INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

Agenda item: 9	IOPC/APR15/**9/1**	
Original: ENGLISH	23 April 2015	
1992 Fund Administrative Council	**92AC13/ AES19**	●
1992 Fund Executive Committee	**92EC64**	●
1992 Fund Working Group 7	**92WG7/4**	●

RECORD OF DECISIONS OF THE APRIL 2015 SESSIONS OF THE IOPC FUNDS' GOVERNING BODIES

(held from 20 to 23 April 2015)

Governing Body (session)		**Chairman**	**Vice-Chairmen**
1992 Fund	Administrative Council **(92AC13/AES19)**	Mr Gaute Sivertsen (Norway)	Professor Tomotaka Fujita (Japan) Mr Samuel Roger Minkeng (Cameroon)
	Executive Committee **(92EC64)**	Ms Welmoed van der Velde (Netherlands)	Capt. Ibraheem Olugbade (Nigeria)
	Working Group **(92WG7/4)**	Mrs Birgit Sølling Olsen (Denmark)	

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Opening of the sessions

1992 Fund Administrative Council

0.1 The Chairman of the 1992 Fund Assembly attempted to open the 19th extraordinary session of the Assembly at 9:30 and 09:45 but the Assembly failed to achieve a quorum on both occasions. Only the following 50 Member States of the 1992 Fund were present at that time, whereas a quorum required 58 States to be present:

Algeria	Islamic Republic of Iran	Poland
Argentina	Italy	Qatar
Australia	Japan	Republic of Korea
Bahamas	Kenya	Russian Federation
Bulgaria	Liberia	Singapore
Cameroon	Malaysia	South Africa
Canada	Malta	Spain
China[<1>]	Marshall Islands	Sweden
Colombia	Mexico	Trinidad and Tobago
Côte d'Ivoire	Monaco	Tunisia
Cyprus	Morocco	Turkey
Estonia	Netherlands	United Arab Emirates
Finland	New Zealand	United Kingdom
France	Nigeria	United Republic of Tanzania
Germany	Norway	Uruguay
Ghana	Panama	Venezuela (Bolivarian Republic of)
Greece	Philippines	

0.2 Since the quorum required 58 States to be present and no quorum was achieved in the 1992 Fund Assembly, the Chairman of the 1992 Fund Assembly concluded that, in accordance with Resolution N°7, the items of the Assembly's agenda would therefore be dealt with by the 13th session of the 1992 Fund Administrative Council, acting on behalf of the 19th extraordinary session of the 1992 Fund Assembly[<2>]. It was recalled that, at its 1st session in May 2003, the 1992 Fund Administrative Council had decided that the Chairman of the 1992 Fund Assembly should *ex officio* be the Chairman of the Administrative Council (document 92FUND/AC.1/A/ES.7/7, paragraph 2).

1992 Fund Executive Committee

0.3 The 1992 Fund Executive Committee Chairman opened the 64th session of the Executive Committee.

0.4 The Member States present at the sessions are listed in Annex I, as are the non-Member States, intergovernmental organisations (IGOs) and international non-governmental organisations (NGOs) which were represented as observers.

1 Procedural matters

1.1

Adoption of the Agenda **Document IOPC/APR15/1/1**	**92AC**	**92EC**	**92WG**

The 1992 Fund Administrative Council and 1992 Fund Executive Committee adopted the agenda as contained in document IOPC/APR15/1/1.

<1> The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

<2> From this point forward, references to the '13th session of the 1992 Fund Administrative Council' should be taken to read '13th session of the 1992 Fund Administrative Council, acting on behalf of the 19th extraordinary session of the 1992 Fund Assembly'.

1.2	**Examination of credentials – Establishment of the Credentials Committee** **Document IOPC/APR15/1/2 and IOPC/APR15/1/2/1**	**92AC**	**92EC**	

1.2.1 The governing bodies recalled that at its March 2005 session the 1992 Fund Assembly had decided to establish, at each session, a Credentials Committee composed of five members elected by the Assembly on the proposal of the Chairman, to examine the credentials of delegations of Member States. It was also recalled that the Credentials Committee established by the 1992 Fund Assembly should also examine the credentials in respect of the 1992 Fund Executive Committee, provided that the session of the Executive Committee was held in conjunction with a session of the Assembly.

1992 Fund Administrative Council Decision

1.2.2 In accordance with Rule 10 of its Rules of Procedure, the 1992 Fund Administrative Council appointed the delegations of Algeria, Argentina, Liberia, Philippines and the United Kingdom as members of the Credentials Committee.

1992 Fund Executive Committee

1.2.3 The 1992 Fund Executive Committee took note of the appointment of the Credentials Committee by the 1992 Fund Administrative Council.

Debate

1.2.4 After having examined the credentials of the delegations of the 1992 Fund Member States, including States which were members of the 1992 Fund Executive Committee, the Credentials Committee reported in document IOPC/APR15/1/2/1 that credentials had been received from 62 Member States and that all were in order. It was noted that credentials had not yet been submitted by South Africa but that the Committee expected that this would be rectified by the delegation shortly after the session.

1.2.5 The governing bodies expressed their sincere gratitude to the members of the Credentials Committee for their work during the April 2015 sessions.

2 Overview

2.1	**Report of the Director**	**92AC**	**92EC**	

2.1.1 The Director referred to issues which were particularly likely to require significant discussion and guidance from Member States as well as to items of interest which were not the subject of specific agenda items or documents.

2.1.2 The Director noted that the 1992 Fund now had 114 Member States as the 1992 Fund Convention had entered into force for Nicaragua on 4 April 2015.

2.1.3 He drew the attention of delegates to the most important and difficult decision taken in 2014 which was the winding up of the 1971 Fund. He noted that the decision had regrettably created a divide but that he very much hoped that the relationship between the Funds and the organisations concerned would be rebuilt. In this regard, he reported that a good start was that discussions on interim payments with the International Group of P&I Associations (the International Group) were scheduled to take place in early May and that the aim was for all interested parties to work together to ensure the international liability and compensation regime continued to pay victims of oil pollution damage.

2.1.4 With respect to the winding up of the 1971 Fund, the Director reported that the final Financial Statements had been approved on 17 April 2015 at a meeting of former 1971 Fund Member States.

2.1.5 With regard to incidents, the Director reported that the 1992 Fund was currently dealing with 13 incidents. However, he drew attention to two incidents which had occurred since the October 2014

sessions of the governing bodies and which merited being reported even though it was unlikely that they would become 1992 Fund incidents. The *OT Southern Star 7* incident had taken place in the Bangladesh Sundarbans in December 2014, resulting in an oil spill in the world's largest mangrove forest which spans across the Indo-Bangla border. He noted that as Bangladesh was not Party to the 1992 Civil Liability and Fund Conventions, the 1992 Fund would not have been called upon to pay compensation. However, if the oil had reached the mangroves on the Indian side, this could have become a 1992 Fund incident. The second incident, involving the oil tanker *Al Yarmouk*, had taken place in the Malacca Strait, close to the coasts of Singapore, Indonesia and Malaysia, in January 2015. As a result of a collision with a bulk carrier, more than 4 500 tonnes of crude oil had spilled into the sea. The Director noted that there had been concern that patches of oil might affect the northern parts of Bintan Island, Indonesia but that satellite data and aerial surveillance had not shown any spilled oil in the vicinity of the island. He further noted that, as Indonesia was not Party to the 1992 Fund Convention, no compensation would have been available to claimants in that State. However, had the oil affected Singapore and Malaysia, both Parties to the 1992 Fund Convention, compensation would have been available.

2.1.6 With respect to the *MT Pavit* incident which would be discussed under a separate agenda item, the Director reported that it was still not clear whether the 1992 Civil Liability and Fund Conventions applied to this incident as, according to the 1992 Fund's experts, it appeared that the vessel was not carrying residues of 'oil', as defined under Article I(5) of the 1992 Civil Liability Convention (1992 CLC), in bulk as cargo. He further noted that, in addition, the vessel did not spill any oil and that, for the 1992 Fund to pay compensation, it must be shown that the tanker created a grave and imminent threat of causing pollution damage (Article I(8) of the 1992 CLC).

2.1.7 With respect to the *Hebei Spirit* incident, the Director recalled that in June 2008 the 1992 Fund Executive Committee had decided, in view of the uncertainty as to the total amount of the admissible claims, to set the level of payments at 35% of the established claims and that this decision had been maintained at subsequent meetings of the 1992 Fund Executive Committee. He noted that, as at 18 March 2015, nearly 49 000 claims totalling KRW 2 476 billion (£1 454 million) were still pending before the Korean Courts and that, in view of the uncertainty regarding the pending claims, with regret he would be proposing to maintain the level of payments at 35% so as to avoid an overpayment situation.

2.1.8 The Director drew attention to two sets of guidelines in respect of compensation which were being submitted for the consideration and/or approval of the 1992 Fund Assembly: Guidelines for presenting claims for clean-up and preventive measures (which had been developed in collaboration with the Governments of France, Spain and the United Kingdom); and Guidance for Member States – Management of fisheries closures and restrictions. He pointed out that the Secretariat was also developing draft guidelines to assist claimants with the submission of claims for environmental damage which were expected to be presented in spring 2016.

