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FUND 1992

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INCIDENTS INVOLVING THE 1992 FUND

VOLGONEFT 139

Note by the Director

Objective of document:

To inform the Executive Committee of the latest developments regarding this incident.

Summary of the incident so far:

On 11 November 2007 the Russian registered tanker *Volgoneft 139* broke in two in the Strait of Kerch linking the Sea of Azov and the Black Sea between the Russian Federation and Ukraine. It is believed that between 1 200 and 2 000 tonnes of fuel oil were spilt at the time of the incident.

Some 50 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by oil. Shoreline clean up in the Russian Federation was reported to have been undertaken by the Russian military. Heavy bird casualties, in excess of 30 000, were reported.

The Russian Federation is party to the 1992 Civil Liability and 1992 Fund Conventions and is a 1992 Fund Member State whereas Ukraine is party to the 1992 Civil Liability Convention only.

The ship was owned by JSC Volgotanker which has since been declared bankrupt by the Commercial Court in Moscow. The shipowner was insured for protection and indemnity liability by Ingosstrakh (Russian Federation). The insurance cover is limited to US\$5 million (£2.5 million) which is well below the minimum limit under the 1992 Civil Liability Convention of 4.51 million SDR (£3.7 million)^{<1>}. There is therefore an 'insurance gap' of some 1.5 million SDR (£1.2 million).

In February 2008 the Arbitration Court of Saint Petersburg and Leningrad Region issued a ruling declaring that the limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for 3 million SDR (£2.5 million).

<1>

In this document conversion of currencies has been made on the basis of the exchange rate as at 29 May 2008 (1 SDR = £0.8204, US\$ 1 = £0.5058 and £1 = RUB 46.8115).

Ingosstrakh does not belong to the International Group of P&I Clubs and therefore STOPIA does not apply.

Ingosstrakh has pleaded before the Arbitration Court of Saint Petersburg and Leningrad Region the defence that the spill resulted from a natural phenomenon of an exceptional, inevitable and irresistible character and that the shipowner and Ingosstrakh are not liable for the pollution damage caused by the spill. If this defence were to be successful, the 1992 Fund would be liable to pay compensation to victims of the spill from the outset.

The Russian Central and Regional Governments have presented claims amounting to RUB 8 432 million (£180 million) although, except for one claim, no documentation has been submitted. A claim for RUB 4 million (£88 000) has been presented to the Arbitration Court in Saint Petersburg by the Kerch Merchant Port in Ukraine. This claim would have to compete with other claims against the limitation fund established by the shipowner in the Arbitration Court of Saint Petersburg.

The total amount available for compensation under the 1992 Civil Liability and Fund Conventions is 203 million SDR (£166.8 million). The total amount claimed so far exceeds this amount.

Recent developments: In April 2008, a meeting took place in London between representatives of the Russian Government, one of the Russian claimants, the shipowner and the Secretariat. Ingosstrakh was invited but did not attend the meeting. At the meeting it was agreed that the 1992 Fund's representatives and experts should visit Moscow to discuss the claims arising from the incident (paragraph 6.2).

In May 2008 meetings took place in Moscow in the Ministry of Transport where further claims were submitted. During the meetings it was agreed that the 1992 Fund's representatives and experts should also visit the area affected by the spill and hold discussions with the regional authorities. This visit has been scheduled for June 2008 (paragraph 6.3).

Action to be taken: Information to be noted

1 Summary of incident

Ship	<i>Volgoneft 139</i>
Date of incident	11.11.2007
Place of incident	Strait of Kerch, between the Sea of Azov and the Black Sea, Russian Federation and Ukraine
Cause of incident	Breaking
Quantity of oil spilled	Approximately between 1 200 and 2 000 tonnes of fuel oil
Area affected	Taman Peninsula, Tuzla Spit and Chushka Spit, Russian Federation
Flag State of ship	Russian Federation
Gross tonnage (GT)	3 463 GT
P&I insurer	Ingosstrakh
P&I cover	US\$5 million (£2.5 million)
CLC Limit	4.51 million SDR (£3.7 million)
CLC & Fund Limit	203 million SDR (£166.8 million)
STOPIA/TOPIA applicable	No
Claims for compensation so far	Russian Central and Regional Governments: RUB 8 446.2 million (£180.4 million) Kerch Port Authority (Ukraine): RUB 4.1 million (£88 000)

