



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

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1992 Fund Assembly	92AES19	●	
1992 Fund Executive Committee	92EC64		
1992 Fund Working Group 7	92WG/7		

INTERIM PAYMENTS

Note by the Secretariat

Summary:	<p>In October 2014, the 1992 Fund Assembly considered document IOPC/OCT14/4/7, relating to the funding of interim payments submitted by the International Group of P&I Associations (International Group).</p> <p>The International Group indicated that it did not wish to raise Member States' expectations regarding the provisions of interim payments by International Group P&I Clubs in the future.</p> <p>The 1992 Fund Assembly instructed the Director to submit a document to the spring 2015 session of the governing bodies to explain the consequences of making interim payments by the 1992 Fund.</p>
Recent developments:	<p>In January 2015, the Director contacted the International Group and offered to continue the discussions on interim payments made by the P&I Clubs. At that time the International Group indicated that they needed further time to consider the matter internally.</p>
Action to be taken:	<p><u>1992 Fund Assembly</u></p> <p>The 1992 Fund Assembly is invited to consider whether to instruct the Director to examine Internal Regulation 7 so that the 1992 Fund is in a better position to make interim payments should the need arise.</p>

1 Introduction/Background information

- 1.1 At the October 2014 session, the 1992 Fund Assembly considered document [IOPC/OCT14/4/7](#), relating to the funding of interim payments submitted by the International Group of P&I Associations (International Group).
- 1.2 During the discussion of the document, the International Group indicated that given the circumstances surrounding the winding up of the 1971 Fund and the conclusion of the *Nissos Amorgos* incident it did not wish to raise Member States' expectations regarding the provision of interim payments by International Group P&I Clubs in the future.
- 1.3 The International Group stated that there was a greater probability that International Group P&I Clubs would follow the approach set down in the 1992 Civil Liability Convention (1992 CLC) and establish a limitation fund for distribution as the court saw fit, which could result in the funds that the Club provided being unavailable to claimants until a considerable time after the incident.
- 1.4 At that time, the 1992 Fund Assembly noted that the International Group had informed the Director that discussions on the issue of the funding of interim payments should be put on hold while the *Nissos Amorgos* case was ongoing, and that, given subsequent developments, it was not clear if or when the discussions would be restarted.

- 1.5 The 1992 Fund Assembly instructed the Director to submit a document to the spring 2015 session of the governing bodies to explain the consequences of making interim payments by the 1992 Fund.
- 1.6 In January 2015, the Director contacted the International Group and offered to continue the discussions on interim payments made by P&I Clubs. At that time, the International Group indicated that they needed further time to consider the matter internally.
- 1.7 In view of the comments made in October 2014 and the need for the International Group to consider matters further, the Director, mindful of the needs of victims, considers it prudent to review the existing arrangements aimed at enabling compensation to flow swiftly following an incident, which include the possibility of the 1992 Fund making provisional payments to victims of an oil spill incident.

2 Interim payments vs provisional payments

- 2.1 It is important to note the distinction between the nature of ‘interim payments’ as ordinarily paid by P&I Clubs pending the distribution of the limitation fund, and ‘provisional payments’ made by the 1992 Fund in order to mitigate undue financial hardship, paid in accordance with the 1992 Fund Convention and the Internal Regulations.
- 2.2 ‘Interim payments’ made by P&I Clubs are generally paid very soon after an incident occurs. Whilst initially they may be paid with the intention of alleviating the financial losses suffered by claimants, they may also be paid with the intention of settling claims, by means of a final payment in return for a signed receipt and release form from the claimant, which subrogates the claimant’s rights back to the P&I Club.
- 2.3 In contrast, ‘provisional payments’ as provided for within Article 18.7 of the 1992 Fund Convention and Regulations 7.9-7.14 of the 1992 Fund Internal Regulations, are categorised slightly differently as they are primarily designed to mitigate undue financial hardship. They are also distinct from the interim payments made by P&I Clubs, as they are not normally made as final settlement of claims to victims, which takes place once the Director has been authorised by the 1992 Fund Assembly to do so.
- 2.4 However, although categorised slightly differently, both interim payments made by P&I Clubs, and provisional payments made by the 1992 Fund, have the effect of alleviating financial losses suffered by claimants in the aftermath of an oil spill incident.