2.1.9 The Director recalled that in October 2014, the 1992 Fund Assembly had considered document IOPC/OCT14/4/7 relating to the funding of interim payments submitted by the International Group. In accordance with the 1992 Fund Assembly's instruction, he had submitted a document to this session of the governing bodies to explain the consequences of making interim payments by the 1992 Fund. He noted that this document would be discussed under item 4 of the Agenda as would a document on the same subject which had been submitted by the International Group in relation to this agenda item. The Director pointed out that, as mentioned earlier, a first meeting between the Secretariat and the International Group was scheduled to take place in early May.

2.1.10 The Director noted that the fourth and final meeting of the 7th intersessional Working Group on the definition of 'ship' would be held later in the week and that the Working Group would present a final report to the October 2015 session of the 1992 Fund Assembly.

2.1.11 The Director drew the attention of the governing bodies to a document which had been submitted by the United Kingdom to the IMO Legal Committee where it had invited the Committee to provide a definite interpretation of the 1992 Fund Convention in respect of who should be liable for

contributions at the time the Convention ceased to be in force. It was noted that the Director would inform the 1992 Fund Assembly of the discussions in the Legal Committee under the item of the Agenda relating to Any Other Business.

2.1.12 With respect to the appointment of the External Auditor, the Director recalled that the Audit Body was in the course of conducting the tender process as instructed by the governing bodies and that the Chairman of the Audit Body would be providing an oral update to the governing bodies on its initial evaluation of the tenders later in the week. He noted that the Audit Body would be making a recommendation as to the appointment of the External Auditor at the October 2015 sessions of the governing bodies.

2.1.13 The Director reminded delegations in October 2014 that he had been instructed to contact the United Kingdom Foreign and Commonwealth Office (FCO) to discuss the implications for the 1992 Fund and the Supplementary Fund of the freezing injunction decision upon the 1971 Fund. He reported that discussions were on-going with the FCO on this matter as well as the status of the Parliamentary process in respect of the revised 1992 Fund Headquarters Agreement and a new Headquarters Agreement for the Supplementary Fund which had been approved by the respective Assemblies in 2006. He noted that this issue would be discussed under item 6 of the Agenda.

2.1.14 With respect to staff matters, the Director reported that the Funds' Legal Counsel, Mrs Akiko Yoshida, had resigned and would be leaving the Secretariat at the end of June 2015. He noted that she had joined the Secretariat in August 2010 and would be greatly missed. He also noted that a Circular inviting candidatures for the position of Legal Counsel would be disseminated to 1992 Fund Member States after these sessions.

2.1.15 He also reported that a job classification exercise had been carried out in 2014 by an external consultant, Mrs Claudine Pichon, a United Nations classifier, to review and update the job descriptions of all staff members, taking into consideration the needs of the Organisation, the role of the posts together with the education, experience and skills required and to harmonise the job descriptions. He reported that, as a result of this exercise, Mrs Pichon had recommended that several posts be re-classified, that he had agreed with Mrs Pichon's recommendations and that he would make a full report on the outcome of this exercise to the 1992 Fund Assembly in October 2015.

2.1.16 The Director also noted that Ms Emer Padden, External Relations and Conference Coordinator and Mrs Astrid Richardson, Administrative/Claims Assistant had left the Secretariat since October 2014 and thanked Ms Padden and Mrs Richardson for their contribution to the work of the IOPC Funds.

2.1.17 He further noted that the following staff members had joined the Secretariat since October 2014: Mr Thomas Moran (Denmark/United Kingdom), External Relations and Conference Coordinator (February 2015) and Ms Julia Sukan del Río (Spain), External Relations and Conference Assistant (March 2015). He also reported that Mrs Julia Shaw (United Kingdom) had been appointed as Human Resources Manager and would take up her post on 1 June 2015.

2.1.18 The Director reported that he was proposing an amendment to Staff Regulation 24 increasing the required period of written notice of resignation from thirty days to ninety days for staff in the Professional and Higher categories on new contracts only. In addition, he had increased the probation period from six months to twelve months and the corresponding amendment had been made to Human Resources Policy Nº4.

2.1.19 The Director also reported that he was proposing some amendments to the Rules of Procedure of the 1992 Fund Assembly, in particular to elect the incoming Chairman and Vice-Chairman of the 1992 Fund Executive Committee at the same time as the incoming Executive Committee was elected. The Administrative Council would also be asked to note the new standalone format of the Rules of Procedure for the 1992 Fund Executive Committee.

2.1.20 The Director reported that the Secretariat was continuing to work with the representatives of the UK Government to find suitable premises for the IOPC Funds.

2.1.21 With respect to external relations activities, the Director drew the attention of delegations to the fifth IOPC Funds' Short Course which would take place from Monday 15 to Friday 19 June 2015 in London. He reminded delegations that the deadline for nominations was 15 May 2015 and that nominations for participation should come directly from governments of 1992 Fund Member States and should be accompanied by the completed nomination form and the candidate's brief curriculum vitae. The Director pointed out that four nominations had been submitted so far.

2.1.22 The Director also recalled that the Annual Report for 2014 had been published last month. He had examined the need to continue to publish an annual Incident Report and had decided that the publication of a separate document was not necessary given that information on all current 1992 Fund incidents was available on the IOPC Funds' website.

2.1.23 The Director reported that the Secretariat had continued its efforts since October 2014 to engage with Member States and non-Member States between meetings, to run workshops, give presentations, assist with implementation issues and generally increase awareness of the international regime. In October 2014, he had had the pleasure of attending the World Maritime Day Parallel event in Tangiers, Morocco, and in November he had travelled with the Head of the Claims Department to the Maritime Institute Willem Barentsz (MIWB), on the island of Terschelling, Netherlands to give a presentation and experience their excellent training facilities. In November 2014, the Funds had participated in a regional workshop in Gabon as part of the IMO/IPIECA GI-WACAF project and had also attended an IMO regional seminar on the implementation of IMO Conventions in Kuala Lumpur, Malaysia. In December 2014, in cooperation with the International Group and ITOPF, the Funds had run a national workshop on the international liability and compensation regime at the Finnish Environment Institute in Helsinki. In February 2015, the Director had given a presentation to members of the Petroleum Industry Marine Association of Japan (PIMA) and other contributors in Tokyo and finally in March 2015, together with representatives from the Gard Club and ITOPF, the Funds had contributed to the Damage Assessment Workshop organised in Doha, Qatar by the Marine Emergency Mutual Aid Centre (MEMAC).

2.1.24 In addition, the Director reported that the IOPC Funds had participated in Interspill 2015 which had been held in Amsterdam in March 2015. The Funds' had organised two workshops, chaired two sessions, made a presentation on environmental damage and had a stand where information on the compensation regime had been provided to interested persons.

2.1.25 He finally reported that an informal lunch for the UK-based representatives of States from the Middle East and surrounding regions had been held in December 2014 and another for UK-based IGOs and NGOs which shared the same interests as the IOPC Funds had been held in January 2015. It was planned that the next regional lunch meeting for Member and non-Member States would take place in early summer 2015.

3 Incidents involving the IOPC Funds

3.1	**Incidents involving the IOPC Funds** **Document IOPC/APR15/3/1**		**92EC**	

The 1992 Fund Executive Committee took note of document IOPC/APR15/3/1, which contained information on documents for the April 2015 meetings relating to incidents involving the IOPC Funds.

3.2	**Incidents involving the IOPC Funds – 1992 Fund: *Prestige*** **Document IOPC/APR15/3/2**		**92EC**	

3.2.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR15/3/2 concerning the *Prestige* incident.

Judgment of the Audiencia Provincial (Criminal Court)

3.2.2 It was recalled that the Audiencia Provincial in La Coruña had issued a judgment on 13 November 2013, finding that the master and the Chief Engineer of the *Prestige*, and the civil servant who had been involved in the decision not to allow the ship into a place of refuge in Spain, were not criminally liable for damages to the environment.

3.2.3 It was also recalled that the judgment had not awarded any compensation to claimants and that the Court had decided that the limitation fund totalling some €22.8 million was at the London Club's disposal for it to decide on its distribution, subject to any appeal by the affected parties.

Cassation appeal

3.2.4 It was noted that some 19 parties had submitted appeals to the Supreme Court, including the Spanish and French Governments, some individual claimants in Spain, and local and regional authorities in France. It was also noted that of these parties, only 12 were seeking compensation, namely the Spanish and French Governments, a Spanish regional authority, a French regional authority, seven individuals and the public prosecutor, who was representing all victims of the spill in the proceedings.

3.2.5 It was noted that the French Government's action in the criminal proceedings was not against the 1992 Fund and that the French Government was requesting from the Court a declaration of joint and several civil liability of the master, the Chief Engineer and the shipowner, its insurer and the ship management company.

3.2.6 The Executive Committee noted that the 1992 Fund would participate in the proceedings before the Supreme Court, as a party with strict civil liability under the 1992 Fund Convention.

3.2.7 It was also noted that the 1992 Fund had submitted pleadings in reply to the appealing parties' arguments against the civil liability decision. It was further noted that, in its pleadings, the 1992 Fund had defended the application of the Conventions and reiterated the assessments that the 1992 Fund had carried out of the damages claimed by the different parties.

3.3	**Incidents involving the IOPC Funds – 1992 Fund:** ***Volgoneft 139*** **Document IOPC/APR15/3/3**		**92EC**	

3.3.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR15/3/3 relating to the *Volgoneft 139* incident.