2 The incident

- 2.1 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 at anchor when a heavy storm caused rough seas with heavy swell of up to six metres.
- 2.2 The tanker was loaded with 4 077 tonnes of heavy fuel oil. It is understood that between 1 200 and 2 000 tonnes of fuel oil were spilt. The aft section remained afloat and, using the casualty's own engines, the captain managed to beach on a nearby sand bar. The crew were then rescued and taken to the nearby port of Kavkaz (Russian Federation). Following removal of 913 tonnes of heavy fuel oil, the aft section was towed to Kavkaz, where it remains for inspection. The fore part remained afloat at anchor for a while and then sank. A month after the incident, the fore part was partially raised and 1 200 tonnes of fuel oil from tanks 1 and 2 were recovered. The fore part remains on the seabed.
- 2.3 The *Volgoneft 123*, another tanker with a cargo of fuel oil on board, was also in serious difficulties and preventive measures were taken to avoid an oil spill. It is believed that 4 000 tonnes of heavy fuel oil were removed from the ship and that no spill took place. Three other vessels loaded with sulphur (*Volnogorsk, Nakhichevan and Kovel*) also sank in the area within two hours of the incident, four crew members of ships in the area at the time died and four others were missing.

3 Clean-up operations and response

- 3.1 According to media reports about the incident, some 50 kilometres of shoreline both in the Russian Federation and in Ukraine were affected by the oil. A significant part of the shoreline of the Taman Peninsula, the Tuzla Spit, Chushka Spit and the beaches near the villages of Ilyich and Priazovskii were allegedly affected by the oil (see map at the Annex). A joint crisis centre was set up to coordinate the response between the Russian Federation and Ukraine and it was reported that attempts were made to contain and recover the oil at sea. Shoreline clean up in the Russian Federation was reported to have been undertaken by the Russian military under the supervision of the Prime Minister, Mr Viktor Subkov.

- 3.2 During at-sea operations 200 tonnes of heavy fuel oil were recovered. The Russian authorities have indicated that an unknown amount of oil sank to the sea bed. During the shoreline clean up some 70 000 tonnes of oily debris with a mixture of soil, sand and sea grass were recovered.
- 3.3 Heavy bird casualties, in excess of 30 000, were reported and a representative of the Sea Alarm Foundation, an environmental agency based in Belgium, travelled to the Russian Federation in an attempt to assist with wildlife rehabilitation efforts.

4 1992 Civil Liability and Fund Conventions

The Russian Federation is party to the 1992 Civil Liability and Fund Conventions whereas Ukraine is party to the 1992 Civil Liability Convention (1992 CLC) only.

5 The shipowner and its insurer

- 5.1 The *Volgoneft 139* was owned by JSC Volgotanker. In March 2008, Volgotanker was declared bankrupt by the Commercial Court in Moscow.
- 5.2 The *Volgoneft 139* was insured for protection and indemnity liability by Ingosstrakh for US\$5 million (£2.5 million). This insurance cover is equivalent to 3 million SDR (ie the minimum limit of liability under the 1992 CLC prior to November 2003). The minimum limit under the 1992 CLC (after November 2003) is 4 510 000 SDR (£3.7 million). There is therefore an 'insurance gap' of some 1.5 million SDR (£1.2 million).
- 5.3 The *Volgoneft 139* was not insured by a P&I Club belonging to the International Group of P&I Clubs and therefore was not covered by the STOPIA 2006 Agreement.

