



ANY OTHER BUSINESS

LEVY OF CONTRIBUTIONS

Note by the Director

Summary:	Considerable funds may be required during 2008 and early 2009 for the payment of claims and claims-related expenses in relation to the <i>Volgoneft 139</i> and <i>Hebei Spirit</i> incidents, which occurred on 11 November 2007 and 7 December 2007 respectively. Possible sources of funding are examined.
Action to be taken:	Decide on the levy of contributions in respect of the <i>Volgoneft 139</i> and <i>Hebei Spirit</i> incidents.

1 The Volgoneft 139 incident

- 1.1 On 11 November 2007 the Russian-registered tanker *Volgoneft 139* (3 463 GT, built in 1978) broke in two in the Strait of Kerch linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. The tanker was allegedly loaded with a cargo of 4 077 tonnes of fuel oil and it is believed that between 1 200 and 2 000 tonnes of fuel oil were spilt at the time of the incident. The ship was owned by HSC Volgotanker and insured for protection and indemnity liability by Ingosstrakh (Russian Federation).
- 1.2 It is alleged that the shipowner's P&I insurance cover is limited to US\$5 million (£2.5 million). If this information were correct, this insurance cover would be well below the level of the cover required under the 1992 Civil Liability Convention (1992 CLC) of 4.51 million SDR (£3.7 million). Ingosstrakh is also arguing in court that no liability of the owner exists because the incident was caused by a natural phenomenon of an exceptional, inevitable and irresistible character (Article III.2(a) of the 1992 CLC).
- 1.3 The vessel was not insured by one of the P&I Clubs belonging to the International Group of P&I Clubs and therefore the Small Tanker Owners Pollution Indemnification Agreement (STOPIA 2006) does not apply. Claims totalling RUB 8 446.2 million (£180.4 million) have been submitted to the competent Arbitration Court of Saint Petersburg and Leningrad Region.
- 1.4 The Director has set out the latest situation in relation to the incident in document 92FUND/EXC.41/8.

2 Funds required for the Volgoneft 139 incident

- 2.1 If the court were to agree with Ingosstrakh's defence referred to in paragraph 1.2 above, the 1992 Fund would have to pay all losses arising from the incident up to 203 million SDR (£166.8 million). In that case, the Director believes that the 1992 Fund may be called upon to make

compensation payments during the period up to 1 March 2009, when the 2008 contributions to be decided by the Assembly at its October 2008 session will be due.

2.2 The 1992 Fund will also incur considerable claims-related expenses (eg costs in relation to legal and technical fees).

2.3 At this stage it is not possible to make an accurate assessment of the payments which the 1992 Fund will be called upon to make during the coming months and specifically before 1 March 2009.

3 The Hebei Spirit incident

3.1 On 7 December 2007 the Hong Kong flag tanker *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung N^o1* while at anchor about five miles off Taean on the west coast of the Republic of Korea. The accident resulted in about 10 900 tonnes of crude oil escaping into the sea from the *Hebei Spirit* and polluting some 375 kilometres of the western coast of the Republic of Korea. The *Hebei Spirit* is insured for pollution risks by Assuranceforeningen Skuld (Gjensidig) (Skuld Club).

3.2 The total amount available for compensation under the 1992 CLC and Fund Convention in respect of the *Hebei Spirit* incident is 203 million SDR of which the limitation amount applicable to this incident under the 1992 CLC is the maximum, namely 89.77 million SDR.

3.3 The 1992 Fund would be expected to pay compensation only once the CLC limit has been exceeded. Joint costs are presently also being paid by the Skuld Club.

3.4 The amount applicable to the 1992 Fund will be 113.23 million SDR ie 203 million SDR minus 89.77 million SDR which, converted at the rate of 1 SDR = Won 1 584.330, is Won 179 393 685 900 (approximately £92 million).

4 Funds required for the Hebei Spirit incident

4.1 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 during the coming months and specifically, before 1 March 2009, when the 2008 contributions to be decided by the Assembly at its October 2008 session will be due.

4.2 If, however, the shipowner's insurer were to decide not to make further payments up to its limit but instead chose to pay the limitation amount into the competent limitation court, the 1992 Fund would be called upon to make significant compensation payments before 1 March 2009.

4.3 The 1992 Fund will also incur considerable claims-related expenses (eg costs in relation to the Claims Handling Office and technical fees) which are presently also being paid by the Skuld Club.

4.4 The Director has set out the latest situation in relation to the Skuld Club's position with respect to making further compensation payments in document 92FUND/EXC.41/9.

5 Funding for the two incidents

5.1 General Fund

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 4 million SDR (£3.1 million) per incident. This amount would be paid from the working capital, which has been fixed by the Assembly at £22 million.

5.2 Major Claims Funds

Financial Regulation 7.2 provides that a separate Major Claims Fund shall be established for each incident to the extent that the aggregate amount of the payment of claims and claims-related expenditure exceeds 4 million SDR per incident. Since the 1992 Fund's payments in respect of both

incidents are expected to exceed that amount, Major Claims Funds will have to be established for both incidents.

6 Possible sources of funds for the *Volgoneft 139* and *Hebei Spirit* Major Claims Funds

6.1 General Fund

6.1.1 In accordance with Financial Regulation 7.1(c)(iv), it would be possible for a loan to be made to the Major Claims Funds from the General Fund to cover expenditure arising from the incidents over and above 4 million SDR. Such a loan would be repaid (with interest) to the General Fund when contributions to the respective Major Claims Funds were received.

