



ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

Note by the Director

Summary:	The need for 2008 contributions to Major Claims Funds is examined. The Director proposes: <ul style="list-style-type: none">(a) <i>Erika</i> Major Claims Fund : no levy;(b) <i>Prestige</i> Major Claims Fund : deferred levy of £2 million;(c) <i>Volgoneft 139</i> incident : deferred levy of £50 million; and(d) <i>Hebei Spirit</i> incident: £33.5 million levy for payment by 1 March 2009.
Action to be taken:	Decide on the levies of 2008 contributions to Major Claims Funds.

1 Introduction

- 1.1 Article 12.1 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 estimate in the form of a budget of the 1992 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.
- 1.2 The 1992 Fund's expenditure consists of:
 - (a) costs and expenses of the administration of the 1992 Fund, and any deficit from preceding years;
 - (b) payments of claims and claims-related expenditure up to 4 million SDR per incident (minor claims); and
 - (c) 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 4 million SDR (major claims).
- 1.3 Expenses mentioned in sub-paragraphs (a) and (b) of paragraph 1.2 above have to be met from the General Fund (Financial Regulation 7.1(c)) and expenses with respect to major claims as defined in sub-paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 7.2(d)).
- 1.4 The assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1992 Fund Convention, has been incorporated in the draft budget and is dealt with in a separate document (document 92FUND/A.13/19). This document deals only with the assessment of contributions to Major Claims Funds.

- 1.5 As for the individual incidents, reference is made to the information contained in the Financial Statements (document 92FUND/A.13/9, Annex V, Schedule II) and to the various documents relating to incidents submitted to the 42nd session of the Executive Committee.
- 1.6 It should be noted that any estimate in this document of amounts to be paid by the 1992 Fund in compensation has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the 1992 Fund in respect of the claims.
- 1.7 It should also be noted that, unless stated otherwise, information on the payments of compensation and claims-related expenditure reflects the situation as at 30 June 2008.
- 1.8 The Director considers that it might be necessary, in an addendum to this document, to modify some of the proposals set out below in light of developments.

2 Erika Major Claims Fund

2.1 Summary information

Background information for consideration of the *Erika* Major Claims Fund is as follows:

Incident Place of incident Date of incident	<i>Erika</i> France 12/12/99	
	Euro ^{<1>}	Pound Sterling
Maximum amount of compensation payable by 1992 Fund (ie 135 million SDR = FFfr1 211 966 881 – CLC limit FFfr84 247 733 = FFfr1 127 719 148 = €171 919 676)	171 919 676	
Compensation paid up to 31/12/07	116 665 647	76 874 457
Compensation paid 01/01/08-30/06/08	133 379	94 166
Balance of compensation available	55 120 650	
Possible total compensation payable by 1992 Fund 01/07/08 – 01/03/10	55 120 650	43 639 019 ^{<2>}
Claims-related expenses paid by 1992 Fund up to 31/12/07		20 256 714
Claims-related expenses paid by 1992 Fund 01/01/08 - 30/6/08		542 260
Possible claims-related expenses payable by 1992 Fund 01/07/08 –01/03/10		2 000 000
Maximum paid from General Fund (4 million SDR)		3 380 680
Total previously levied to Major Claims Fund		118 000 000
Estimated balance on <i>Erika</i> Major Claims Fund as at 30 June 2008		44 160 000

2.2 Analysis

- 2.2.1 The total payments by the 1992 Fund in respect of the *Erika* incident reached the maximum amount payable from the General Fund (£3 380 680) during 2001.
- 2.2.2 A total of £118 million has been levied as contributions to the *Erika* Major Claims Fund. There was a surplus of £43.5 million on the Major Claims Fund as at 31 December 2007 (document 92FUND/A.13/9, Annex V, Statement IV.I). The balance on the *Erika* Major Claims Fund is estimated at some £44.2 million as at 30 June 2008. There are no outstanding contributions.
- 2.2.3 It is not possible at this stage to determine the total amount of the established claims. However, it is certain that it will exceed by far the amount available under the 1992 Conventions.
- 2.2.4 As at 30 June 2008 an amount of some £76.9 million had been paid in compensation.