3 Past incidents where the 1992 Fund paid compensation prior to payment by the owner or P&I Club

- 3.1 If in the future, a P&I Club were to decide not to make interim payments, there would be increasing pressure upon the 1992 Fund to make money available at an earlier stage.
- 3.2 It should be noted that such a scenario occurred in the *Prestige* incident, where the insurer of the *Prestige* (the London Club) decided not to make individual compensation payments up to the shipowner’s limitation amount. That decision was taken following legal advice that if the Club were to make payments to claimants in line with past practice, it was likely that those payments would not be taken into account by the Spanish courts when the shipowner set up the limitation fund. This could have resulted in the Club paying twice the limitation amount.
- 3.3 When the *Prestige* incident was discussed at its February 2003 session, the 1992 Fund Executive Committee decided that, as a consequence of the P&I Club not making interim payments, it was necessary for the 1992 Fund to make payments from the outset, as the concerns of the victims were paramount.

- 3.4 Further examples of incidents where the 1992 Fund has, for the reasons contained within Article 4 (1) of the 1992 Fund Convention, paid compensation prior to a payment by a shipowner or a P&I Club, include *inter alia*, the *Vistabella*, *Pontoon 300*, *Al Jaziah 1*, *Nesa R3* incidents and many others.

4 Relevant provisions in the 1992 Fund Convention and Internal Regulations

Provisions in the 1992 Fund Convention – provisional payments

- 4.1 Article 18.7 of the 1992 Fund Convention provides:

‘The functions of the Assembly shall be:

7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible’.

- 4.2 Article 29.2 (e) of the 1992 Fund Convention provides:

‘29.2 The Director shall in particular:

- (e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the Internal Regulations, including the final settlement of claims without the prior approval of the Assembly where these Regulations so provide’.

Provisions in the 1992 Fund Convention – rights acquired by subrogation

- 4.3 Article 9 of the 1992 Fund Convention states:

- ‘1. The Fund shall, in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4, paragraph 1, of this Convention, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.’

Provisions in the Internal Regulations

- 4.4 A copy of Regulation 7 is provided in the Annex. Regulations 7.1-7.8 provide details of the Director’s mandate and authority to make final settlement of claims, and Regulations 7.9-7.14 provide details of the Director’s authority to make provisional payments.

5 Issues to consider when making provisional payments

- 5.1 It is possible that it may be some time before the International Group will be in a position to discuss the matter of interim payments further with the Secretariat, but the Director is hopeful that the International Group P&I Clubs will continue to make interim payments following an oil spill incident. However, it is also possible that an agreement will not be reached with the International Group in the

short term. Consequently, in the absence of any agreement, if there was an oil spill affecting a 1992 Fund Member State, the 1992 Fund Executive Committee would have to decide whether the 1992 Fund should make provisional payments itself.

- 5.2 In order to make final settlement of claims or to make provisional payments, two requirements must be fulfilled:

- 1) The Director must be authorised to do so; and
- 2) The 1992 Fund must have the financial ability to make the payments.

The Director's authority to make final settlement of claims

- 5.3 The authority of the Director to make final settlement of claims is governed by Regulations 7.1-7.8 of the Internal Regulations.

- 5.4 Regulation 7.4 provides:

'7.4 Where the Director is satisfied that the 1992 Fund is liable under the 1992 Fund Convention to pay compensation for pollution damage, he or she may, without the prior approval of the Assembly, make final settlement of any claim, if he or she estimates that the total cost to the 1992 Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 2.5 million SDRs. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 1 million SDRs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.'^{<1>}

- 5.5 As indicated, the amounts of compensation which the Director is authorised to make without authority from the 1992 Fund Assembly are relatively low. Practically, this means that even if a relatively minor oil spill were to occur, these amounts could be insufficient to enable the 1992 Fund to make a meaningful contribution to the welfare of victims in the immediate aftermath of the incident.