Civil proceedings

3.3.2 It was recalled that in June 2012, the Arbitration Court of Saint Petersburg and Leningrad Region had delivered its judgment on quantum, awarding amounts totalling RUB 503.2 million. It was also recalled that the Court had decided that the shipowner/Ingosstrakh should pay the awarded amounts up to 3 million SDR and that the 1992 Fund should pay all amounts above 3 million SDR. It was further recalled that, since the 1992 CLC limit applicable at the time of the incident was 4.51 million SDR, an 'insurance gap' of some 1.51 million SDR remained.

3.3.3 It was recalled that, in a ruling delivered in July 2013, the Supreme Court had stated that it was incorrect that the 1992 Fund should have to pay the 'insurance gap' because the amendments to the 1992 CLC had not been published in the Russian Federation prior to the date of the incident, nor brought to the attention of the shipowner and insurer.

3.3.4 It was recalled that, in a judgment rendered in October 2013 the Presidium of the Supreme Court had ordered that the judgments of the Arbitration Court of Saint Petersburg and Leningrad Region, the Court of Appeal and the Court of Cassation be set aside in respect of the part that had ordered the

1992 Fund to cover the 'insurance gap' of 1.51 million SDR and had ordered the case to be sent to the Arbitration Court of Saint Petersburg and Leningrad Region for reconsideration on that point.

3.3.5 The Committee noted that, in a judgment delivered in November 2014, the Arbitration Court of Saint Petersburg and Leningrad Region had decided that the difference between the limitation fund deposited in Court by the shipowner's insurer of 3 million SDR and the amount of the shipowner's liability limit that would correspond under the 1992 CLC of 4.51 million SDR should be allocated between all claimants. It also noted that the Court had decided therefore that the 'insurance gap' of 1.51 million SDR should be deducted pro rata from the amount previously awarded to all claimants.

3.3.6 It was noted that the shipowner had appealed against the judgment, arguing mainly that Volgotanker had been declared bankrupt and that the 1992 Fund should cover the 'insurance gap' by virtue of Article 4.1(b) of the 1992 Fund Convention.

Claims for compensation

3.3.7 It was recalled that, at its April 2013 session, the 1992 Fund Executive Committee had decided to authorise the Director to pay private claimants in full according to the 2012 ruling of the Arbitration Court of Saint Petersburg and Leningrad Region and make interim payments to the three government claimants with pro-rated deductions to cover the 'insurance gap'. It was also recalled that, in accordance with that decision, the 1992 Fund had paid all private claimants in full and only the three government agencies remained to be paid.

3.3.8 It was noted that the total amount awarded against the shipowner/Ingosstrakh and the 1992 Fund in the June 2012 judgment, including costs, together with the amount settled out of court for the shipowner's claim, was RUB 512.3 million, but following the November 2014 judgment, this amount had been reduced to RUB 453.7 million. It was also noted that if the terms of the November 2014 judgment were to remain unchanged, the 1992 Fund would have the right to recover from the private claimants a total of RUB 8.7 million (£89 000).

3.3.9 The Committee noted that if the terms of the November 2014 judgment were to be upheld in a final judgment, the 1992 Fund would have to decide whether to recover from the individual claimants the amount overpaid. It was also noted that, at some point, the 1992 Fund would have to pay the amounts corresponding to the three government claims.

Debate

3.3.10 One delegation stated that the Arbitration Court's judgment challenged the 1992 Fund's assumption that the Russian Government should bear the burden of the 'insurance gap'. That delegation referred to the fact that when the Executive Committee had taken the decision to authorise the Director to pay private claimants in full according to the 2012 Arbitration Court ruling, that delegation had expressed concern for the lack of formal agreement between the three government claimants and the 1992 Fund and had suggested that the Director should continue negotiations with the three government claimants to reach an agreement on the 'insurance gap'. That delegation pointed out that the Fund, despite the caution raised by that delegation, had commenced the payments to the victims on the assumption that the 'insurance gap' was shared only by the Government claimants. That delegation expressed disappointment at the situation of overpayment and expressed the view that in the future the 1992 Fund should not make payments based on optimistic assumptions. In the view of that delegation it would not be cost effective to try to recover the overpaid amounts from the individual claimants. A number of delegations agreed with the views expressed by this delegation.

3.3.11 Another delegation suggested that if the November 2014 Arbitration Court decision were to become final, the compensation overpaid to the individual claimants should, in principle, be discounted from the compensation owed to those claimants by the shipowner and its insurer.

3.3.12 One delegation stated that private claimants were not guilty of the 'insurance gap' and that it would not look good for the 1992 Fund's image to try to recover from the individual claimants the overpaid amount.

3.3.13 Another delegation added that the 1992 Fund should not take the burden of trying to recover from the private claimants the overpaid amount. That delegation suggested that a proposal should be put forward to the Court in which the 1992 Fund would discount the 'insurance gap' from the payments to the government claimants and the government claimants could then recover the money from the private claimants. A number of delegations agreed with this view.

3.3.14 One delegation noted that, although the amount in question in this case was small, overpayment situations could arise, and stressed that caution should be exercised in the future.

3.3.15 The Director stated that Ingosstrakh had not yet made any compensation payments but that Ingosstrakh could deduct from their payments to individual claimants the amounts overpaid by the 1992 Fund. The Director added that overpayment situations can arise when making compensation payments prior to a final judgment, and that the only way to avoid the risk of overpayment was not making payments at all, which would only be to the detriment of claimants. The Director also stated that the Secretariat would continue discussions with the Russian Government to try to solve the outstanding issues in respect of this case.

3.4	**Incidents involving the IOPC Funds – 1992 Fund:** ***Hebei Spirit*** **Documents IOPC/APR15/3/4, IOPC/APR15/3/4/1 and IOPC/APR/15/3/4/2**		**92EC**	

3.4.1 The 1992 Fund Executive Committee took note of the information contained in documents IOPC/APR15/3/4 and IOPC/APR15/3/4/1, submitted by the Secretariat and document IOPC/APR15/3/4/2 submitted by the Republic of Korea, in respect of the *Hebei Spirit* incident.

DOCUMENT IOPC/APR15/3/4, SUBMITTED BY THE SECRETARIAT

Claims for compensation

3.4.2 The Executive Committee noted that as at 18 March 2015, 128 406 individual claims totalling KRW 2 776 billion had been registered. It also noted that the shipowner's insurer, Assuranceföreningen Skuld (Gjensidig) (Skuld Club) had made payments totalling KRW 186 billion in respect of 32 453 claims.

Limitation proceedings

3.4.3 The Executive Committee recalled that 127 483 claims totalling KRW 4 227 billion had been submitted to the limitation proceedings. The Executive Committee also recalled that in January 2013 the Limitation Court had rendered a decision regarding the distribution of the *Hebei Spirit* limitation fund, assessing the damages arising out of the *Hebei Spirit* incident at a total of KRW 738 billion and rejecting 64 270 claims.

3.4.4 It was noted that a total of 122 552 claims had been filed in objection proceedings.

3.4.5 The Executive Committee noted that the Seosan Court had been proposing mediation settlements to the parties in cases where matters of principle were not under discussion. The Executive Committee further noted that, as a result, 80 514 claims had been resolved by judgments or mediation, or had been withdrawn. The Executive Committee further noted that the Seosan Court had issued 41 judgments in respect of 29 478 claims, the majority of which had been appealed.

DOCUMENT IOPC/APR15/3/4/2, SUBMITTED BY THE REPUBLIC OF KOREA

3.4.6 The Executive Committee noted document IOPC/APR15/3/4/2 submitted by the Korean Government which provided information on the latest developments in the objection proceedings.

3.4.7 The Executive Committee noted that, in the document, the Korean Government informed the Executive Committee that the claims settled by the Court through judgment or mediation were awarded sums corresponding to 10.3% of the amount initially claimed in the Limitation Court. It was further noted that the Korean Government expected that the first instance proceedings would be concluded by the end of summer 2015 and that all legal proceedings would be concluded by the end of 2016.

3.4.8 The Committee further noted that the Korean Government considered that, in view of the decisions taken by the Seosan Court so far, it was likely that the outstanding 25 216 claims would be assessed by the Court at the same level as those already settled, ie 10.3% of the claimed amount. It was also noted that the Korean Government considered that such estimate would be in line with the Seosan Court's original decision with regard to the pending claims.

3.4.9 The Executive Committee noted the Korean Government's expectation that the total compensation awarded would be around KRW 421 000 million, which would represent 76.5% of the total available under the 1992 CLC and 1992 Fund Convention.

DOCUMENT IOPC/APR15/3/4/1, SUBMITTED BY THE SECRETARIAT

Level of payments

3.4.10 The Executive Committee recalled that in June 2008, in view of the uncertainty as to the total amount of the admissible claims, it had decided that the level of payments should be limited to 35% of the amount of the damage actually suffered by the respective claimants as assessed by the Fund. It was also recalled that in subsequent meetings, the Executive Committee had decided to maintain the level of the Fund's payments at 35% of the established losses.

3.4.11 The Executive Committee recalled that the total amount available for compensation under the 1992 Civil Liability and Fund Conventions was 203 million SDR or KRW 321 600 million.

3.4.12 The Executive Committee noted that the Seosan Court had resolved, through recommendations and judgments, about 66% of the claims, but that some 34% of the claims in the limitation proceedings were still pending. It was noted that, in view of the number of claims still pending in the limitation proceedings and in view of the large amounts still disputed in the proceedings, the Director considered that there was still a risk that the Seosan Court might increase the amount awarded by the Limitation Court.

