



International Oil Pollution
Compensation Funds

Agenda Item 6	IOPC/APR17/6/1/Rev.1 ^{<1>}	
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1992 Fund Assembly	92AES21	●
1992 Fund Executive Committee	92EC68	
Supplementary Fund Assembly	SAES5	

REVIEW OF THE WORKING CAPITAL OF THE 1992 FUND

Note by the Director

Summary:	The Director proposes to reduce the working capital from £22 million to £15 million over three budget years (2018 to 2020).
Action to be taken:	<u>1992 Fund Assembly</u> Approve the Director's proposal to reduce the working capital to £15 million over the budget years 2018 to 2020 by reducing the levy of contributions to the General Fund.

1 Introduction

- 1.1 At the October 2016 session of the 1992 Fund Assembly, the Director was requested to undertake a review of the level of the working capital of the 1992 Fund^{<2>}.
- 1.2 The Financial Regulations of the 1992 Fund provide that a working capital shall be maintained at such a level as the Assembly may decide from time to time (Financial Regulation 7.1(b)).
- 1.3 Under Financial Regulation 7.1(c), the 1992 Fund shall have a General Fund which shall be used:
- (i) for the satisfaction of payments referred to in Article 12.1(i)(b) of the 1992 Fund Convention including the first four million SDRs of payments in respect of any one incident where the aggregate amount of the payments of all claims and claims related expenditure exceeds four million SDRs;
 - (ii) to make provisional payments pursuant to Internal Regulation 7.8;
 - (iii) to meet the costs and expenses of the administration of the 1992 Fund and any other expenditure which may be authorised by the Assembly;
 - (iv) to make loans to a Major Claims Fund for the satisfaction of payments referred to in Article 12.1(i)(c) of the 1992 Fund Convention, above the first four million SDRs in respect of any one incident, to the extent that sufficient money is not available in that Major Claims Fund.
- 1.4 Separate Major Claims Funds are established in respect of incidents where the aggregate amount of the payments by the 1992 Fund exceeds 4 million SDR. Such Major Claims Funds are used for

^{<1>} This document has been reissued since the original document contained some outdated text from a previous version of the Financial Regulations of the 1992 Fund Assembly.

^{<2>} See document [IOPC/OCT16/11/1](#), paragraph 9.1.11.

the payment of claims arising from the relevant incident. The first 4 million SDR, however, are paid from the General Fund (Financial Regulation 7.2(a) and (d)).

2 Evolution of the working capital over the years

2.1 The working capital of the 1992 Fund has been built up as follows:

Assembly year	Working capital increased		Document	Paragraph
	From:	To:		
1996		£7 million	92FUND/A/ES.1/22	18
1997	£7 million	£9 million	92FUND/A.2/29	26
1998	£9 million	£12 million	92FUND/A.3/27	24
1999	£12 million	£15 million	92FUND/A.4/32	28
2000	£15 million	£18 million	92FUND/A.5/28	27
2001	£18 million	£20 million	92FUND/A.6/28	25
2004	£20 million	£22 million	92FUND/A.9/31	26

2.2 At the October 2004 session of the 1992 Fund Assembly, some delegations expressed the view that an increase in the working capital to £25 million was not justified in the light of the reduction of the number of incidents involving the 1992 Fund, the increased amount payable by the shipowner under the 1992 Civil Liability Convention (1992 CLC) and the ongoing renewal of the world tanker fleet. Other delegations instead favoured a small increase. The Assembly decided to set the working capital at £22 million. This level of working capital has been maintained since 2005.

3 Director's considerations

3.1 The Director considers that the prompt payment of compensation is of crucial importance. The 1992 Fund should, in the Director's view, hold sufficient liquid funds to enable it to pay claims without having to wait for the following payment of contributions. In addition, the Director considers that the working capital should be sufficiently large so that bank loans are not required for the prompt payment of settled claims, at least not in normal circumstances.

3.2 There is a considerable element of uncertainty in the estimates that form the basis of the 1992 Fund Assembly's decision to levy contributions. This is due partly to the comparatively long period between when the estimates are made (August) and when the Assembly's decision to levy contributions is taken (October) and the date when contributions are due (1 March of the following year).