6 Meetings between the Russian authorities and the Secretariat

- 6.1 In November and December 2007, the Director and the Head of the Claims Department contacted the Russian Embassy in London and the Ministry of Transport in Moscow offering the help of the 1992 Fund to the Russian authorities to deal with the incident. A number of meetings took place at the 1992 Fund offices where the compensation regime was explained in detail and information was provided to the Russian authorities. The Russian authorities were again offered the 1992 Fund's assistance to deal with the incident. In particular, the 1992 Fund offered to send experts from the International Tanker Owner's Pollution Federation (ITOPF) who were on stand-by, ready to travel to the Russian Federation to monitor the situation and provide advice to the Russian authorities in the event claims for compensation were to be made in the future. However, no official reply was received from the Russian authorities and without the required letters of invitation and visas neither the representatives of the 1992 Fund nor the experts from ITOPF could visit the affected area to monitor the clean-up operations.
- 6.2 In April 2008, a meeting took place in London between representatives of the Russian Government, one of the Russian claimants, the shipowner and the Fund Secretariat. Ingosstrakh was invited but did not attend the meeting. At the meeting it was pointed out that the 1992 Fund would need time to translate the documentation submitted by the Russian claimant and it was agreed that the claimant and the 1992 Fund would jointly request the Court to grant the parties sufficient time to examine the documentation and to discuss its contents. It was also agreed that the 1992 Fund's representatives and experts should visit Moscow to discuss the claims arising from the incident.
- 6.3 In May 2008, meetings took place in Moscow in the Ministry of Transport where further claims were submitted. During the meetings the Russian delegation informed the 1992 Fund that, as per order of the Government of the Russian Federation, the Ministry of Transport would be the main speaker on behalf of all Russian Central and Regional Government claimants. The Russian delegation stated that they were preparing the supporting documentation required which would be presented to the 1992 Fund, with translations in English, in the near future. The 'insurance gap' issue was discussed at the meeting. The

Russian delegation also stated that they understood the problem but that, with goodwill from all the parties, a solution would be found. It was pointed out that, under Russian law, international agreements take precedence over national law and that the Russian authorities would examine who should pay for the 'insurance gap' (Ingosstrakh or the Russian Government). It was mentioned that the Russian authorities intended to submit a document to the 1992 Fund with their legal analysis. It was agreed that the 1992 Fund's representatives and experts should also visit the area affected by the spill and hold discussions with the regional authorities. This visit has been scheduled for June 2008.

7 Claims for compensation

7.1 The claims situation as at 29 May 2008 is summarised in the table below:

Category	Claimant	Amount	Amount	Current situation
Clean up	Contractor	RUB 73.5 million	£1.6 million	Documentation being examined by experts.
Environmental damage	Ministry of Natural Resources	RUB 6 048.6 million	£129.2 million	No supporting documentation submitted. Claim calculated on the basis of 'Methodika'.
Clean up	Ministry of Emergencies	RUB 4 million	£85 000	No supporting documentation submitted.
Clean up	Regional Government	RUB 100.5 million	£2.1 million	No supporting documentation submitted.
Clean up	Regional Government	RUB 400 million	£8.5 million	No supporting documentation submitted.
Reinstatement measures	Regional Government	RUB 1 819.6 million	£38.9 million	No supporting documentation submitted.
		RUB 8 446.2 million	£180.4 million	

7.2 The Russian Central and Regional Governments have presented claims totalling RUB 8 446.2 million (£180.4 million). These claims relate to the costs of clean up and preventive measures and the costs of reinstatement of the marine environment.

7.3 In January 2008 the 1992 Fund received a claim for compensation from a Russian clean-up contractor for the amount of RUB 73.5 million (£1.6 million) for the cost of clean-up operations, discharging oil from the aft part of the tanker, towage of the aft part to Kavkaz (Russian Federation) and removal of the oil from the sunken fore part. The claim is being examined by the 1992 Fund's experts.

7.4 At the meeting in May 2008 the Russian authorities informed the 1992 Fund that the Ministry of Natural Resources had submitted a claim for some RUB 6 048.6 million (£129.2 million). This claim has been calculated on the basis of a formula (Methodika). The Russian authorities also informed the 1992 Fund that documentation in respect of this claim and all other claims referred to in the table under paragraph 7.1 was being prepared and would be submitted to the Fund in the near future.

7.5 In May 2008, the Kerch Merchant Port (Ukraine) submitted a claim before the Arbitration Court in Saint Petersburg totalling RUB 4 105 561 (£87 000) in respect of damage to property and costs incurred in clean-up operations. This claim relates to damage caused in Ukraine, which is party to the 1992 CLC but not to the 1992 Fund Convention. The 1992 Fund will therefore not have to pay compensation in

respect of this claim. It will, however, affect the apportionment of the shipowner's limitation fund, having a minor effect on the total amount available for compensation.