3.4.13 The Executive Committee noted that the Director therefore proposed to maintain the level of payments at 35% since this would continue to provide the 1992 Fund with reasonable protection against a possible overpayment situation, and that the level of payments should be reviewed at its next session.

Debate

3.4.14 The delegations that took the floor remarked that it was unfortunate that it was still not possible to increase the level of payments but that, in view of the remaining uncertainties, maintaining the level of payments at 35% of the established claims was regretfully the only possible option at this stage. Those delegations therefore agreed with the Director's proposal to maintain the level of payments to 35% of the established claims and to review this decision at the next session of the 1992 Fund Executive Committee.

1992 Fund Executive Committee Decision

3.4.15 The 1992 Fund Executive Committee decided to maintain the level of payments at 35% of the amount of the established losses and to review this decision at the next session of the 1992 Fund Executive Committee.

3.5	**Incidents involving the IOPC Funds – 1992 Fund: *MT Pavit* Document IOPC/APR15/3/5**		**92EC**	

3.5.1 The 1992 Fund Executive Committee noted the information contained in document IOPC/APR15/3/5 relating to the *MT Pavit* incident.

3.5.2 The Executive Committee recalled that on 31 July 2011, the *MT Pavit*, a product tanker of 999 GRT built in 1990, ran aground off Juhu beach, Mumbai, India.

3.5.3 The Executive Committee noted that the 1992 Fund had instructed experts to advise on the recoverability of losses claimed by the salvors, and a firm of naval architects to advise on the operations conducted during the re-floating operations and to consider whether the circumstances of the grounding of the tanker on the beach at Mumbai on 5 August 2011, constituted a 'grave and imminent threat' of causing oil pollution.

3.5.4 The Executive Committee further noted that the Fund's experts had concluded that the *MT Pavit* grounded on a sandy beach, into which it settled and which caused no structural defect, nor any breach of the hull which allowed any liquid pollutant out of the vessel. It was noted that the Fund's experts were of the view that there was little immediate threat of the vessel breaking up or toppling over, given that the vessel had secured itself into the sandy beach and was unlikely to move without towage assistance.

3.5.5 It was noted that an interpretation of the measurements taken by the marine surveyors who performed the initial survey of the vessel, had failed to identify significant quantities of oil and oily water in the vessel that could support the claim that the vessel presented a grave and imminent threat of pollution that would cause environmental damage.

3.5.6 It was also noted that according to the Fund's experts, the previous cargo on board the vessel which was discharged before the vessel ran aground, was a cargo of Marine Gas Oil (MGO), which was a generic term covering a range of oils with a boiling point in the range of 160 - 358° (321-676°F) at atmospheric pressure, and the Fund's experts had advised that in all likelihood, the majority (approximately 90%) of oils categorised as MGO, were non-persistent. Accordingly, whilst it was impossible to say with certainty without an analysis of the MGO residue found in the cargo tanks, given the significantly greater likelihood that oil classed as MGO was non-persistent, the residues of oil on board the *MT Pavit* most likely derived from a previous cargo of non-persistent mineral oil.

3.5.7 It was further noted that the West of England P&I Club had insured the vessel at the start of the voyage but that insurance cover had been cancelled with retrospective effect on 22 July 2011, for non-payment of insurance premium in accordance with the West of England P&I Club Class rules (the Class rules). The Executive Committee noted that under the Class rules, the P&I Club ceased to be liable for any loss, damage, liabilities, costs or expenses whatsoever in respect of any vessels entered by the owner, whether the events giving rise to such loss, damage, costs expenses or liabilities occurred before or after termination, and that the costs incurred by the salvors were incurred after the insurance cover had ceased.

3.5.8 The Executive Committee also noted that the 1992 Fund's lawyers had advised that under the blue card issued by the West of England P&I Club, there would only be liability if the vessel was carrying persistent mineral oil and if there was actual oil pollution from the vessel within the 90-day period following the Club providing notice of cessation to the Flag State. The Executive Committee further noted however, that since no plausible evidence had been presented to indicate that there was any

pollution from the *MT Pavit*, combined with the view that the residues of oil on board the vessel were non-persistent oil, it would appear that the P&I Club had no liability.

3.5.9 It was noted that the Director was grateful for the assistance provided by the Indian authorities and the claimants in reporting this incident, the first to occur in India. It was also noted that it was unfortunate that the incident was reported to the 1992 Fund almost three years after the events had taken place and consequently it had been difficult obtaining evidence relating to the incident.

3.5.10 It was further noted that from the evidence provided to date, it appeared that the *MT Pavit* was not carrying residues of a persistent mineral oil in bulk as cargo as defined in Article I(5) of the 1992 CLC, and that if this were the case, the 1992 CLC and Fund Conventions would not apply.

3.5.11 The 1992 Fund Executive Committee noted that conversely, if the 1992 Conventions were found to apply, the claimants would need to prove that the incident caused a grave and imminent threat of causing oil pollution damage. The 1992 Fund Executive Committee also noted however, that the Director was of the view that this would be difficult for the claimants to prove given that the Fund's experts considered there to be little immediate threat of the vessel breaking up or toppling over as the vessel had secured itself into the sandy beach and was unlikely to move without towage assistance.

3.5.12 The 1992 Fund Executive Committee further noted that the tanker was unladen apart from some 10-20 tonnes of oil/oily water/sludge found in the tanker's cargo/ballast tanks and engine room and that the Fund's experts considered that there was no evidence that the South Western Monsoon would cause structural damage or place the vessel at risk of breaking up.

Debate

3.5.13 The delegation of France made the following statement:

> 'Having examined several incidents, France is concerned at the increase in the number of oil spills in which the insurers seek to exonerate themselves from their obligations with respect to compensation under the CLC.
>
> The reasons given are varied: origin of the cargo in the *Nesa R3* incident, alleged bankruptcy of the insurer in the *Volgoneft 139* incident and special clause in the insurance contract restricting the responsibility of the insurer solely to non-persistent oil spills in the *Alfa I* incident.
>
> France recalls that the international compensation system is based on a balance between compensation by the shipowner and his insurer, on the one hand, and compensation by the IOPC Funds on the other.
>
> A limitation of liability was granted to shipowners under the CLC in exchange for prompt payment of sums owed up to that limit. While Article 4.1(b) of the 1992 Fund Convention allows the IOPC Funds to substitute the shipowner in the event of its failure to comply with its obligations, this clause is only intended to be applied in exceptional cases.
>
> The repeated invoking of this clause by insurers who all too often seek to pass the entire burden of compensation of incidents to the IOPC Funds is such as to call into question the founding principles of the CLC and, thus, the balance of the international compensation system. France therefore invites insurers to honour their obligations in the spirit which prevailed at the time of the adoption of the international Conventions.
>
> The French delegation also requests the IOPC Fund Director to evaluate, in the incidents currently subject to compensation, the additional financial burden that might be imposed on the IOPC Funds, as a result of the failure of insurers to comply with their obligations and to inform the Executive Committee at its next session.'

3.5.14 One delegation stated that at the October 2014 session of the Executive Committee, it had expressed some doubt over the claims submitted, and that it now appeared that there were concerns of a more fundamental nature regarding the applicability of the 1992 CLC and Fund Conventions to the incident. That delegation also stated that whilst it was premature to draw any conclusions, it endorsed the Director's considerations and requested the Director to discuss matters further with the interested parties before reporting further to the October 2015 session.

3.5.15 In response to a comment from one delegation, who was of the view that the burden was not upon the 1992 Fund to prove that there were no residues of persistent mineral oil in the vessel, the Director agreed that the burden of proving a claim was upon the claimant.

1992 Fund Executive Committee

3.5.16 The 1992 Fund Executive Committee noted that the vessel did not seem to create a grave and imminent threat of causing pollution damage, and that the cargo residues on board the vessel were unlikely to be persistent mineral oil. The Executive Committee also noted that the Director intended to continue discussions with the relevant parties and would report any developments to the next session of the Executive Committee.

3.6	**Incidents involving the IOPC Funds – 1992 Fund: *Alfa I* Document IOPC/APR15/3/6**		**92EC**	

3.6.1 The 1992 Fund Executive Committee took note of document IOPC/APR15/3/6 which contained information relating to the *Alfa I* incident.

Claims for compensation

3.6.2 The Executive Committee recalled that in February 2014, the 1992 Fund had filed an intervention before the Court to defend the 1992 Fund's interests and to challenge the quantum of the losses claimed by the clean-up contractors.

3.6.3 The Executive Committee further recalled that in July 2014, the 1992 Fund had met with the insurer's lawyers and surveyors in preparation for a subsequent meeting with the clean-up contractors to discuss the claim, but since the clean-up contractors were not willing to disclose further information before the court hearing, the meeting was postponed.

3.6.4 The Executive Committee noted that in October 2014, the clean-up contractors' claim and the 1992 Fund's intervention were heard by the Court, and the Court was expected to render its judgment approximately six months after the court hearing.

3.6.5 The Executive Committee also noted that in January 2015, the Director and the Claims Manager responsible for dealing with the incident, together with the Fund's expert, had met with the insurer and the clean-up contractors to further discuss the claim and to ascertain whether it was possible to settle the claim before the Court rendered its judgment.

