



International Oil Pollution
Compensation Funds

Agenda Item 8	IOPC/MAY23/8/2	
Date	5 May 2023	
Original	English	
1992 Fund Assembly	92AES27	●
1992 Fund Executive Committee	92EC80	
Supplementary Fund Assembly	SAES11	

ANY OTHER BUSINESS

ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

1992 FUND

Note by the Director

Summary:	Considerable funds may be required during 2023 and early 2024 for the payment of claims and claims-related expenditure in relation to the <i>Bow Jubail</i> and <i>Princess Empress</i> incidents, which occurred on 23 June 2018 and 28 February 2023 respectively. Possible sources of funding are examined in this document.
Action to be taken:	<p><u>1992 Fund Assembly</u></p> <p>The 1992 Fund Assembly is invited to:</p> <ul style="list-style-type: none"> (a) take note of the information contained in this document; (b) decide whether to levy contributions for £20 million to the <i>Bow Jubail</i> Major Claims Fund for payment by 15 September 2023; (c) decide whether to make payments in relation to the <i>Bow Jubail</i> incident exceeding the amount payable from the General Fund and payable in advance of 15 September 2023, if required, through a loan to the <i>Bow Jubail</i> Major Claims Fund from the <i>Agia Zoni II</i> Major Claims Fund; and (d) decide whether to make payments relating to the <i>Princess Empress</i> incident exceeding the amount payable from the General Fund, if required, through a loan from the <i>Agia Zoni II</i> Major Claims Fund.

1 Introduction

- 1.1 Article 12 of the 1992 Fund Convention provides that the Assembly shall determine the amount of contributions to be levied, if any. For this purpose, the Assembly shall make an annual estimate in the form of a budget of the 1992 Fund's expenditure and income for each calendar year, considering the necessity to maintain sufficient liquid funds.
- 1.2 The most recent annual assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1992 Fund Convention, was incorporated in the draft budget for 2023 and was proposed to the Assembly in October 2022 (document IOPC/OCT22/9/1/1).

- 1.3 In accordance with Financial Regulation 7.2, payments of claims and claims-related expenditure to the extent that the aggregate amount of the payments in respect of any one incident is in excess of SDR 4 million are made through a Major Claims Fund and annual levies in respect of Major Claims Funds were proposed to the Assembly in October 2022 in the Assessment of Contributions to Major Claims Funds document (document IOPC/OCT22/9/2/1).
- 1.4 This document has been prepared on an exceptional basis, between annual levies of contributions, to inform the Assembly of two new incidents which may require funds in advance of the due date of the next annual levy of contributions, which will be 1 March 2024.
- 1.5 At its May 2023 session, the 1992 Fund Executive Committee will be requested to authorise the Director to pay claims in respect of the *Bow Jubail* and *Princess Empress* incidents (documents IOPC/MAY23/3/6/1 and IOPC/MAY23/3/8/1, respectively). Subject to those decisions, the 1992 Fund Assembly will be requested to decide how such payments should be funded.
- 1.6 It should be noted that in this document, any estimate of amounts to be paid by the 1992 Fund in compensation has been made solely for the assessment of annual contributions. This does not consider the position of the 1992 Fund in respect of the admissibility of claims.