^{<1>} 1 Euro = 6.55957 French Francs.

^{<2>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2008, ie 1 Euro = £0.7917.

- 2.2.5 The Director takes the view that some £45.6 million in compensation and claims-related expenses may be payable by the 1992 Fund in respect of this incident for the 20-month period 1 July 2008 – 1 March 2010 (the date when any 2009 contributions would be receivable). This estimate is based on the exchange rate on 30 June 2008 of €£0.7917.
- 2.2.6 As set out in the Annex, it appears that the amount available in the *Erika* Major Claims Fund may not be sufficient for payments to be made in respect of the *Erika* incident up to 1 March 2010. However, the calculation in the Annex does not include interest which will be earned on the assets of the Major Claims Fund during the period 1 July 2008 – 1 March 2010. If the interest earned were taken into account, the amount available would be sufficient for this purpose.
- 2.2.7 In addition, some 40% (€21.7 million) of the amount of compensation yet to be paid is already held in Euros. In the Director's view the balance on this Major Claims Fund and the interest to be earned on the balance would be sufficient to cover the anticipated payments and any weakening of the Pound Sterling against the Euro up to 1 March 2010. For these reasons the Director proposes not to levy contributions for the *Erika* Major Claims Fund at this stage.
- 2.2.8 Should the amount to be paid during the period 1 July 2008 – 1 March 2010 exceed the Director's estimate of £45.6 million due to much larger currency fluctuations or higher claims-related costs than anticipated, the deficit could be covered by a loan from the General Fund under Financial Regulation 7.1(c) (iv), to be repaid with interest.

3 Prestige Major Claims Fund

3.1 Summary information

Background information for consideration of the *Prestige* Major Claims Fund is as follows:

Incident Place of incident Date of incident	<i>Prestige</i> Spain 13/11/02	
	Euro	Pound Sterling
Maximum amount of compensation payable by 1992 Fund (ie 135 million SDR = €171 520 703 – CLC limit €22 777 896)	148 742 807	
Compensation paid by 1992 Fund up to 31/12/07	119 598 815	82 306 762
Compensation paid by 1992 Fund 01/01/08 to 30/06/08	163 828	125 392
Balance of compensation available	28 980 164	
Possible total compensation payable by 1992 Fund 01/07/08 – 01/03/10	28 980 164	22 943 596 ^{<3>}
Claims-related expenses paid by 1992 Fund up to 31/12/07		12 134 554
Claims-related expenses paid by 1992 Fund 01/01/08 - 30/6/08		929 172
Possible claims-related expenses payable by 1992 Fund 01/07/08 – 01/03/10		3 000 000
Maximum paid from General Fund (4 million SDR)		3 369 200
Total previously levied to Major Claims Fund		108 000 000
Estimated balance on <i>Prestige</i> Major Claims Fund as at 30 June 2008		22 583 000

3.2 Analysis

- 3.2.1 The total amount payable in respect of the *Prestige* incident reached the maximum amount payable from the General Fund (£3 369 200) during 2003.
- 3.2.2 A total of £108 million has been levied as contributions to the *Prestige* Major Claims Fund. The balance on the *Prestige* Major Claims Fund is estimated at some £22.6 million as at 30 June 2008, which includes some £284 000 in contributions levied but not received.

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Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2008, ie 1 Euro=£0.7917.