3.6.6 The Executive Committee further noted that in the meeting with the clean-up contractors, the details of the contractors' claim were discussed and further information was sought to enable the 1992 Fund's expert to proceed with the assessment of the claim. It was noted that this had since been provided and passed to the 1992 Fund's experts for consideration, in order to finalise their assessment of the claim, based on a technical and scientific basis.

3.6.7 It was also noted that in the meeting with the insurer, the insurer had indicated that the reinsurers had instructed it to fight the claim, on the basis that since the *Alfa I* had carried less than 2 000 tonnes of persistent mineral oil, the 1992 CLC did not apply, and thus the insurer and reinsurers had no liability.

3.6.8 It was further noted that this view was not shared by the 1992 Fund. The Executive Committee noted that the Director had explained that whilst the requirement to maintain compulsory insurance in

accordance with the provisions of Article VII(1) of the 1992 CLC did not apply if the ship did not carry 2 000 tonnes of oil in bulk as cargo, the remaining provisions of the 1992 CLC, including the provisions relating to the strict liability of the shipowner, did still apply, since the insurer had issued a blue card which had been relied upon by the Greek authorities when issuing their certificate of insurance.

3.6.9 The Executive Committee also noted that in February 2015, the clean-up contractors had also served the 1992 Fund with legal proceedings before the expiry of the three-year time bar, and that another claimant had filed a claim against the insurer for some €333 000 before the expiry of the three-year time bar. The Executive Committee further noted that the details of this latter claim had been passed onto the Fund's experts for assessment.

Intervention by the delegation of Greece

3.6.10 The Greek delegation stated that it had requested the clean-up contractors to provide the information sought by the 1992 Fund following its meeting with the clean-up contractors in January 2015. It also stated that the authorities were of the view that the insurer was liable for the full limit of liability under the 1992 CLC as it had issued a blue card.

Debate

3.6.11 One delegation stated that in its view, the argument raised by the insurers was groundless and that the Director was correct to argue that the provisions of the 1992 CLC were applicable, notwithstanding that the vessel carried less than 2 000 tonnes of persistent mineral oil. It also expressed its hope that the Greek Court would support this interpretation and render judgment accordingly.

1992 Fund Executive Committee

3.6.12 The 1992 Fund Executive Committee took note of the information contained in the document, and the insurer's view that the 1992 CLC did not apply to this incident. The Executive Committee also noted that the 1992 Fund did not share this view, and that it would await further developments to be reported at its October 2015 session.

3.7	**Incidents involving the IOPC Funds – 1992 Fund: *Nesa R3* Document IOPC/APR15/3/7**		**92EC**	

3.7.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR15/3/7.

3.7.2 The Executive Committee recalled that on 19 June 2013 the 856 GT tanker *Nesa R3*, carrying 840 tonnes of bitumen, sank off the Port Sultan Qaboos, Muscat, Oman. It was recalled that the pollution affected 40 kilometres of the coast of Oman. It was recalled that tragically the master of the *Nesa R3* lost his life while trying to save his vessel.

3.7.3 The Executive Committee recalled that the *Nesa R3* had been carrying less than 2 000 tonnes of persistent oil as cargo and as such, was not required to maintain insurance. Notwithstanding this, the owners of the *Nesa R3* had taken out insurance with the Indian Ocean Ship Owners Mutual P&I Club, Sri Lanka. It was recalled, however, that the insurer had declared that the insurance policy would not cover this incident.

3.7.4 The Executive Committee recalled that at its October 2013 session it had authorised the Director to make payments of compensation in respect of admissible losses arising out of the *Nesa R3* incident and to claim reimbursement from the shipowner.

3.7.5 The Executive Committee noted that the shipowner had not yet responded to requests from the Omani Government to pay compensation for the pollution damage caused by the incident.

3.7.6 The Executive Committee further noted that the Omani Government had informed the 1992 Fund that it had commenced legal proceedings against the shipowner in the Court of Muscat and that the next hearing of the Court had been scheduled for spring 2015.

3.7.7 The Committee noted that in December 2014, the 1992 Fund instructed its lawyers to commence legal proceedings against the shipowner and its insurer to recover the amounts paid by the Fund, but that in March 2015, the Fund had to change lawyers since the original firm had unexpectedly closed down.

3.7.8 The Executive Committee noted that 17 claims had been received for clean-up related activities, surveys of the wreck and economic losses suffered in the fisheries sector, totalling OMR 5 612 543 409 (£9.7 million). The Executive Committee further noted that two clean-up claims had been paid for OMR 457 524 (£761 000) and that the remaining claims had been queried pending the submission of additional supporting information.

Intervention by the delegation of Oman

3.7.9 The Omani delegation expressed its appreciation for the efforts made by the Director and the Secretariat in dealing with the incident. That delegation stated that there were many challenges in dealing with the incident and expressed the hope that the majority of them had now been resolved.

3.8	**Incidents involving the IOPC Funds – 1992 Fund: *Shoko Maru*** **Document IOPC/APR15/3/8**		**92EC**	

3.8.1 The 1992 Fund Executive Committee took note of the information contained in document IOPC/APR15/3/8 regarding the *Shoko Maru* incident.

Investigation into the cause of the incident

3.8.2 It was noted that the Japan Transport Safety Board was investigating the cause of the incident and that the Japanese Coast Guard (JCG) had been conducting a criminal investigation into the cause of the incident. It was also noted that the investigations were still in progress and that no conclusions had been issued.

Claims for compensation

3.8.3 It was noted that claims received from the local fishing communities for loss of earnings in the fishing activities as well as seabed cleaning costs, had been settled by the shipowner at an aggregate amount of ¥48 million (£261 000).

3.8.4 It was also noted that a claim related to clean-up operations and wreck removal costs submitted by a salvage company, had been settled by the shipowner for a total of ¥335 million (£1.8 million).

3.8.5 It was further noted that from the information obtained by the expert engaged by the 1992 Fund, it seemed that no further claims were expected.

3.8.6 The Executive Committee noted that the claims submitted had not exceeded the limitation applicable to the *Shoko Maru* under the 1992 CLC and that therefore the 1992 Fund was unlikely to be liable to pay compensation to the victims of this spill.

Debate

3.8.7 One delegation congratulated all the parties involved in this case for the prompt resolution of the claims and especially given the fact that this incident was the first oil pollution case for the shipowner's insurer. That delegation pointed out that in order to enhance the work of shipowners' insurers, it would be useful for the Secretariat to try to engage with insurers which are not part of the

International Group, and help them to familiarise themselves with the international compensation regime.

3.8.8 The Director stated that the Secretariat would examine the proposal by the delegation of engaging with insurers which are not members of the International Group.

4 Compensation matters

4.1	**Guidelines for presenting claims for clean up and preventive measures** **Document IOPC/APR15/4/1 and IOPC/APR15/4/1/1**	**92AC**		

DOCUMENT IOPC/APR15/4/1 SUBMITTED BY THE SECRETARIAT

4.1.1 The 1992 Fund Administrative Council recalled that at its May 2014, session the Secretariat had presented draft guidelines for presenting claims for clean up and preventive measures (document IOPC/MAY14/4/1). It also recalled that the delegations of France, Spain and the United Kingdom had also presented a document at that session on the assessment of such claims, in which they made a number of suggestions to improve the assessment of losses of an affected State in the event of an incident (document IOPC/MAY14/4/2).

4.1.2 It was recalled that the 1992 Fund Administrative Council had decided that the draft would not be considered for approval in May 2014 as many delegations considered that more time was needed to review both the Guidelines and the suggestions made by the three States.

4.1.3 It was noted that the Guidelines for presenting claims for clean up and preventive measures had been revised and now incorporated comments by France and the United Kingdom following a meeting with those delegations, the Secretariat and its expert in January 2015. The revised Guidelines were presented to the Administrative Council for approval, as set out at the Annex to document IOPC/APR15/4/1.

DOCUMENT IOPC/APR15/4/1/1 SUBMITTED BY FRANCE

4.1.4 The delegation of France presented document IOPC/APR15/4/1/1 and made the following statement:

> 'The French delegation thanks the Secretariat for the very interesting document, which is the result of considerable collaboration.
>
> These Guidelines seek to facilitate a dialogue between the IOPC Funds and the affected State by presenting clearly the parameters taken into account by the IOPC Funds experts in their assessment. While certain documents and certain information are automatically required by the experts, the legal and accounting specificities of each State and the particular circumstances of each incident are also taken into consideration.
>
> In addition, France underlines the importance of the IOPC Funds undertaking to inform the affected State, as soon as possible, in writing, whether they consider that certain pollution prevention measures have become ineffective or disproportionate and, for that reason, may not be compensated. This intervention by the IOPC Funds does not call into question the sovereignty of States to decide the measures to be taken in preventing pollution. It will, however, allow the opening of a discussion between the IOPC Funds experts and the competent operational services while clean-up operations are still in progress, and not several years after the incident, in order to optimise the chances of reaching an amicable settlement of the amount due to the State.
>
> France therefore invites the 1992 Fund Assembly to approve the publication of these Guidelines. France recalls, however, that they are merely a guide aimed at facilitating the conclusion of an amicable settlement with the IOPC Funds. These Guidelines do not in

any circumstances constitute a legally binding document which can be invoked against a State in a legal proceeding against the IOPC Funds, because in such a case only the national courts are competent to interpret the international Conventions in the light of the compensation principles fixed in national law.'

Debate

4.1.5 The Administrative Council thanked the Secretariat and the delegations of France, United Kingdom and Spain for their cooperation and collaboration in producing a revised text of the Guidelines for consideration.

