



PREPARATIONS FOR THE ENTRY INTO FORCE OF THE SUPPLEMENTARY FUND PROTOCOL

Compensation matters

Note by the Director

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| Summary: | This document deals with issues relating to compensation which will have to be considered in connection with the setting up of the Supplementary Fund. |
| Action to be taken: | Give the Director instructions in respect of the preparations for the entry into force of the Supplementary Fund Protocol in relation to the compensation matters dealt with in this document. |

1 Introduction

The provisions relating to the payment of compensation by the Supplementary Fund are set out in Articles 4-9 of the Supplementary Fund Protocol.

2 Criteria for the admissibility of claims

- 2.1 Under Article 4.4 of the Supplementary Fund Protocol, the Supplementary Fund shall pay compensation in respect of established claims as defined in Article 1.8, namely claims which have been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund and which would have been fully compensated if the limit set out in Article 4.4 of the 1992 Fund Convention had not been applied to the incident.
- 2.2 Since the Supplementary Fund under the Protocol shall pay compensation in respect of claims recognised by the 1992 Fund, the criteria for the admissibility of claims against the Supplementary Fund must in the Director's view be identical to those applied by the 1992 Fund. He considers that for this reason the Supplementary Fund should not develop its own criteria.

3 The Supplementary Fund's involvement in the claims handling process and the payment procedures

- 3.1 As mentioned above, the Supplementary Fund will pay compensation for claims which have been recognised by the 1992 Fund or have been accepted by decisions by a competent court binding on the 1992 Fund. It appears, therefore, that there would normally not be any need for the Supplementary Fund

to become directly involved in the claims handling process.

- 3.2 The Supplementary Fund shall pay compensation when the 1992 Fund Assembly has considered that the total amount of the established claims exceeds, or there is a risk that it will exceed the aggregate amount of compensation available under the 1992 Conventions, and that, as a consequence, the 1992 Fund Assembly or Executive Committee has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Supplementary Fund Assembly shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Conventions (Article 5 of the Supplementary Fund Protocol).
- 3.3 The Director considers that it would be difficult to lay down in advance the exact conditions under which the Supplementary Fund should commence payments. For this reason, he proposes that this issue should be considered by the Supplementary Fund Assembly on a case-by-case basis.

4 Claims Manual

- 4.1 The governing bodies of the 1971 and 1992 Funds have developed criteria for the admissibility of various types of claims which are reflected in the Claims Manual of the 1992 Fund. The Manual is a practical guide to presenting claims against the 1992 Fund and sets out the legal framework within which the 1992 Fund operates and describes how the Organisation works. It explains how claims for compensation should be presented, and deals with the different types of admissible claims.
- 4.2 It is proposed that the 1992 Fund and the Supplementary Fund should issue a joint Claims Manual, based on the 1992 Fund's Claims Manual. The text should be modified to reflect the establishment of the Supplementary Fund. In the context of this revision the Director intends to consider revising the Manual so as to make it more reader-friendly so as to give further assistance to claimants.

5 Establishment of subsidiary bodies

At its 8th session in October 2003, the Assembly agreed with the Director that since the Supplementary Fund would not make its own examination of claims for compensation, there would be no need for the Supplementary Fund to set up a body to deal with claims for compensation (document 92FUND/A.8/30, paragraph 7.10).

6 Co-operation with P&I Clubs

- 6.1 The IOPC Funds endeavour to co-operate closely with the insurer of the shipowner's third party liability (normally one of the P&I Clubs) in its claim-settlement procedures. The assessment of pollution damage caused by an incident is normally carried out jointly by the insurer and the Funds. The co-operation between the Funds and the P&I Clubs belonging to the International Group of such Clubs is governed by a Memorandum of Understanding signed in November 1980 by the International Group of P&I Clubs and the 1971 Fund and extended, by means of an exchange of letters, to cover co-operation between the P&I Clubs and the 1992 Fund.
- 6.2 On several occasions, insurers which are not members of the International Group of P&I Clubs have, at the request of the Director, agreed to apply the terms of the Memorandum of Understanding to particular spills involving ships insured by them.
- 6.3 The co-operation between the P&I Clubs and the Funds has proved to be extremely valuable, since it has permitted the Funds to share the experience existing within the Clubs in the monitoring of oil spills and the handling of claims for compensation. The Funds have also had the benefit of the services of the P&I Clubs' worldwide network of correspondents, and these services are particularly important in the days immediately following an oil spill.

6.4 The Director considers that it would be to the benefit of claimants, P&I Clubs and the Funds if the above-mentioned Memorandum of Understanding were extended to cover co-operation between the Clubs and the Supplementary Fund. If the Assembly were to approve this approach, the Assembly might wish to invite the Director to enter into negotiations with the International Group for the purpose of reaching an agreement on such an extension.

7 Sharing of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund

7.1 At its first session in June 1996, the 1992 Fund Assembly considered how costs incurred in handling incidents involving both the 1992 Fund and the 1971 Fund should be shared between the two Organisations. The Assembly took the view that, subject to the agreement of the 1971 Fund Assembly, a certain flexibility should be allowed in the apportionment of costs incurred in the handling of such incidents, but that normally such costs should be shared on the basis of the ultimate liabilities of the two Funds in respect of the incident in question. The Assembly also considered that the Director should be authorised to use other methods in cases where he deemed this more equitable, for example if, following the joint examination of claims, the amount of compensation payable in respect of an incident was ultimately reduced to such a level that the 1992 Fund would not be called upon to pay compensation (document 92FUND/A.1/34, paragraph 22.1).

7.2 The Director considers, however, that the situation is different as regards the relationship between the 1992 Fund and the Supplementary Fund. Since it is likely that the Supplementary Fund would become involved in a very limited number of incidents, the Director considers that it would be preferable that the distribution be agreed between the governing bodies of the respective Funds on a case-by-case basis, taking into account the particular circumstances of the incident in question.

8 Action to be taken by the Assembly

The Assembly is invited to:

- (a) take note of the information contained in this document; and
 - (b) give the Director such instructions in respect of the preparations for the entry into force of the Supplementary Fund Protocol as it may deem appropriate in relation to compensation matters, in particular as regards:
 - (i) criteria for the admissibility of claims;
 - (ii) involvement of the Supplementary Fund in the claims handling process and the payment procedures;
 - (iii) publication of Claims Manual;
 - (iv) establishment of subsidiary bodies;
 - (v) co-operation with P&I Clubs; and
 - (vi) sharing of joint costs in respect of incidents involving both the 1992 Fund and the Supplementary Fund.
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