- 3.3 There have been some incidents involving the 1992 Fund in which there was no P&I insurer covering the losses or where the insurer decided not to provide prompt compensation to victims of the spill, but instead, to deposit the limitation amount in court and thus considerably delayed compensation to victims. Recent examples are incidents like the *Nesa R3* where the insurer has refused to pay or the *Volgoneft 139* where the insurer has decided not to make prompt compensation payments. In these two cases it was imperative that the 1992 Fund was in a position to make compensation payments from the outset in order to mitigate undue financial hardship to victims. The initial 4 million SDR paid in compensation came from the 1992 Fund working capital.
- 3.4 Before the *Prestige* incident, in all incidents involving the 1971 and 1992 Funds, the shipowner's P&I insurer had been prepared to make compensation payments up to the limitation amount applicable to the ship in question, and then subrogate the right of the claimants thus paid against the limitation fund. However, in the *Prestige* case the P&I Club decided instead to deposit the limitation amount in court and not to make payments to claimants. The 1992 Fund therefore had to make payments to claimants from the outset. A similar situation may arise again in the future in the event of a major incident and the 1992 Fund will need sufficient funds available to pay compensation at an early stage of the incident.
- 3.5 Compensation payments are made in the local currency of the State where the damage occurs. When the Director makes a proposal to the 1992 Fund Assembly to levy contributions to a Major Claims Fund, the amount he estimates for compensation, and fees and expenses is converted from the local currency into Pounds sterling on the basis of the rate of exchange at the time of the drafting of the document to be submitted to the Assembly. A subsequent weakening of the Pound sterling vis-à-vis the local currency over the period in which compensation payments are made could result in a shortfall in that Major Claims Fund, which would have to be covered by a loan from the General Fund. The IOPC Funds have a hedging policy which should mitigate this risk, however, events can prove challenging. For instance, following the decision of the United Kingdom to leave the European Union (Brexit), the Pound sterling weakened in relation to the Euro which has resulted in a higher than anticipated loan being made to the *Alfa I* Major Claims Fund from the General Fund.
- 3.6 Furthermore, the 1992 Fund Assembly will recall that at its October 2016 session, it decided to amend Internal Regulation 7.8 which provides that the Director may make provisional payments to victims to ensure that pollution damage is compensated as promptly as possible. The total amount of provisional payments shall not exceed 8 million SDR in respect of any one incident. Although this provision has not been used before, in the Director's view, it is important that the 1992 Fund holds a working capital that is sufficiently large to pay compensation promptly.
- 3.7 In addition, the working capital should be sufficient to cover the administrative expenses of the Secretariat for one year without having to levy contributions.
- 3.8 The Assembly will recall that the Financial Statements of the 1992 Fund are produced on an entity basis, combining the General Fund and the Major Claims Funds. When considering the financial viability of the 1992 Fund, one could argue that the only amount available to the 1992 Fund is the balance available in the General Fund since the amounts held in the Major Claims Funds are for the exclusive payment of compensation in respect of those incidents.
- 3.9 The Director however also recognises that there has been a fall in the number of incidents in recent years, with the *Hebei Spirit* being the last major spill involving the 1992 Fund which occurred ten years ago. He therefore considers that the level of the 1992 Fund working capital could be reviewed to reflect this situation.

4 Director's proposal

- 4.1 For the reasons set out in paragraphs 3.1 to 3.9 above, the Director considers that the present level of the working capital of the 1992 Fund could be reduced to £15 million.
- 4.2 The Director also proposes that the reduction in the working capital be made over the budget years 2018 to 2020, as set out below:

Budget Year	Working Capital	Reduction
2017	£22 million	
2018	£19.5 million	(£2.5 million)
2019	£17 million	(£2.5 million)
2020	£15 million	(£2.0 million)

- 4.3 In addition, the Director proposes that the reduction in the working capital be made by reducing future levies of contributions to the General Fund.

5 Action to be taken**1992 Fund Assembly**

The 1992 Fund Assembly is invited to approve the Director's proposal to reduce the working capital from £22 million to £15 million over the budget years 2018 to 2020 by reducing the levy of contributions to the General Fund.