6.1.2 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, measures should be taken to avoid having to rely on significant loans being made from the General Fund to finance payments from the two Major Claims Fund.

6.2 *Erika* Major Claims Fund

6.2.1 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 Funds. Such a loan would be repaid (with interest) when contributions to the relevant Major Claims Fund are received.

6.2.2 The balance on the 1992 Fund *Erika* Major Claims Fund at the end of December 2007 stands at approximately £43 million. Of this balance some 60% (£25 million) is held in Pounds sterling. The monies on this Major Claims Fund will eventually be used for payment of compensation and expenses in respect of the *Erika* incident. It is difficult to make an estimate of the amount which will be paid from this Major Claims Fund up to 1 March 2009 but, given the present situation in relation to claims in Court, the Director is of the view that it would be possible for a significant loan to be made from the 1992 Fund *Erika* Major Claims Fund to the *Volgoneft 139* and *Hebei Spirit* Major Claims Funds.

6.3 *Prestige* Major Claims Fund

6.3.1 The balance on the *Prestige* Major Claims Fund at the end of December 2007 stands at approximately £23 million. Of this balance some 75% (£17 million) is held in Pounds sterling. The monies on this Major Claims Fund will eventually be used for payment of compensation and expenses in respect of the *Prestige* incident. It is difficult to make an estimate of the amount which will be paid from this Major Claims Fund up to 1 March 2009. However, given the present situation in relation to the speed of the assessment of government claims, the Director is of the view that it would be possible for a significant loan to be made also from the 1992 Fund *Prestige* Major Claims Fund to the *Volgoneft 139* and *Hebei Spirit* Major Claims Funds.

7 Levy of contributions to the *Volgoneft 139* Major Claims Fund

7.1 One option would be to finance payments possibly to be made in respect of the *Volgoneft 139* incident up to 1 March 2009, above the amount payable from the General Fund, through loans to the *Volgoneft 139* Major Claims Fund from the *Erika* and *Prestige* Major Claims Funds and to some extent through loans from the General Fund. If this option were chosen, the Assembly would be invited to consider levying contributions for the *Volgoneft 139* Major Claims Fund for payment by 1 March 2009 at its next regular session in October 2008.

7.2 The alternative would be for the Assembly to decide at this extraordinary session to levy contributions to the *Volgoneft 139* Major Claims Fund for payment by 1 November 2008. However,

the amount of compensation that the 1992 Fund will be required to pay is not known at the date of this document.

8 Levy of contributions to the Hebei Spirit Major Claims Fund

- 8.1 One option would be to finance payments possibly to be made in respect of the *Hebei Spirit* incident up to 1 March 2009, above the amount payable from the General Fund, through loans to the *Hebei Spirit* Major Claims Fund from the *Erika* and *Prestige* Major Claims Funds and to some extent through loans from the General Fund. If this option were chosen, the Assembly would be invited to consider levying contributions for the *Hebei Spirit* Major Claims Fund for payment by 1 March 2009 at its next regular session in October 2008.
- 8.2 The alternative would be for the Assembly to decide at this extraordinary session to levy contributions of £50 million to the *Hebei Spirit* Major Claims Fund for payment by 1 November 2008.

9 Director's proposal

- 9.1 The Director takes the view that the 1992 Fund should ensure that sufficient funds are available to allow prompt payments of compensation to be made for claims arising from the *Volgoneft 139* and the *Hebei Spirit* incidents and to pay the expenses relating to these incidents.
- 9.2 In view of the uncertainty of both the amount and timing of the payment requirements in relation to the *Volgoneft 139* incident the Director proposes that the Assembly not levy contributions to this Major Claims Fund at this extraordinary session.
- 9.3 Should the 1992 Fund be called upon to make payments exceeding the amount payable from the General Fund in respect to the *Volgoneft 139* incident, these payments should for the period up to 1 March 2009 be financed through loans to the *Volgoneft 139* Major Claims Fund from the *Erika* and *Prestige* Major Claims Funds and, if required, from the General Fund, to be repaid with interest on receipt of contributions.
- 9.4 In relation to the *Hebei Spirit* incident the Director proposes that the Assembly decide at this extraordinary session to levy contributions for £50 million to the *Hebei Spirit* Major Claims Fund for payment by 1 November 2008.
- 9.5 Should the 1992 Fund be called upon to make payments exceeding the amount payable from the General Fund in respect to the *Hebei Spirit* incident, prior to 1 November 2008, these payments should be financed through loans to the *Hebei Spirit* Major Claims Fund from the *Erika* and *Prestige* Major Claims Funds and, if required, from the General Fund, to be repaid with interest on receipt of contributions.

10 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 payments of compensation and expenses relating to the *Volgoneft 139* incident (above the amount payable from the General Fund) should, if required, be made through loans from the *Erika* and *Prestige* Major Claims Fund and, if necessary, also from the General Fund;
- (c) to consider the Director's proposal that the Assembly decide at this extraordinary session to levy contributions for £50 million to the *Hebei Spirit* Major Claims Fund for payment by 1 November 2008; and

- (d) to consider the Director's proposal that, should the 1992 Fund be called upon to make payments in relation to the *Hebei Spirit* incident exceeding the amount payable from the General Fund prior to 1 November 2008, these payments should be financed through loans to the *Hebei Spirit* Major Claims Fund from the *Erika* and *Prestige* Major Claims Funds and, if required, from the General Fund.
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