



PREPARATIONS FOR THE ENTRY INTO FORCE OF THE SUPPLEMENTARY FUND PROTOCOL

FINANCIAL MATTERS

Note by the Director

Summary:	This document deals with issues relating to financial matters 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: <ul style="list-style-type: none">(a) the budget;(b) working capital; and(c) assessment of contributions

1 Introduction

Article 16.2 of the Supplementary Fund Protocol provides that Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund. As a result, the provisions in the 1992 Fund Convention relating to budget and assessment of contributions apply, *mutatis mutandis*, to that Fund.

2 Supplementary Fund budget

2.1 Under Article 16.2 of the Supplementary Fund Protocol and Article 18.5 of the 1992 Fund Convention, the Supplementary Fund Assembly shall adopt the annual budget of the Supplementary Fund.

2.2 The budget shall cover:

- (a) estimates of costs and expenses of the administration of the Supplementary Fund for the relevant year and any deficit from operations in proceeding years; and
- (b) estimates of payments for claims (Article 11.1(i)(a) and 11.2 of the Protocol).

Administrative expenditures

2.3 The 1971 Fund and 1992 Fund each have a General Fund which pays the administrative expenses and claims related expenses up to a certain amount per incident (1 million SDR and

- 4 million SDR, respectively), in Fund terminology 'minor claims'. In this regard, the Supplementary Fund is different in that the General Fund to be established for payments of administrative expenses under the Supplementary Fund Protocol will not make any payments of compensation or of incident related expenses, but all such payments will be covered by contributions levied to a fund established for the particular incident ('Claims Fund').
- 2.4 In document 92FUND/A/ES.8/2/3, the Director proposes that the 1992 Fund Secretariat should administer, in addition to the 1971 Fund, also the Supplementary Fund, and that the Supplementary Fund should pay a flat management fee to the 1992 Fund, the level of which should be decided by the governing bodies of the three Organisations.
- 2.5 Should the Assembly follow the Director's recommendation in paragraph 2.4 above, it is proposed that the flat management fee towards the running of the joint Secretariat should initially be set at £150 000 per annum, being approximately 5 % of the administrative expenditure of the Secretariat for 2004. This figure is arrived at on the basis of a rough estimate of the time to be spent by the various staff members on Supplementary Fund matters during the first year of its operations, costs of meetings of the Assembly and extra costs for documents and publications. The management fee could be adjusted for later years by the governing bodies of the IOPC Funds in the light of experience in respect of the workload of the Supplementary Fund.
- 2.6 The Director also proposes that, in addition to the management fee, the Supplementary Fund should pay administrative costs relating only to the Supplementary Fund, such as fees for the External Auditor's audit of the Supplementary Fund, as well as non-incident related costs for general consultancy and legal experts dealing only with Supplementary Fund activities. The Director proposes that an amount of £50 000 should be included in the annual budget to cover these costs.
- 2.7 At its 6th extraordinary session, held in April/May 2002, the 1992 Fund Assembly decided to make available to IMO the funds necessary to finance the International Conference which would be convened by IMO to consider the draft Protocol establishing a Supplementary Fund, estimated by IMO at £56 500, on the understanding that the amount paid to IMO would be reimbursed, with interest, to the 1992 Fund by the Supplementary Fund when the Protocol establishing that Fund had entered into force (document 92FUND/A/ES.6/10, paragraph 6.11). The 1992 Fund made available an amount of £37 749 to IMO for this purpose.
- 2.8 In the Resolution on the Establishment of the Supplementary Fund of the 2003 International Conference which adopted the Supplementary Fund Protocol, it was requested that the 1992 Fund Assembly should instruct the Director of the 1992 Fund to perform certain administrative tasks necessary for setting up the Supplementary Fund, on the basis that all costs and expenses that might be incurred would be reimbursed, with interest in due course, by the Supplementary Fund (document 92FUND/A/ES.8/2, Annex I).
- 2.9 The Director proposes that the first Supplementary Fund budget should include amounts enabling the Supplementary Fund to repay the 1992 Fund for the costs referred to in paragraphs 2.7 and 2.8 above.
- 2.10 In the light of the information available, it is in the Director's view likely that the Supplementary Fund Protocol will enter into force toward the end of 2004. He proposes that the first financial year for the Supplementary Fund should cover any part of 2004 for which the Protocol will be in force and the entire calendar year 2005. Subject to any instructions the 1992 Fund Assembly may wish to give him, the Director intends to submit an administrative budget for the said period to the first session of the Supplementary Fund Assembly.
- 2.11 As set out in paragraph 11.12 of document 92FUND/A/ES.8/2/4 the Director proposes that the Supplementary Fund should have a small working capital of, say £1 million, to cover unforeseen expenditure.

- 2.12 If the approach proposed by the Director is accepted, the budget for the first financial year of the Supplementary Fund would include:
- (a) the management fee
 - (b) costs specific to the Supplementary Fund
 - (c) reimbursements to the 1992 Fund
 - (d) working capital

Claims related expenditure

- 2.13 Budget estimates for claims and claims related expenditure in respect of incidents involving the Supplementary Fund would also have to be made for each financial period. These estimates will not be included in the administrative budget, since such expenditure will be paid from separate Claims Funds (see paragraph 3.3 below).

3 Assessment of annual contributions

- 3.1 In paragraph 4.6 of document 92FUND/A/ES.8/2/4, the Director proposes that the first levy of contributions should be postponed until the ordinary session of the Supplementary Fund in the autumn of 2005. He has also proposed that contributions should not be levied every year but only every two or three years (document 92FUND/A/ES.8/2/4, paragraph 4.2)
- 3.2 If these proposals were adopted, each levy of contributions for administrative expenditure would have to be set at a level sufficient to cover the estimated expenses for several years.
- 3.3 Contributions to cover payments of compensation and incident related expenses would, under Article 11.2(b) of the Supplementary Fund Protocol, be levied separately for each incident involving the Supplementary Fund. The level and timing of such contributions would have to be decided by the Assembly on a case-by-case basis.

4 Action to be taken

The Assembly is invited

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions as it deems appropriate in respect of:
 - (i) the Supplementary Fund budget;
 - (ii) the working capital of the Supplementary Fund; and
 - (iii) the assessment of contributions.
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