4.1.6 The delegation of the United Kingdom stated that it had welcomed the opportunity to have constructive dialogue with the delegation of France and the Secretariat on the content of the Guidelines and thanked the Secretariat and the French delegation for the documents presented. It reiterated the point made by the French delegation, that in the event of an incident, should the IOPC Funds not be content with the clean-up response or preventive measures being undertaken, that it should say so at the time, preferably in writing. That delegation stated that, whilst it supported the publication of the Guidelines as presented, it did not agree with all of the points in the document, in particular paragraph 5.19 of the Guidelines which proposed the recording of small tools and plastic bags used during an incident response.

4.1.7 One delegation expressed its appreciation that comments made by that delegation at a previous session were now reflected in the revised draft.

4.1.8 Several delegations supported the view that the Guidelines, whilst a useful guidance tool, were not legally binding and that it would be for the national courts to decide on their own interpretation of the Conventions in relation to any specific incident. A number of delegations also emphasised that the 1992 Fund should take into account the individual circumstances and the decisions taken at the time of the incident.

4.1.9 Several delegations, whilst agreeing that the Guidelines were not legally binding, suggested that, given that the Guidelines would have been endorsed by Member States, national courts should nevertheless be strongly encouraged to follow them in the interest of the uniform application of the Conventions.

4.1.10 One delegation expressed particular concern that paragraph 3.2 of document IOPC/APR15/4/1/1, submitted by France, encouraged the Secretariat to apply different practices and rates to different States, which that delegation considered went against the 1992 Fund's principle of equal treatment. That delegation suggested that since the 1992 Fund had developed a practice based on the Guidelines, they would in fact have a certain binding character. Another delegation supported that view and stated that, whilst it was accepted that the Guidelines did not have legislative power over national courts, it would nevertheless be unfortunate if one practice was applied under one jurisdiction and another was applied in another jurisdiction. The Director recognised that these Guidelines were not legally binding. He indicated, however, that the document would be used in court by the 1992 Fund in order to justify the experts' assessments.

4.1.11 One delegation sought clarification from the Secretariat in respect of the term 'reasonable element of profit' which appeared within the Guidelines. That delegation suggested that it would be useful if the Guidelines were to include tangible examples and clearer explanation as to what the 1992 Fund would consider as reasonable. In response, the Director explained that it was necessary for the text to be vague in this respect, since in his view, providing figures or percentages would not be appropriate and could lead to difficulties when claims were submitted.

4.1.12 Another delegation referred to the issue of claims for VAT from Governments which had been discussed at the October 2014 of the 1992 Fund Assembly and asked whether this was related to the Guidelines. The Director explained that the issue of VAT was not limited to claims for clean-up operations, but was part of a wider issue which would need to be considered further at a future

session.

4.1.13 Several delegations commented that the Guidelines would be a useful addition to the Claims Information Pack. All delegations which spoke supported the publication of the Guidelines.

1992 Fund Administrative Council Decision

4.1.14 The 1992 Fund Administrative Council decided that the 1992 Fund should publish the Guidelines for presenting claims for clean up and preventive measures, as contained in the Annex to document IOPC/APR15/4/1. It was noted that the document would be published as part of the existing Claims Information Pack.

4.2	**Guidance for Member States – Management of fisheries closures and restrictions** **Document IOPC/APR15/4/2**	**92AC**		

4.2.1 The 1992 Fund Administrative Council recalled that at its June 2010 session, the Director had been instructed to develop, in conjunction with the Fund's experts and taking into account any input from Member States, guidelines addressing the principles of reasonable fishery restrictions (document IOPC/JUN10/6/1, paragraph 3.5.46).

4.2.2 It was noted that such guidelines for Member States had been developed in the form of a draft publication, which offered guidance on the implications of imposing fisheries restrictions in the event of an oil spill. It was noted that these latest guidelines were intended to assist Member States achieve a degree of preparedness for monitoring contamination in fishery products and managing closures before a spill takes place in their waters. It was also noted that the Guidelines also aim to explain how those measures are imposed and the way they can have an impact on the shipowner's, insurer's and/or the 1992 Fund's assessment of the resulting claims from the fishery sector.

4.2.3 It was noted that the Secretariat intended to publish the document in a similar format to the guidance document published in 2014 relating to measures to facilitate the claims handling process which can be found under the publications section of the website (www.iopcfunds.org).

4.2.4 The draft guidance document was presented in the Annex to document IOPC/APR15/4/2 for consideration and comments by delegations.

Debate

4.2.5 One delegation thanked the Director for producing a comprehensive set of detailed guidelines to address the principle of managing fisheries restrictions. That delegation welcomed the document and supported it in principle.

4.2.6 Another delegation, whilst thanking the Secretariat for the draft document, suggested that a number of improvements to its text should be made to ensure its conformity with other guidance documents published by the 1992 Fund.

4.2.7 One delegation, whilst agreeing that such a document may be useful, expressed the view that in their current layout, the Guidelines appear to provide guidance on what States could do in terms of implementing restrictions rather than in terms of claims. That delegation stated its view that the Guidelines should be more focused on the link between the decisions taken by the affected Government and the documents which would be requested by the 1992 Fund to assess the reasonableness of the measures taken.

4.2.8 Another delegation suggested further amendments to ensure the compliance of language of the guidelines with UN-approved standards, such as the uses of the term 'fishers' instead of 'fishermen' and asked whether the Guidelines could be expanded to include how the 1992 Fund would view precautionary measures undertaken by the fishing industry.

4.2.9 One delegation supported the Guidelines and stated that it was important to maintain the operative text of the Guidelines as it would eventually help the 1992 Fund to reduce the costs caused by imposing fisheries restrictions.

4.2.10 The delegations that took the floor thanked the Secretariat for preparing the Guidelines, stating that, the Guidelines could potentially become a useful tool for Member States when dealing with the impact of fisheries restrictions on fisheries claims.

1992 Fund Administrative Council Decision

4.2.11 The 1992 Fund Administrative Council indicated its support in principle for the development of the guidance document on the management of fisheries closures and restrictions as contained in the Annex to document IOPC/APR15/4/2. The Administrative Council encouraged delegations to contact the Secretariat to provide any input in advance of the October 2015 session of the 1992 Fund Assembly, with the view to adopting the revised guidelines at that session of the Assembly.

4.3	**Guidelines for presenting claims for environmental damage** **Document IOPC/APR15/4/3**	**92AC**		

4.3.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/APR15/4/3.

4.3.2 It was noted that, as confirmed by the Director in October 2014, the Secretariat was developing draft guidelines to assist claimants with the submission of claims for environmental damage. It was noted, however, that due to the complexity of the Guidelines and in order to allow sufficient time to fully consult a number of external experts and interested parties, the Secretariat had decided to postpone the presentation of the draft Guidelines to the spring 2016 session of the 1992 Fund Assembly.

4.4	**Interim Payments** **Document IOPC/APR15/4/4 and IOPC/APR/15/4/4/1**	**92AC**		

4.4.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/APR15/4/4 submitted by the Secretariat, and document IOPC/APR15/4/4/1 submitted by the International Group.

DOCUMENT IOPC/APR15/4/4 SUBMITTED BY THE SECRETARIAT

4.4.2 The Administrative Council recalled that at its October 2014 session it had 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.

4.4.3 The Administrative Council noted that in January 2015, the Director had contacted the International Group and offered to continue the discussions on interim payments made by the P&I Clubs, but that at that time, the International Group had indicated that they needed more time to consider the matter internally.

4.4.4 The Administrative Council also noted 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.

4.4.5 The Administrative Council further noted the examples of past incidents where the 1992 Fund had, 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.

4.4.6 It was noted that the Director was hopeful that the International Group would continue to make interim payments following an oil spill incident, but that it was possible that an agreement would 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.

The Director's authority to make final settlement of claims

4.4.7 It was also noted that the authority of the Director to make final settlement of claims was governed by Regulations 7.1-7.8 of the Internal Regulations, and that the amounts of compensation which the Director was authorised to make without authority from the 1992 Fund were relatively low. It was further noted that practically this meant 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. Accordingly, the Director considered that it would be advisable to review the authority he was provided with, to ensure that meaningful payments could be made, prior to receiving further authority from the 1992 Fund Executive Committee.

The Director's authority to make provisional payments

4.4.8 The Administrative Council noted that the authority of the Director to make provisional payments was governed by Regulations 7.9-7.14 of the Internal Regulations which required the Director to endeavour to ensure that no person receiving a provisional payment received more than 80% of the amount which he or she was likely to receive from the 1992 Fund in the event of claims being abated pro rata.

4.4.9 The 1992 Administrative Council also noted that given the large number of uncertainties following an incident, it was 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, and that Regulation 7.9 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

4.4.10 The Administrative Council further noted that the current working capital of the 1992 Fund was £22 million, which was needed *inter alia*, to cover claim payments and expenses for minor incidents payable from the General Fund, and that whilst it was not possible to foresee with certainty the future financial demands upon the 1992 Fund, the Director was of the view that currently the working capital was sufficient to meet the needs of the organisation.

Risks faced by the 1992 Fund when making provisional payments

Subrogation risk

4.4.11 It was noted that there were a number of risks faced by the 1992 Fund when making provisional payments including a subrogation risk if the national courts of Member States did not recognise the subrogated rights acquired by the 1992 Fund, which were themselves recognised under the 1992 CLC. It was also noted that, provided that the relevant provisions of the 1992 Civil Liability and Fund Conventions had been incorporated into national law and were 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 was small and could be managed on a case-by-case basis, by consideration of the national law of the Member State concerned before payments were made.

