitional provisions) of the Supplementary Fund Protocol and the capping levy would also be applied to the reimbursement of those contributions. The capping deduction and additional reimbursement are set out below:

	Levy per tonne £
Capping deduction on reimbursement for contributors in Japan	0.0003794
Additional reimbursement for contributors in other States	-0.0001765

CONCLUSIONS

The advantages for a State being Party to the 1992 Civil Liability Convention and the 1992 Fund Convention can be summarised as follows. If a pollution incident occurs involving a tanker, compensation is available to governments or other authorities which have incurred costs for clean-up operations or preventive measures and to private bodies or individuals who have suffered damage as a result of the pollution. For example, fisherfolk whose nets have become polluted are entitled to compensation, and compensation for loss of income is payable to fisherfolk and to hoteliers at seaside resorts. This is independent of the flag of the tanker, the ownership of the oil or the place where the incident occurred, provided that the damage is suffered within a State Party.

The 1992 Civil Liability Convention and the 1992 Fund Convention provide a wider scope of application on several points and much higher limits of compensation than the Conventions in their original versions. For these reasons, it is recommended that States which have not already done so should accede to the 1992 Protocols to the Civil Liability Convention and the Fund Convention (and not to the 1969 Convention) and thereby become Parties to the Conventions as amended by the Protocols (the 1992 Conventions). The 1992 Conventions would enter into force for the State in question 12 months after the deposit of its instrument(s) of accession.

States which are already Parties to the 1969 Civil Liability Convention are advised to denounce that Convention at the same time as they deposit their instruments in respect of the 1992 Protocols, so that the denunciation of that Convention would take effect on the same day as the 1992 Protocols enter into force for that State.

As regards the Supplementary Fund Protocol, a State will have to consider whether, in light of its particular situation, ratification of or accession to the Protocol is in the interests of that State.

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ANNEX

States Parties to both the
1992 Civil Liability Convention and the
1992 Fund Convention
as at 31 December 2018
(and therefore Members of the 1992 Fund)

115 STATES FOR WHICH 1992 FUND CONVENTION IS IN FORCE

Albania
Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Bahamas
Bahrain
Barbados
Belgium
Belize
Benin
Brunei Darussalam
Bulgaria
Cabo Verde
Cambodia
Cameroon
Canada
China[<4>]
Colombia
Comoros
Congo
Cook Islands
Côte d'Ivoire
Croatia
Cyprus
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Estonia
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Grenada
Guinea
Hungary
Iceland
India
Iran (Islamic Republic of)
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Kiribati
Latvia
Liberia
Lithuania
Luxembourg
Madagascar
Malaysia
Maldives
Malta
Marshall Islands
Mauritania
Mauritius
Mexico
Monaco
Montenegro
Morocco
Mozambique
Namibia
Netherlands
New Zealand
Nicaragua
Nigeria
Niue
Norway
Oman
Palau
Panama
Papua New Guinea
Philippines
Poland
Portugal
Qatar
Republic of Korea
Russian Federation
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Senegal
Serbia
Seychelles
Sierra Leone
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Syrian Arab Republic
Thailand
Tonga
Trinidad and Tobago
Tunisia
Turkey
Tuvalu
United Arab Emirates
United Kingdom
United Republic of Tanzania
Uruguay
Vanuatu
Venezuela (Bolivarian Republic of)

<4> The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

States Parties to the Supplementary Fund Protocol
as at 31 December 2018
(and therefore Members of the Supplementary Fund)

32 STATES PARTIES TO THE SUPPLEMENTARY FUND PROTOCOL		
Australia	Greece	Norway
Barbados	Hungary	Poland
Belgium	Ireland	Portugal
Canada	Italy	Republic of Korea
Congo	Japan	Slovakia
Croatia	Latvia	Slovenia
Denmark	Lithuania	Spain
Estonia	Montenegro	Sweden
Finland	Morocco	Turkey
France	Netherlands[<5>]	United Kingdom
Germany	New Zealand	

States Parties to the 1992 Civil Liability Convention
but not to the 1992 Fund Convention
as at 31 December 2018
(and therefore not Members of the 1992 Fund)

23 STATES FOR WHICH 1992 CIVIL LIABILITY CONVENTION IS IN FORCE			
Azerbaijan	Indonesia	Pakistan	Togo
Chile	Jordan	Peru	Turkmenistan
China	Kuwait	Republic of Moldova	Ukraine
Egypt	Lebanon	Romania	Viet Nam
El Salvador	Mongolia	Saudi Arabia	Yemen
Guatemala	Myanmar	Solomon Islands	

States Parties to the 1969 Civil Liability Convention
as at 31 December 2018

34 STATES PARTIES TO THE 1969 CIVIL LIABILITY CONVENTION		
Azerbaijan	Gambia	Maldives
Benin	Georgia	Mongolia
Brazil	Ghana	Peru
Cambodia	Guatemala	Saint Kitts and Nevis
Chile	Guyana	Sao Tomé and Principe
Costa Rica	Honduras	Saudi Arabia
Cote d'Ivoire	Indonesia	Senegal
Dominican Republic	Jordan	Syrian Arab Republic
Ecuador	Kazakhstan	Turkmenistan
Egypt	Kuwait	United Arab Emirates
El Salvador	Lebanon	
Equatorial Guinea	Libya	

[<5>] The Netherlands, Aruba, Curaçao and Sint Maarten are autonomous partners within the Kingdom of the Netherlands. The Supplementary Fund has not been extended to Aruba, Curaçao or Sint Maarten.