- 5.6 Moreover, the situation would be far worse for a major oil spill incident. By way of example, in the *Hebei Spirit* incident, the first payment to claimants was made within two months of the incident occurring. This payment by the Skuld P&I Club, amounted to KRW 7 894 040 000 (approximately US\$7.1 million) and was paid in respect of 21 clean-up operations.

- 5.7 Ordinarily, in the event of a major oil spill incident, the Director would convene an extraordinary session of the 1992 Fund Executive Committee to request authority to pay in excess of the amounts he is authorised to pay under section 7.4 of the Internal Regulations. However, for the reasons indicated above, given the likely size of claims submitted in the immediate aftermath of a major incident, the Director considers that it would be advisable to review the authority he is provided with, to ensure that meaningful payments can be made, prior to receiving further authority from the 1992 Fund Executive Committee.

The Director's authority to make provisional payments

- 5.8 The authority of the Director to make provisional payments is governed by Regulations 7.9-7.14 of the Internal Regulations.

- 5.9 Regulation 7.9 provides:

'Where the Director is satisfied in respect of an incident that the 1992 Fund will be liable under the 1992 Fund Convention to pay compensation to victims of pollution damage arising from the incident, the Director may make provisional payments to such victims. Provisional payments, which shall be at

^{<1>} 2.5 million SDR is approximately £2.3 million (US\$ 3.5 million) and 1 million SDR is approximately £918 000 (US\$ 1.4 million), based on exchange rate at 23 February 2015 of 1 SDR = £0.918316, and 1 SDR = US\$ 1.410630.

the discretion of the Director, may be made if this is necessary in the Director's view to mitigate undue financial hardship to them. The Director shall endeavour to ensure that no person receiving such payment receives more than 80% of the amount which he or she is likely to receive from the 1992 Fund in the event of claims being abated pro rata. Total payments under this paragraph shall not exceed 6 million SDRs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.^{<2>}

- 5.10 As indicated, where the Director makes provisional payments, the Director shall endeavour to ensure that no person receiving a provisional payment receives more than 80% of the amount which he or she is likely to receive from the 1992 Fund in the event of claims being abated pro rata.
- 5.11 However, given the large number of uncertainties following an incident, including the number of claimants, the quantum of their claims, how many claims will be submitted before the expiry of the three year time bar period, and even whether or not the claims submitted will need to be pro-rated, it is very difficult to know in advance, whether any provisional payment which the Director may wish to make under Regulation 7.9, would comply with the restriction of being less than 80% of the amount awarded, in the event the claims were to be pro-rated.
- 5.12 In summary, Regulation 7.9 relating to provisional payments, would benefit from being reviewed and re-drafted, to be more compatible with the current payment practice.

The financial ability of the 1992 Fund to make payments

- 5.13 Currently, the working capital of the 1992 Fund is £22 million. The working capital is needed to cover claim payments and expenses for minor incidents payable from the General Fund, and to make loans to Major Claims Funds for the satisfaction of both claims and claims-related expenses to the extent that sufficient money is not available in the Major Claims Fund in question, pending the levy of contributions to that particular Fund^{<3>}.
- 5.14 For example, in recent years a number of incidents were reported to the 1992 Fund, for which no Major Claims Funds were established, including the *Shoko Maru*^{<4>} and *Nesa R3*. The size of the claims presented to date in respect of these relatively small incidents, are approximately US\$2 million and US\$15.1 million respectively.
- 5.15 The Director considers that the working capital should be sufficiently large so that bank loans are not required for the prompt payment of claims, at least not in normal circumstances. Whilst it is not possible to foresee with certainty the future financial demands upon the 1992 Fund, the Director is of the view that currently, the working capital is sufficient to meet the immediate needs of the organisation.