2 The *Bow Jubail* incident

- 2.1 On 23 June 2018, an incident occurred in Rotterdam Port in the Netherlands involving the oil and chemical tanker *Bow Jubail* (document IOPC/MAY23/3/6).
- 2.2 On 31 March 2023, the Supreme Court in the Netherlands delivered a judgement resulting in the applicability of the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention in relation to this incident.
- 2.3 The limitation amount applicable under the 1992 CLC will be SDR 15.99 million, but the owner of the *Bow Jubail* is a party to the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017)^{<1>} whereby the shipowner will indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.
- 2.4 The maximum amount of compensation payable by the 1992 Fund and the Supplementary Fund is SDR 750 million.
- 2.5 A preliminary review of the amounts claimed by 29 claimants before the Rotterdam District Court gives a total amount of nearly EUR 50 million. Not all claimants have quantified their damages in full, and some have not quantified them at all, so the total amount is expected to increase. Therefore, a provisional estimate of 1992 Fund liability for this incident has been made of EUR 60 million.
- 2.6 The amount covered by STOPIA 2006, SDR 20 million, has been converted using a guide exchange rate of EUR 1.20 to 1 SDR, pending confirmation of the date of conversion. This provides an estimated amount of compensation covered by STOPIA 2006 of EUR 24 million. Therefore, the current estimated amount of compensation to be funded by 1992 Fund contributions is EUR 36 million.
- 2.7 The 1992 Fund will also incur claims-related expenses in relation to legal and technical fees.

3 The *Princess Empress* incident

- 3.1 On 28 February 2023, an incident occurred off the coast of Naujan, Oriental Mindoro, the Philippines

<1> From this point forward, references to 'STOPIA 2006' should be taken to read 'STOPIA 2006 (as amended 2017)'.

involving the tanker *Princess Empress* (document IOPC/MAY23/3/8).

- 3.2 The limitation amount applicable under the 1992 CLC will be SDR 4.51 million, but the owner of the *Princess Empress* is a party to STOPIA 2006 whereby the shipowner will indemnify, on a voluntary basis, the 1992 Fund up to SDR 20 million.
- 3.3 Initial estimates of the impact of the incident indicate that claims for pollution damage may surpass the 1992 CLC limit applicable to the *Princess Empress*.

4 Funding for the two incidents

4.1 General Fund

- 4.1.1 Financial Regulation 7.1(c)(i) provides that the General Fund shall be used for the payment of claims and claims-related expenditure up to SDR 4 million per incident, converted to pounds sterling on the date of the incident. For both the *Bow Jubail* and the *Princess Empress*, this amount would be paid from the working capital of £15 million.
- 4.1.2 Payment of claims and claims-related expenditure up to SDR 4 million (£4 258 160) will be payable from the General Fund in relation to the *Bow Jubail* incident, of which some £320,000 had been paid as of 31 March 2023.
- 4.1.3 Payment of claims (in the event that the incident exceeds the STOPIA 2006 limit of SDR 20 million) and claims-related expenditure up to SDR 4 million (£4 394 480) will be payable from the General Fund in relation to the *Princess Empress* incident.

4.2 Major Claims Funds

- 4.2.1 Financial Regulation 7.2 provides that a separate Major Claims Fund be established for each incident to the extent that the aggregate amount of the payment of claims and claims-related expenditure exceeds SDR 4 million per incident.
- 4.2.2 Since expenditure incurred by the 1992 Fund in respect of the *Bow Jubail* incident is expected to exceed that amount, a Major Claims Fund will be established for that incident.
- 4.2.3 It is not yet known whether the *Princess Empress* incident will exceed the STOPIA 2006 limit of SDR 20 million. In the event that the STOPIA 2006 limit of SDR 20 million is exceeded, and the General Fund limit of SDR 4 million is exceeded, a Major Claims Fund will be established for that incident.

5 Sources of funds for the *Bow Jubail* and *Princess Empress* (if required) Major Claims Funds

5.1 General Fund

- 5.1.1 It is not possible at this stage to make an accurate assessment of the payments which the 1992 Fund will be called upon to make before 1 March 2024, when the 2023 contributions to be decided by the Assembly at its November 2023 session will be due.
- 5.1.2 Any payments of compensation made under STOPIA 2006 will initially be made by the 1992 Fund and then reimbursed by the Club. This method of payment requires sufficient liquidity within the cash holdings of the 1992 Fund to cover upfront payments in advance of reimbursement.
- 5.1.3 The Director considers that, in order to avoid depleting the working capital, and to ensure that funds remain available to meet payments in respect of possible new incidents, particularly given the higher risk profile for incidents due to sanctions-related activities, measures should be taken to avoid having to rely

on loans being made from the General Fund to finance payments from new Major Claims Funds.