- 3.2.3 It is not possible at this stage to determine the total amount of the established claims. However, it is certain that it will exceed by far the amount available under the 1992 Conventions.
- 3.2.4 As at 30 June 2008 an amount of some £82.4 million had been paid in compensation.
- 3.2.5 The Director takes the view that some £26 million, being compensation and claims-related expenses, may be payable by the 1992 Fund in respect of this incident for the 20-month period 1 July 2008 – 1 March 2010 (the date when any 2009 contributions would be receivable). This estimate is based on the exchange rate on 30 June 2008 of €£0.7917.
- 3.2.6 As set out in the Annex, it appears that the amount available in the *Prestige* Major Claims Fund may not be totally sufficient for payments to be made in respect of the *Prestige* incident up to 1 March 2010. However, the calculation in the Annex does not include interest which will be earned on the assets of the Major Claims Fund during the period 1 July 2008 – 1 March 2010. If the interest earned (estimated at £1.5 million) were taken into account, the amount available would cover part of the deficit of £3.4 million.
- 3.2.7 Some 25% (€7 million) of the amount of compensation yet to be paid is already held in Euros.
- 3.2.8 In the Director's view the balance on this Major Claims Fund and the interest to be earned on the balance may not be sufficient to cover the estimated balance of £2 million deficit net of interest earned. The Director believes it would be prudent to maintain the possibility to levy contributions of £2 million to the *Prestige* Major Claims Fund and therefore proposes a deferred levy of £2 million.
- 3.2.9 Should the amount to be paid during the period 1 July 2008 – 1 March 2010 exceed the Director's estimate of £26 million due to currency fluctuations or higher claims-related costs than anticipated, the deficit could be covered by a loan from the General Fund under Financial Regulation 7.1(c) (iv), to be repaid with interest.

4 Volgoneft 139 Major Claims Fund

4.1 Summary information

Background information for consideration of the *Volgoneft 139* Major Claims Fund is as follows:

Incident Place of incident Date of incident	<i>Volgoneft 139</i> Russian Federation and Ukraine 11/11/07	
	Pound Sterling	Pound Sterling
Maximum amount of compensation payable by 1992 Fund (ie 203 million SDR = £166.8 million – CLC limit 4.51 million SDR = £3.7 million)	163 100 000	
Compensation paid up to 31/12/07	0	0
Compensation paid 01/01/08 – 30/06/08	0	0
Balance of compensation available	163 100 000	
Possible total compensation payable by 1992 Fund 01/07/08 – 01/03/10	163 100 000	163 100 000
Claims-related expenses paid by 1992 Fund up to 31/12/07		0
Claims-related expenses paid by 1992 Fund 01/01/08 - 30/06/08		40 000
Possible claims-related expenses payable by 1992 Fund 01/07/08 – 01/03/10		1 000 000
Maximum payable from General Fund (4 million SDR)		3 059 508
Total previously levied to Major Claims Fund		0
Estimated balance on <i>Volgoneft 139</i> Major Claims Fund as at 30 June 2008		0

4.2 Analysis

- 4.2.1 At its 13th extraordinary session, held in June 2008, the Assembly decided that funding of this incident would be reviewed at the next session of the Assembly in October 2008 since the Executive Committee had not yet authorised compensation payments in respect of this incident.
- 4.2.2 Claims related expenses (eg costs related to legal and technical fees) are momentarily being paid from the General Fund. If the Executive Committee were to decide to authorise the Director to make payments of compensation, it is expected that the total amount payable from the General Fund in respect of the *Volgoneft 139* incident of £3 059 508 will be reached in 2009.
- 4.2.3 Although it is not possible at this stage to determine the total amount of established claims, the total amount claimed so far exceeds the amount available under the 1992 Conventions. It is important to note, however, that a major part of the total amount claimed relates to a claim for environmental damage which appears to be based on an abstract quantification calculated in accordance with a theoretical model, which is not admissible under the Fund's criteria.
- 4.2.4 Since the Director has not yet been authorised to make payments for claims assessed and settled in accordance with the Fund's criteria for admissibility, there is, as yet, no need for a levy for the *Volgoneft 139* incident. Any levy to be decided at this session of the Assembly, however, should cover the period up to 1 March 2010, the date by which a levy to be decided at the next regular Assembly, in October 2009, will be payable.
- 4.2.5 The Director assumes that it is likely that a decision authorising him to make payments of compensation will be taken at some point before that date. In which case, there is a significant possibility that the Fund will not be able to respond to the *Volgoneft 139* incident in accordance with its function under the Convention, unless considerable funds can be made available by loans from other Major Claims Funds. Taking loans from other Major Claims Funds is an option, however, which, in the Director's view, should not be relied upon too easily, in particular when it is clear that a significant levy will have to be made in the near future in any event.
- 4.2.6 Therefore, in spite of the uncertainty of the amount and timing of the expenditure, the Director is of the view that it would be prudent for the Assembly at this stage to consider at least a deferred levy for the *Volgoneft 139* incident, to ensure that the Fund will be able to respond adequately, should a decision to authorise the Director to make payments in respect of this incident be made before 1 March 2010. The amount of such levy should however be determined, not taking into account the claim for environmental damage, which seems to be based on an abstract quantification calculated in accordance with a theoretical model.
- 4.2.7 In view of the above the Director proposes a deferred levy of £50 million.