6 Risks faced by the 1992 Fund when making provisional payments

- 6.1 When considering the options available to the 1992 Fund to make provisional payments, the 1992 Fund Assembly should evaluate the risks detailed below, in conjunction with the scenarios which follow thereafter.
- 6.2 Subrogation risk
- 6.2.1 There is a danger for the 1992 Fund if the national courts of Member States do not recognise the subrogated rights acquired by the 1992 Fund. The right of subrogation is also recognised under the 1992 CLC.

<2> 6 million SDR is approximately £5.5 million (US\$ 8.46 million).

<3> Major claims funds are established for expenses for incidents in excess of 4 million SDR.

<4> It does not appear that the 1992 Fund will pay compensation for this incident.

6.2.2 Article V(5) and (6) of the 1992 CLC provide:

‘V(5) If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

V(6) The right of subrogation provided for in paragraph 5 of this Article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.’

6.2.3 In addition, Article 9(1) of the 1992 Fund Convention provides that the 1992 Fund shall acquire by subrogation, the rights that the person compensated may enjoy under the 1992 CLC against the owner or his guarantor.

6.2.4 Accordingly, provided that the relevant provisions of the 1992 Civil Liability and Fund Conventions have been incorporated into national law, and are applied by the national court so as to recognise the subrogated rights acquired by the 1992 Fund, the risk of the 1992 Fund making payment beyond its limit is small and may be managed on a case-by-case basis, by consideration of the national law of the Member State concerned before payments are made.

6.2.5 It is worthwhile to note the difference in nature of the risks borne by the P&I Clubs/insurer when they make interim payments, compared to the risks faced by the 1992 Fund when it makes provisional payments or settles claims.

6.2.6 Under Article V(1) of the 1992 CLC, the owner/insurer is entitled to limit its liability by establishing a limitation fund. If in addition to establishing the limitation fund the insurer also makes interim payments in expectation of acquiring the victims’ rights by subrogation, but the national courts do not recognise the rights so acquired as diminishing the insurer’s legal liability, the insurer is at risk that a double-payment situation may occur.

6.2.7 Furthermore, the Club has no right of subrogation against the 1992 Fund under the 1992 CLC or 1992 Fund Convention, and so the Club’s protection is limited to that provided under the national law of the Member State concerned.

6.2.8 In contrast, Article 9(1) of the 1992 Fund Convention provides that the 1992 Fund shall acquire by subrogation, the rights that the person compensated may enjoy under the 1992 CLC against the owner or his guarantor. In other words, the Fund has a right of subrogation against the owner/insurer and by implication, against the owner’s limitation fund, whereas the insurer has no such rights against the 1992 Fund.

6.2.9 Notwithstanding the protection afforded to the insurer by Article V(5) of the 1992 CLC, and to the 1992 Fund by Article 9 (1) of the 1992 Fund Convention respectively, since it is the national courts of each Contracting State which make the final decision on the apportionment and distribution of the limitation fund, and since judgments made by competent courts are binding on the 1992 Fund, a possibility always exists that the provisions of the 1992 Civil Liability and Fund Conventions may not be applied by a national court, in a manner which recognises the subrogated rights of the insurer and 1992 Fund.

6.2.10 However, this is a relatively minor risk for the 1992 Fund, as it is expected that the national courts would recognise the 1992 Fund’s rights of subrogation acquired as a result of making provisional payments. In any event, the decision to make provisional payments is, as is presently the case, a matter that should be decided on a case-by-case basis.

- 6.2.11 Furthermore, provided the total payments made are within the 1992 Fund's limit, both the Club and 1992 Fund can ensure that each party pays its correct liability in accordance with the terms of the Memorandum of Understanding (MoU) agreed between the 1992 Fund and International Group, to ensure that neither party pays more than its liabilities.