5.2 Agia Zoni II Major Claims Fund

5.2.1 Financial Regulation 7.2(d) provides that monies in any Major Claims Fund may be used to make loans to other Major Claims Funds, to the extent that sufficient money is not available in the relevant Major Claims Fund. Such a loan would be repaid (with interest) when contributions to the relevant Major Claims Fund were received.

5.2.2 The balance on the *Agia Zoni II* Major Claims Fund at the end of December 2022 was some £27.1 million, with some £8.3 million held in pounds sterling cash. The monies on this Major Claims Fund will eventually be used for payment of compensation and expenses in respect of the *Agia Zoni II* incident. It is difficult to make an estimate of the amount which will be paid from this Major Claims Fund up to 1 March 2024, but the Director is of the view that it would be possible for a loan to be made from the *Agia Zoni II* Major Claims Fund to the *Bow Jubail* Major Claims Fund.

5.3 Levy of contributions

5.3.1 To finance payments due in respect of the *Bow Jubail* Major Claims Funds up to 1 March 2024, there are two options available. A loan can be made to the *Bow Jubail* Major Claims Fund from the *Agia Zoni II* Major Claims Fund. If this option were chosen, the Assembly would be invited to consider, at its next session in November 2023, levying contributions for the *Bow Jubail* Major Claims Fund for payment by 1 March 2024.

5.3.2 Alternatively, the Assembly could decide at this session of the governing bodies to levy contributions of £20 million to the *Bow Jubail* Major Claims Fund for payment by 15 September 2023.

5.3.3 Similar options would be possible for payments in respect of a potential *Princess Empress* Major Claims Fund, but it is not yet possible to predict whether a Major Claims Fund will need to be established in respect of that incident.

6 Director's proposal

6.1 The Director takes the view that the 1992 Fund should ensure that sufficient funds are available to allow prompt payment of compensation for claims arising from the *Bow Jubail* and *Princess Empress* incidents and to pay the expenses relating to these incidents.

6.2 In addition to the funding needs for 1992 Fund compensation liabilities, the Director seeks to ensure that sufficient liquidity is available within the General Fund working capital for the payment of claims covered by STOPIA 2006 in advance of their reimbursement by the relevant Club.

6.3 In relation to the *Bow Jubail* incident, the Director proposes that the Assembly decide to levy contributions of £20 million to the *Bow Jubail* Major Claims Funds, for payment by 15 September 2023.

6.4 Should the 1992 Fund be called upon to make payments exceeding the amount payable from the General Fund in respect of the *Bow Jubail* incident prior to 15 September 2023, these payments should be financed through a loan from the *Agia Zoni II* Major Claims Fund, to be repaid (with interest) on receipt of contributions.

6.5 In view of the uncertainty of both the amount and the timing of payment requirements in relation to the *Princess Empress* incident, the Director proposes that the Assembly decide not to levy contributions to a Major Claims Fund for this incident at this session.

6.6 Should the 1992 Funds be called upon to make payments exceeding the amount payable from the General Fund in respect of the *Princess Empress* incident prior to 1 March 2024, these payments should be financed

through a loan from the *Agia Zoni II* Major Claims Fund, to be repaid (with interest) on receipt of contributions.

7 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information contained in this document;
 - (b) decide whether to levy contributions for £20 million to the *Bow Jubail* Major Claims Fund for payment by 15 September 2023;
 - (c) decide whether to make payments in relation to the *Bow Jubail* incident exceeding the amount payable from the General Fund and payable in advance of 15 September 2023, if required, through a loan to the *Bow Jubail* Major Claims Fund from the *Agia Zoni II* Major Claims Fund; and
 - (d) decide whether to make payments relating to the *Princess Empress* incident exceeding the amount payable from the General Fund, if required, through a loan from the *Agia Zoni II* Major Claims Fund.
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