5 Hebei Spirit Major Claims Fund

5.1 Summary information

Background information for consideration of the *Hebei Spirit* Major Claims Fund is as follows:

Incident	<i>Hebei Spirit</i>	
Place of incident	Taeon, Republic of Korea	
Date of incident	07/12/07	
	Korean Won	Pound Sterling
Maximum amount of compensation payable by 1992 Fund (ie 203 million SDR = KRW 321 618 990 000 – CLC limit 89.77 million SDR = KRW 142 225 304 100)	179 393 685 900	
Compensation paid up to 31/12/07	0	0
Compensation paid 01/01/08-30/06/08	0	0
Balance of compensation available	179 393 685 900	
Possible total compensation payable by 1992 Fund 01/07/08 – 01/03/10	179 393 685 900	86 172 392 ^{<4>}
Claims-related expenses paid by 1992 Fund up to 31/12/07		0
Claims-related expenses paid by 1992 Fund 01/01/08 - 30/06/08		170 000
Possible claims-related expenses payable by 1992 Fund 01/07/08 – 01/03/10		2 000 000
Maximum payable from General Fund (4 million SDR)		3 110 128
Total previously levied to Major Claims Fund (cf paragraph 5.2.4)		0
Estimated balance on <i>Hebei Spirit</i> Major Claims Fund as at 30 June 2008		0

5.2 Analysis

- 5.2.1 It is expected that the total amount payable from the General Fund in respect of the *Hebei Spirit* incident of £3 110 128 will be reached in 2009.
- 5.2.2 It is not possible at this stage to determine the total amount of the established claims. However, it is certain that it will exceed by far the amount available under the 1992 Conventions.
- 5.2.3 The Director takes the view that some £85.5 million, being compensation and claims-related expenses, may be payable by the 1992 Fund from the *Hebei Spirit* Major Claims Fund for the period up to 1 March 2010 (the date when any 2009 contributions would be receivable). This estimate is based on the exchange rate on 30 June 2008 of £/KRW 2 081.80.
- 5.2.4 At its 13th extraordinary session, held in June 2008, the Assembly decided to levy £50 million for the *Hebei Spirit* incident due for payment by 1 November 2008.
- 5.2.5 As set out in the Annex, an additional amount of £35.5 million will be required in respect of the *Hebei Spirit* Major Claims Fund. However, the calculation in the Annex does not include interest which will be earned on the assets of the Major Claims Fund during the period 1 November 2008 – 1 March 2010. If the interest (estimated at £2 million) were taken into account an additional amount of £33.5 million would be required.
- 5.2.6 Should the amount to be paid during the period 1 July 2008 – 1 March 2010 exceed the Director's estimate of £85.5 million due to currency fluctuations or higher claims-related costs than anticipated, the deficit could be covered by a loan from the General Fund under Financial Regulation 7.1(c) (iv), to be repaid with interest.

6 Director's proposals

6.1 Proposed levies

- 6.1.1 On the basis of the considerations set out in paragraphs 2.2.1 – 2.2.8 above, the Director proposes that contributions should not be levied to the *Erika* Major Claims Fund and that any deficit should be covered by loans from the General Fund.

^{<4>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2008, ie £1= KRW 2 081.80.

6.1.2 The Director proposes levies of £2 million to the *Prestige* Major Claims Fund (cf paragraphs 3.2.1 – 3.2.9), £50 million to the *Volgoneft 139* Major Claims Fund (cf paragraphs 4.2.1 – 4.2.7) and a levy of £33.5 million to the *Hebei Spirit* Major Claims Fund (cf paragraphs 5.2.1 – 5.2.6).

6.2 Timing of Levies

6.2.1 Internal Regulation 3.6 provides that unless the Assembly decides otherwise, payment of annual contributions shall be due on 1 March of the year following that in which the Assembly decides on the levy of annual contributions.