7.6 Claims may be submitted by the State Fisheries Committee in respect of losses in the fisheries sector.

8 Legal proceedings

Claims for compensation

8.1 In February 2008 the Fund received a notification from the Arbitration Court of Saint Petersburg and Leningrad Region of proceedings brought by a Russian clean-up contractor against the shipowner, the P&I insurer and the 1992 Fund (paragraph 7.3).

8.2 In May 2008 the Fund received a further notification from the Arbitration Court of proceedings brought by the Kerch Merchant Port (paragraph 7.5).

Limitation proceedings

8.3 The shipowner commenced limitation proceedings in the Arbitration Court of Saint Petersburg and Leningrad Region.

8.4 In February 2008 the Court issued a ruling declaring that the limitation fund had been constituted by means of an Ingosstrakh letter of guarantee for 3 million SDR, equivalent to RUB 116 636 700 (£2.5 million).

8.5 At a hearing in April 2008 the 1992 Fund presented pleadings, requesting the Court to allow time for the 1992 Fund to examine the claims and enter into discussions with the claimants. In its pleadings the 1992 Fund argued that the current limit of the shipowner's liability under the 1992 CLC is 4.51 million SDR (£3.7 million) and that, under the Russian constitution, international conventions to which the Russian Federation is party take precedence over Russian internal law and that therefore the Court's ruling establishing the shipowner's limitation fund should be amended.

8.6 In May 2008 the Court of Appeal rendered a decision dismissing the 1992 Fund's request and confirming the ruling by the Arbitration Court of Saint Petersburg and Leningrad Region establishing the shipowner's limitation fund in the RUB equivalent to 3 million SDR.

8.7 The 1992 Fund, in consultation with its Russian lawyer, will examine the Court's decision as soon as it is published and will decide whether to appeal to the Second Appeal ('Cassation') Court.

Natural phenomenon of an exceptional, inevitable and irresistible character

8.8 Ingosstrakh has submitted a defence in Court arguing that the incident was wholly caused by a natural phenomenon of an exceptional, inevitable and irresistible character and that therefore no liability should be attached to the owner of the *Volgoneft 139* (Article III.2 (a) of the 1992 CLC). If this argument were to be accepted by the Court, the shipowner and its insurer would be exonerated from liability and the 1992 Fund would have to pay compensation to the victims of the spill from the outset (Article 4.1 (a) of the 1992 Fund Convention).

8.9 The experts engaged by the 1992 Fund are examining the information available in respect of the weather conditions in the area and the circumstances at the time of the incident to determine the validity of the shipowner's defence.

9 Director's considerations

9.1 It is first of all important to keep in mind that this is an incident where unfortunately the 1992 Fund could not intervene from the outset and it is therefore very difficult to know with any certainty the circumstances surrounding the spill. The views expressed in this document can therefore only be of a preliminary nature, pending further investigation into various aspects of this incident.

9.2 The Director is pleased to note that the Russian authorities have invited the 1992 Fund's representatives and experts to visit Moscow and the affected area. He would, however, like to bring the following issues to the attention of the Executive Committee:

- The Russian Courts have considered that the shipowner's limit of liability under the 1992 CLC is 3 million SDR and not 4.51 million SDR. This decision is in clear contravention of the 1992 CLC as amended in November 2003.
- The shipowner and Ingosstrakh are attempting to be exonerated from liability for the incident. If they are successful the 1992 Fund will have to pay compensation from the outset.
- One of the claims submitted by the Russian Central Government is for environmental damage, quantified on the basis of a formula which is in contravention of Article I.6 of the 1992 CLC.
- The claims submitted as a result of the incident already exceed the maximum amount available under the 1992 Conventions. In the event that, at some point in the future, the Executive Committee were to authorise the Director to make settlement and payment of claims, it would also have to determine an appropriate level of payment.

10 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions in respect of the handling of the incident as it may deem appropriate.

* * *

ANNEX