6.3 Level of payments

- 6.3.1 The risks faced by the 1992 Fund are also dependent on the correct determination of the level of payments.
- 6.3.2 In past incidents, where it has been necessary to make *pro rata* payments in respect of the claims submitted, the 1992 Fund has benefitted from the extra time provided by the P&I Club making interim payments before the 1992 Fund has begun to settle claims. The extra time has enabled the 1992 Fund's experts to ascertain with greater certainty, the likely level of claims which might arise as a result of the incident, and acting upon their advice, has enabled the 1992 Fund Executive Committee to set conservative levels of payment. This has to some extent protected the 1992 Fund.
- 6.3.3 However, in the future, if the 1992 Fund were to make provisional payments in place of the P&I Clubs, there would be less time for the Fund's experts to gather information to enable them to forecast the likely level of claims, which the 1992 Fund Executive Committee uses to set the necessary level of payments. There may therefore be a greater risk that the eventual level set may be either too high, in which case the risk exists that the 1992 Fund would make overpayments, or, if set too low, may result in too little compensation reaching the claimants in sufficient time to reduce their losses.

6.4 Practical scenarios highlighting the risks to the 1992 Fund of making provisional payments

- 6.4.1 By way of example, the following scenarios investigate the risks to the 1992 Fund of making provisional payments:

Scenario 1 – Oil spill incident within the CLC limit

- 6.4.2 Following an incident, if it appears that the claims submitted will be within the shipowner's limit of liability, the shipowner usually does not establish a limitation fund, but rather simply pays the claims as they arise, are assessed and agreed. In these circumstances, the 1992 Fund would not make any payments and would have no liability, and would therefore bear no risk.
- 6.4.3 However, if the 1992 Fund Executive Committee were to instruct the Director to pay compensation, for example because of one of the reasons contained within Article 4(1) of the 1992 Fund Convention, the 1992 Fund would pay compensation to victims, and would acquire their rights by subrogation, and present these subsequently to the shipowner and insurer for repayment.

Scenario 2 – Oil spill incident over the CLC limit

- 6.4.4 In the ordinary course of events, following an incident which is clearly over the shipowner's CLC limit, the shipowner would deposit the limitation fund in court. In the event that the P&I Club does not make interim payments, but the 1992 Fund makes provisional payments instead, it would then acquire by subrogation, the rights of the claimants. The 1992 Fund would file those subrogated rights against the limitation fund, in accordance with the provisions of Article 9.1 of the 1992 Fund Convention.
- 6.4.5 If the national courts apply the Conventions correctly, the Court should recognise the subrogated rights of the 1992 Fund and thus should accept the provisional payments made by the 1992 Fund.
- 6.4.6 However, a risk for the 1992 Fund would exist if the Court did not recognise the provisional payments made voluntarily as discharging the legal liability under the 1992 Fund Convention. This would result in the possibility that the Fund would have made overpayments.

Scenario 3 – A major spill incident well in excess of the CLC limit and possibly in excess of the 1992 Fund limit

- 6.4.7 In addition to the risk that the rights of subrogation acquired by the 1992 Fund are not recognised by the national court, a further potential difficulty arises in the event of major oil spills.
- 6.4.8 It is often difficult to know at the start of an incident whether the 1992 Fund will be called upon to pay compensation, or in the event of a major oil spill, whether the damage might even exceed the 1992 CLC and 1992 Fund Convention limits.
- 6.4.9 Historically, the 1992 Fund has benefitted from good advice and estimates from its experts regarding the likely level of claims which will arise from an incident. However, the danger always exists that unforeseen claims may arise at a late stage in the claims assessment procedure, which could result in the 1992 Fund's limit being reached before all the claims have been assessed and paid.
- 6.4.10 For these reasons, the 1992 Fund Executive Committee often sets conservative levels of payment, until a time when the claims situation becomes clear enough to increase the level of payments sufficiently to ensure that the principle of equal treatment of all claimants is maintained and the 1992 Fund does not find itself in an overpayment situation.

- 6.4.11 To give an example, below are figures of a theoretical major oil spill incident scenario:

Total losses estimated:	200 million SDR
P&I Club deposits limitation fund:	89.77 million SDR
<u>1992 Fund's liability:</u>	<u>113.23 million SDR</u>
Total compensation available	203 million SDR

- 6.4.12 Under this scenario, the 1992 Executive Committee would likely only be able to set a level of payments somewhere between 40% to 50% of the estimated losses, since the value of the 1992 Fund's liability equates to approximately 56% of the total losses estimated.