6.2.2 At its 1st session the Assembly decided to introduce a deferred invoicing system. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower 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 (document 92FUND/A.1/34, paragraph 16).

6.2.3 The Director proposes that both the entire levy of £2 million to the *Prestige* Major Claims Fund and that of £50 million to the *Volgoneft 139* Major Claims Fund should be deferred and that the Director be authorised to decide whether to invoice all or part of those deferred levies.

6.2.4 With respect to the *Hebei Spirit* Major Claims Fund, the Director proposes that the entire levy of £33.5 million be due for payment by 1 March 2009.

7 Action to be taken by the Assembly

The Assembly is invited, in accordance with Article 12 of the 1992 Fund Convention:

- (a) to take note of the information contained in this document;
- (b) to consider the Director's proposal that there should be no levy of 2008 contributions in respect of the *Erika* Major Claims Fund (paragraphs 2.2.1 – 2.2.8 and 6.1.1);
- (c) to consider the Director's proposal to levy £2 million in 2008 contributions to the *Prestige* Major Claims Fund (paragraphs 3.2.1 – 3.2.9 and 6.1.2);
- (d) to decide on the date of payment of 2008 contributions to the *Prestige* Major Claims Fund (paragraph 6.2.3);
- (e) to consider the Director's proposal to levy £50 million in 2008 contributions in respect of the *Volgoneft 139* Major Claims Fund (paragraphs 4.2.1 – 4.2.7 and 6.1.2);
- (f) to decide on the date of payment of 2008 contributions in respect of the *Volgoneft 139* incident (paragraph 6.2.3);
- (g) to consider the Director's proposal to levy £33.5 million in 2008 contributions to the *Hebei Spirit* Major Claims Fund (paragraphs 5.2.1 – 5.2.6 and 6.1.2); and
- (h) to decide on the date of payment of 2008 contributions to the *Hebei Spirit* Major Claims Fund (paragraph 6.2.4).

ANNEX

Major Claims Fund expenditure

(Figures in Pounds Sterling)

Incident	Date of Incident	Previous levies				Maximum Paid by the General Fund: 4 million SDR	Payments by 31/12/07		MCF Balance 31/12/07	2008 Expenditure to 30/6/08		2008 Income to 30/6/08 Estimated Interest to 30/6/08	Estimated Balance 30/06/08	Contributions due in 2008	Possible Total Expenditure 01/07/08 - 01/03/10	Projected Surplus /(Deficit) (excluding interest income from 01/07/08) 01/03/10	
		Contribution	Assembly	Date	Amount		(including General Fund)			Compensation	Claims-related						
		Year	Session	Due	Compensation paid by 31/12/07		Claims related expenses paid by 31/12/07	paid to 30/06/08		paid to 30/06/08							
<i>Erika</i>	12/12/99	2000	4th ext	01/09/00	40 000 000	3 380 680	76 874 457	20 256 714	43 588 233	(94 166)	(542 260)	1 207 500	44 160 000	0	(45 600 000)	(1 440 000)	
		2000	5th	01/03/01	25 000 000												
		2001	6th	01/03/02	25 000 000												
		2002	7th	01/03/03	28 000 000												
					118 000 000												
				Authorised but not levied	01/09/01												25 000 000
				Authorised but not levied	01/09/02												21 000 000
<i>Prestige</i>	13/11/02	2003	8th	01/03/04	75 000 000	3 369 200	82 306 762	12 134 554	23 004 082	(125 392)	(929 172)	632 500	22 583 000	0	(26 000 000)	(3 417 000)	
		2004	9th	01/03/05	33 000 000												
					108 000 000												
				Authorised but not levied	01/09/04												35 000 000
				Authorised but not levied	01/09/06												3 500 000
<i>Volgoneft 139</i>	11/11/07				3 059 508	0	0	0	0	0	0	0	0	0	(161 100 000)	(161 100 000)	
<i>Hebei Spirit</i>	07/12/07	2007	13th ext	01/11/08	50 000 000	3 110 128	0	0	0	0	0	0	50 000 000	(85 500 000)	(35 500 000)		
								66 592 315				66 743 000	50 000 000	(318 200 000)	(201 457 000)		