4.4.12 It was however further noted that 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 was the national courts of each Contracting State which made the final decision on the apportionment and distribution of the limitation fund, and since judgments made by competent

courts were binding on the 1992 Fund, a possibility always existed that the provisions of the 1992 Civil Liability and Fund Conventions might not be applied by a national court, in a manner which recognised the subrogated rights of the insurer and the 1992 Fund.

Level of payments

4.4.13 The Administrative Council noted that the risks faced by the 1992 Fund were also dependent on the correct determination of the level of payments, and that in past incidents where it had been necessary to make pro rata payments in respect of the claims submitted, the 1992 Fund had benefited from the extra time provided by the P&I Club making interim payments before the 1992 Fund had begun to pay claims, as this allowed the 1992 Fund to ascertain with greater certainty, the likely level of claims which might arise as a result of the incident. It was also noted that this had enabled the 1992 Fund Executive Committee to set conservative levels of payment which had, to some extent, protected the 1992 Fund.

4.4.14 It was further noted that 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 to gather information to forecast the likely level of claims, which the 1992 Fund Executive Committee used to set the necessary level of payments.

Risks to Member States – level of protection and cover

4.4.15 The Administrative Council noted the practical scenarios detailed in the document which highlighted the risks to the 1992 Fund of making provisional payments, and also noted that Member States of the 1992 Fund may also wish to consider whether they had 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.

4.4.16 The Administrative Council further noted that the Director, if so instructed by the Administrative Council, intended to report back to the governing bodies with proposals for amendments to Regulation 7 at the next session of the 1992 Fund Assembly and that the Director intended to work together with the Audit Body in this task.

DOCUMENT IOPC/APR15/4/4/1 SUBMITTED BY THE INTERNATIONAL GROUP

4.4.17 The 1992 Fund Administrative Council noted that in document IOPC/APR15/4/4/1, the International Group had recalled that following the publication of the study prepared in February 2010 by Mr Mäns Jacobsson and Mr Richard Shaw it had appeared that the International Group and the 1992 Fund were close to agreeing a set of principles. The International Group also pointed out that the Director had stated in document IOPC/OCT13/11/1 that in principle he had reached a form of understanding, pending final agreement with the International Group that whenever interim payments were made in the future, these interim payments would be made on behalf of both the shipowner/insurer and the 1992 Fund.

4.4.18 The Administrative Council noted that the discussion on those principles was never concluded and was overtaken by the winding up of the 1971 Fund at the end of 2014. It noted that, in the view of the International Group, the decision to wind up the 1971 Fund and the conduct of the *Nissos Amorgos* incident had raised a number of fundamental issues for the P&I Clubs which were not considered to be significant when the discussion on interim payments started in 2008.

Compensation not available although Fund limit not reached

4.4.19 The International Group stated that in the *Nissos Amorgos* incident, the 1971 Fund was wound up with payments made by the 1971 Fund of approximately US$ 18.3 million, approximately US$ 58 million short of the 1971 Fund limit, whilst the shipowner faced claims far in excess of the 1969 Civil Liability Convention (1969 CLC) limit. The International Group explained that, as a result, Clubs now had concerns about cases where total claims fell within the 1992 Fund limit and not just where it was exceeded.

4.4.20 The International Group stated that Clubs had previously proceeded in the expectation that, if interim payments had been made up to the 1992 CLC limit, the 1992 Fund would take over responsibility for payment of claims established by a judgment or agreed settlement, subject to those payments not exceeding the 1992 Fund limit, but that since the 1971 Fund had successfully maintained that there was no legally binding obligation or agreement to that effect, other ways would need to be found of making the system work as intended.

Agreements and immunity

4.4.21 The International Group stated that the reliance by the 1971 Fund on immunity in the *Nissos Amorgos* proceedings brought against it by the Gard Club, had called into question the value of an agreement between the IOPC Funds and the Clubs to supplement the Conventions, such as the Memorandum of Understanding (MoU) entered into in 1980 and most recently revised in 2006. It was noted that the International Group had concerns about relying on the MoU or any similar future agreement unless there was a valid waiver of immunity by the 1992 Fund in relation to any such agreement.

Claims not meeting IOPC Funds' criteria but upheld by competent court

4.4.22 It was further noted that the Clubs supported the criteria on the admissibility of claims as had been developed by the IOPC Funds in conjunction with the International Group and others, but that, in the view of the International Group, it had always been clear that claims were ultimately determined by the courts of a State Party in the relevant jurisdiction. The Administrative Council noted that the International Group were of the view that in the *Nissos Amorgos* incident, the 1971 Fund was bound by the final judgment of the Supreme Court, but for a variety of reasons it refused to pay.

4.4.23 The Administrative Council also noted that the International Group were of the view that the supremacy of the competent courts remained an important principle, as Clubs and their members would generally be unable to refuse to settle final judgments. It also noted that the Clubs were now concerned that they alone were exposed to claims adjudged to be recoverable by the competent courts but determined by the 1992 Fund not to meet its own criteria.

Collection of contributions

4.4.24 The Administrative Council further noted that the Clubs had to make recoveries from pooling partners and from over ninety reinsurers in much the same manner that the IOPC Funds collected contributions from contributors.

Looking ahead

4.4.25 The International Group recognised that it must continue to maintain a working relationship with the IOPC Funds' Secretariat and stated that the Clubs would continue to strongly support the compensation system established by the Conventions which had served claimants well for more than 40 years.

4.4.26 It was noted that Clubs could fulfil their legal obligations under the 1992 CLC by establishing a limitation fund without making interim payments, but that Clubs also had the alternative of making interim payments on a different basis to that followed in previous incidents. It was noted that interim payments between the Club and the IOPC Funds could be apportioned such that any interim payments funded by the Club would only cover the CLC portion of the total amount that each claimant would be entitled to under the CLC/Fund Convention system.

4.4.27 It was further noted that in the view of the International Group this would fundamentally change the approach taken in respect of the payment of claims and be administratively inconvenient since it would lead claimants to receiving compensation from two different parties. It would, in that delegation's view, require the 1992 Fund to fund payments from the outset in all large cases. The International Group considered that this would potentially cause delay and would necessitate the Club

making an estimate of the final proportions of total claims ultimately payable under the 1992 CLC and the 1992 Fund Convention.

4.4.28 The Administrative Council noted that taking particular account of the approach taken by the Director and the Member States in winding up the 1971 Fund, the International Group was considering whether any concerns surrounding the funding of interim payments could be more effectively dealt with on a case-by-case basis rather than through a generic agreement with the 1992 Fund that would apply to all future 1992 CLC/1992 Fund Convention cases.

4.4.29 The Administrative Council also noted that the International Group had referred to the Second Cooperation Agreement made between the Skuld Club and the Korean Government in the *Hebei Spirit* incident, as an illustration of a post-spill agreement reflecting the individual circumstances of the case, and that the International Group was prepared to re-open the discussions with the Director on the possibility of a legally binding generic agreement building on the concept of the MoU. The Administrative Council further noted that the International Group considered that case-specific agreements may have a role to play.

4.4.30 The International Group stated in response to comments made by the Director earlier during the sessions, that it was not correct to say that the International Group Clubs would not make interim payments in the future, as it had always been very careful to state only that the International Group Clubs would be less likely to make interim payments in the future and would be more conservative and treat each incident on a case-by-case basis.

Debate

4.4.31 One delegation stated that, in its view, whilst it understood that the current Internal Regulations may cause some short-term problems for the Director, these were not problems for the Executive Committee as a meeting could be convened in a relatively short period of time. It also stated that in addition to the subrogation rights provided for under the 1992 CLC and Fund Convention, it was also possible to acquire rights by contract, and therefore, in that delegation's view the relative rights of the 1992 Fund and the insurers were not that different in reality.

4.4.32 The same delegation also stated that, in its view, the 1992 Fund did not face any greater difficulties in making provisional payments than the Club faced when making interim payments, and that in relation to the issue of immunity, it required time to consider the matter further.

4.4.33 Another delegation stated that, in its view, the issues between the 1992 Fund and the International Group were not that different and that it was in both sides' interests to agree a solution. Noting that neither party was under a legal obligation to make interim payments or provisional payments, that delegation stated that both did so for humanitarian reasons or to protect against reputational risk, and that these reasons applied equally to both the Clubs and the 1992 Fund.

4.4.34 The same delegation also stated that whilst it recognised that in order to make progress it was important to set aside secondary or delicate issues, in its experience, it had never seen an organisation waiving immunity on a general basis.

4.4.35 A large number of delegations stated that they welcomed the news that a meeting and further discussions would take place between the Director and the International Group in May 2015. Several delegations stated that they hoped that those discussions would result in an agreement between the parties.

4.4.36 One delegation stated that any delay would only damage the reputation of the parties and the compensation regime, and that it was crucial that affected victims be provided with prompt payment of compensation. That delegation requested the Director to attempt to reach a legally binding agreement with the P&I Clubs.

4.4.37 A number of delegations stated that the issue of whether to make interim payments or to pay provisional payments should be done on a case-by-case basis.