7 Risks to Member States - level of protection and cover

- 7.1 Member States of the 1992 Fund may also wish to consider whether they have the best level of protection available by considering whether they should become Party to the Supplementary Fund Protocol with the total available cover of 750 million SDR^{<6>}.
- 7.2 If the Member State affected by the incident was a Party to the Supplementary Fund Protocol, assuming the same losses as detailed in the example above, no such issues would arise, as evidenced by the following calculation:

Total losses estimated:	200 million SDR
P&I Club deposits limitation fund:	89.77 million SDR
1992 Fund liability	113.23 million SDR
<u>Supplementary Fund liability:</u>	<u>547 million SDR</u>
Total compensation available	750 million SDR

- 7.3 The total losses of 200 million SDR would be well within the total amount of compensation available amounting to 750 million SDR, and would enable the governing bodies to establish a level of payment of 100%.

<6> Approximately £688.7 million (US\$ 1 058 million).

8 Director's considerations

- 8.1 The Director considers that the prompt payment of compensation is of crucial importance for the functioning of the compensation regime, and is conscious of the immediate needs of victims following an oil spill incident. With this in mind, in January 2015 the Director contacted the International Group and asked them to continue its discussions on interim payments made by the P&I Clubs. At that time, the International Group indicated that they needed further time to consider the matter internally.
- 8.2 The Director will seek to continue further discussions with the International Group and, mindful of the needs of victims, remains hopeful that the International Group P&I Clubs will continue to make interim payments to enable compensation to flow swiftly following an incident. However, in the absence of any agreement to do so, the Director is of the view that the 1992 Fund should be well prepared to be able to respond, should the need arise.
- 8.3 The Director also recognises the risks that exist for the 1992 Fund when making provisional payments, predominant amongst which is the possibility that national courts of Member States may not recognise the subrogation rights acquired by the 1992 Fund, which may lead to an overpayment situation. Consequently, whilst this is a risk which can be managed prior to payment, by consideration of the relevant laws of the Member State concerned, as is presently the case, the Director is of the view that the decision to make provisional payments can only be made on a case-by-case basis.
- 8.4 Similarly, the Director recognises the importance of the 1992 Fund Executive Committee setting the correct level of payments in order to provide protection for the 1992 Fund. However, the Director also notes the difficulty that the 1992 Fund Executive Committee may face in the future in ascertaining the correct level of payments if it were to make provisional payments, in view of the reduced time the 1992 Fund's experts would have to gather information on the likely quantum of total claims arising from the incident.
- 8.5 For further protection, Member States may also wish to consider the benefits of becoming Party to the Supplementary Fund Protocol, with increased levels of compensation up to 750 million SDR.
- 8.6 If the 1992 Fund Assembly decides to make provisional payments, the 1992 Fund needs to hold sufficient liquid funds to enable it to pay claims without having to wait for the next payment of contributions. At present, the Director is of the view that the working capital of £22 million is sufficient to meet the immediate needs of the 1992 Fund.
- 8.7 The Director notes that if the 1992 Fund decides to make provisional payments, this may place additional demands upon the 1992 Fund in responding to incidents in a shorter time frame than in previous incidents where the Fund made payment after the P&I Club.
- 8.8 Furthermore, for the reasons explained in sections 5, 6 and 7 of the document, the Director is of the view that amendments may be required to Regulation 7 of the Internal Regulations, to enable the 1992 Fund to play a meaningful role in making provisional payments, should this be necessary in the future.
- 8.9 The issues to consider are delicate and require careful consideration. It is for this reason that the Director, if so instructed by the 1992 Fund Assembly, intends to report back to the governing bodies with proposals for amendments to Regulation 7 at the next session of the 1992 Fund Assembly.

9 Action to be taken

1992 Fund Assembly

The 1992 Fund Assembly is invited to consider whether to instruct the Director to examine Internal Regulation 7 so that the 1992 Fund is in a better position to make provisional payments should the need arise.

ANNEX

Regulation 7 of the 1992 Fund Internal Regulations

INTERNAL REGULATIONS OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as amended by the Assembly at its 19th session held from 20-24 October 2014)

Regulation 7

Settlement of Claims

- 7.1 The Director shall promptly take all appropriate and necessary measures for dealing with claims.
- 7.2 The Director shall promptly satisfy any claims for pollution damage under Article 4 of the 1992 Fund Convention which have been established by judgement against the 1992 Fund enforceable under Article 8 of the 1992 Fund Convention.
- 7.3 The Director may agree with any claimant to submit a claim to binding arbitration. Claims established by such arbitration shall be promptly satisfied by the Director.
- 7.4 Where the Director is satisfied that the 1992 Fund is liable under the 1992 Fund Convention to pay compensation for pollution damage, he or she may, without the prior approval of the Assembly, make final settlement of any claim, if he or she estimates that the total cost to the 1992 Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 2.5 million SDRs. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 1 million SDRs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.
- 7.5 The Assembly may authorise the Director to settle claims in respect of a particular incident beyond the limit established in Regulation 7.4.
- 7.6 As a condition for making a final settlement of any claim under Internal Regulation 7.4 or 7.5, the Director shall obtain a full and final release in favour of the 1992 Fund from the claimant in respect of the claims in question.
- 7.7 Subject to Internal Regulation 7.4, where a claim has been submitted to the 1992 Fund and agreement has been reached between the 1992 Fund and the claimant as to the value of the majority of items of the claim, but further investigation is considered necessary with respect to the remaining items, the Director may make payment in respect of the agreed items. Internal Regulation 7.6 applies correspondingly.
- 7.8 All agreements to submit claims to arbitration under Internal Regulation 7.3 and all claims settled under Internal Regulation 7.4 or 7.5 shall be reported by the Director at the next session of the Assembly.
- 7.9 Where the Director is satisfied in respect of an incident that the 1992 Fund will be liable under the 1992 Fund Convention to pay compensation to victims of pollution damage arising from the incident, the Director may make provisional payments to such victims. Provisional payments, which shall be at the discretion of the Director, may be made if this is necessary in the Director's view to mitigate undue financial hardship to them. The Director shall endeavour to ensure that no person receiving such payment receives more than 80% of the amount which he or she is likely to receive from the 1992 Fund in the event of claims being abated pro rata. Total payments under this paragraph shall not exceed 6 million SDRs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.

ANNEX

7.10 Where, in respect of a particular incident, the Director considers the level of provisional payments permitted under Internal Regulation 7.9 is insufficient to mitigate undue financial hardships to victims, the Director may bring the matter to the attention of the Assembly. The Assembly may decide, in respect of such incident, that provisional payments may be made beyond the limit of 6 million SDRs laid down in Internal Regulation 7.9.

7.11 As a condition of making a provisional payment in respect of a claim, the Director shall obtain from the claimant concerned a transfer to the 1992 Fund of any right that such a claimant may enjoy under the 1992 Civil Liability Convention against the owner or his or her guarantor, up to the amount of the provisional payment to be made by the 1992 Fund to that claimant.

7.12 Where a person who is in arrears in respect of any payment due to the 1992 Fund is entitled to receive payment from the 1992 Fund for the satisfaction of a claim, the Director shall, unless this is not permitted under the applicable national law, deduct the amount of the arrears from the amount of the payment to be made to such person by the 1992 Fund.

7.13 The Director may authorise another officer or other officers to make final or partial settlement of claims or to make provisional payments. Such authority shall:

- (a) in respect of the Head of the Claims Department be limited to approvals not exceeding £500 000 for a particular claim; and
- (b) in respect of other officers:
 - (i) be given only in respect of claims arising out of a specific incident and only to an officer who is responsible for dealing with claims arising out of that incident; and
 - (ii) be limited to approvals not exceeding £75 000 for a particular claim.

The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director.

7.14 Any settlements made under Internal Regulation 7.13(a) shall be reported to the Director and those made under Regulation 7.13(b) to the Head of the Claims Department.