4.4.38 Most delegations that took the floor supported the proposal for the Director to examine the Internal Regulations, in order to provide the Director with greater flexibility to aid victims and to be more compatible with the current payment practise, should the need arise in the future.

4.4.39 One delegation stated that in its view the issue of making provisional payments required an independent examination. That delegation expressed the view that the risks involved in making provisional payments involved three issues namely, legal, financial and increased transactional costs if the Club concerned did not make interim payments, all of which needed to be managed properly. That delegation stated that those issues must be addressed when the Internal Regulations are amended. That delegation stated that it would welcome solutions to those issues.

4.4.40 The 1992 Fund Administrative Council noted the positive response to the proposed meeting between the Director and the International Group in May 2015, and also noted that it was in the interest of both parties to reach a solution.

1992 Fund Administrative Council Decision

4.4.41 The 1992 Fund Administrative Council instructed the Director to examine section 7 of the Internal Regulations of the 1992 Fund, in consultation with the Audit Body, and to report back with proposed changes to the governing bodies in October 2015.

4.5	**Compensation for Casualty Response Document IOPC/APR15/4/5**	**92AC**		

4.5.1 The observer delegation of the International Spill Control Organization (ISCO) presented document IOPC/APR15/4/5 relating to compensation for casualty-response and made the following statement:

> 'This document reviews the need for knowledge to replace belief in marine casualty response planning. It recognises that the beliefs which previously suppressed knowledge are now being rejected; and that this rejection augurs well for ultimate acceptance of the knowledge-only/cost-effective contingency and incident-specific plans now advocated for future responses to accidental releases from ships, and indeed for ultimate acceptance of this new knowledge-only approach to operational discharges and emissions from ships, as jointly proposed in ISCO document MEPC 67/19/INF.13 and its sequel for MEPC 68.
>
> Thus, this document reinforces ISCO document IOPC/OCT14/4/6 by reviewing the benefits of replacing belief with knowledge in paragraphs 1.1 - 1.6; by revealing the former extent and persistence of knowledge suppression by belief in paragraphs 2.1 and 2.2; by noting the progress recently made towards rejecting the beliefs which have been suppressing knowledge in paragraphs 3.1 - 3.3; by recalling in paragraph 4.1, how the twelve steps of the new ISCO approach to incident-specific planning will facilitate assessment of claims by the IOPC Funds and P&I Club Secretariats and how reportage of thus acquired knowledge to the IMO Secretariat will progressively enhance the new knowledge repository; by using the *Sea Empress* incident in paragraphs 5.1 and 5.2, to exemplify the negative consequences of knowledge loss and belief retention; and by specifying in paragraphs 6.1 - 6.4, the knowledge which must be accepted if incident response is ever to be indisputably cost-effective.
>
> As to next steps, paragraph 7.1 announces that the new knowledge-only contingency/incident-specific planning approach and its referential knowledge repository will shortly be available to all; and that the intention is to accredit response contractors as to competence in its use; to enhance customer-contractor interaction by liaising with IMO, IOPC Funds and P&I Club Secretariats and Member States; to expedite claim settlement; and to enhance the knowledge repository itself through incident reportage to IMO as in

paragraphs 1.2 and 4.1. As to the need for knowledge-acceptance and belief-rejection in policy formulation in general, readers may wish to visit www.knowledgeonlypolicy.weebly.com.'

4.6	**Assessment Methods of the 1992 Fund** **Document IOPC/APR15/4/6**	**92AC**		

4.6.1 The 1992 Fund Administrative Council took note of document IOPC/APR15/4/6 submitted by the Republic of Korea, containing its considerations on the claim assessment method applied by the 1992 Fund in the non-fishery sector.

4.6.2 The Administrative Council noted that in its document, the Korean Government, based on the experience gained from the *Hebei Spirit* incident, had identified several aspects of the claims assessment method applied by the 1992 Fund and had proposed a number of improvements.

4.6.3 The Administrative Council further noted that the Korean Government had highlighted the following factors, which it considered paramount in determining lost revenues:

(i) Analysis of market and economic factors, in addition to collecting basic financial data.

(ii) Consideration of the impact of variable costs in the assessment of claims, especially in cases where the claimant had set up mitigation actions that might have an impact on variable costs.

(iii) Application of income estimation models when the business was not required by law to maintain financial information.

4.6.4 The Administrative Council noted the Korean Government's interpretation of the concept of mitigation as saved overhead costs and its concern that the 1992 Fund might, in its assessment, misinterpret the actions taken by business owners to mitigate their losses.

4.6.5 The Administrative Council further noted that the Korean Government, whilst reaffirming the basic principle that the burden of proof rests upon the claimants themselves to provide documentation in support of their losses, considered that the measures suggested in the document would ensure a more accurate assessment of claims.

Intervention by the Director

4.6.6 In his intervention, the Director thanked the Korean delegation for its suggestions. The Director noted that the suggestions were very detailed and expressed the opinion that it might not be possible to respond to them in the same level of detail during this meeting. The Director pointed out that, in his view, the assessment process was a practice of iteration, in the sense that whenever the 1992 Fund assessed a claim, it engaged in discussions with the claimant with a view to understanding the claim and its circumstances in the local market.

4.6.7 With regard to the issue of variable cost, the Director remarked that the Fund's experts were already taking into account the variable costs of a business and if the business had different streams of revenues, the variable costs for each revenue stream would, in principle, be taken into consideration.

4.6.8 The Director further remarked that whilst the 1992 Fund would start with a conservative assessment, it might well be revised on the basis of additional information provided.

4.6.9 In terms of mitigation, the Director noted that the expectation was that claimants would act as 'prudent uninsured', thus trying to protect their business by any mitigation measure available, which might result in reducing costs but also in increasing costs, for instance by running a marketing campaign or exploring alternative revenue streams. He stated that all mitigation measures adopted by the claimants were taken into account by the 1992 Fund in their assessment of claims.

4.6.10 The Director also noted that the use of an income estimated model had been introduced on a trial basis for the *Hebei Spirit*, but only because of the particular circumstances of the Republic of Korea, where national law did not require small business trading under KRW 24 million to keep financial or accounting data. He pointed out, however, that the use of such models might not be applied in areas where all business without distinction might be required by law to keep records.

4.6.11 In conclusion, the Director stated that the Secretariat would welcome further discussion with the Republic of Korea on a bilateral basis to explore how to accommodate the suggestions into the 1992 Fund's guidance documents if appropriate.

Debate

4.6.12 One delegation thanked the delegation of the Republic of Korea, for its document, which it found very informative in light of the valuable experience gained by the Republic of Korea in dealing with the *Hebei Spirit* incident. That delegation suggested that the proposals contained in the document should be integrated into the Claims Manual after the discussion between the Secretariat and the Republic of Korea had taken place.

4.6.13 One delegation, supported by other delegations, pointed out that the basic principle underlying the IOPC Fund system was that the claimants were responsible for proving both their loss and the link of causation between the loss and the contamination. That delegation noted that, if claimants could receive compensation without providing supporting information, the IOPC Fund system would fundamentally change. That delegation recognised that it might be difficult for small businesses to provide supporting documents, and indicated their openness to any improvement of the Claims Manual, which would not undermine the basic concept of the burden of proof. The same delegation, whilst expressing its appreciation for the document, considered it difficult to take a position on the proposals contained therein as they were too generic and lacked concrete proposals to improve the assessment process. That delegation suggested that further elaboration of the proposals might be needed.

4.6.14 One delegation stated that it considered the proposal too detailed and that it would prefer that the Secretariat be given more flexibility in assessing claims.

1992 Fund Administrative Council

4.6.15 The 1992 Fund Administrative Council expressed some sympathy for the proposals presented by the Republic of Korea, but considered them too specific to be incorporated in the Claims Manual in their current form. The Administrative Council encouraged the Secretariat and the Korean Government to engage in a bilateral discussion to explore the possibility of suggesting changes to the Claims Manual of a more generic nature.

5 Financial policies and procedures

5.1	**Appointment of the External Auditor** **Document IOPC/APR15/5/1**	**92AC**		

5.1.1 The 1992 Fund Administrative Council took note of document IOPC/APR15/5/1, submitted by the Audit Body, on the appointment of the External Auditor which was presented by Mr Jerry Rysanek, Chairman of the Audit Body.

5.1.2 Mr Rysanek recalled that the tenure of the current External Auditor (the Comptroller and Auditor General of the United Kingdom, National Audit Office (NAO)) would end with the audit of the IOPC Funds' Financial Statements for 2015, and that in October 2014, the governing bodies had instructed the Audit Body to conduct a competitive process for the selection of the External Auditor from both public and private sectors to conduct the audits of the Financial Statements for 2016-2019 or any such period as may be decided by the governing bodies.

5.1.3 He reported that in December 2014, the Director had invited 1992 Fund Member States to nominate their Auditor General (or officer holding an equivalent title) or to nominate a commercial firm with the requisite capabilities to tender for the appointment of the External Auditor. In addition, six commercial firms with international representation and with the requisite capabilities which had been identified by the Audit Body were also invited to tender.

5.1.4 Mr Rysanek stated that by the deadline for nominations of 30 January 2015, nominations had been received from two 1992 Fund Member States: the Government of the Republic of Ghana in support of Mr Richard Q. Quartey, Auditor-General of Ghana, and the Government of the Republic of Turkey in support of the Turkish Court of Accounts (National Auditor of Turkey), and three private firms: BDO, Moore Stephens and PricewaterhouseCoopers (PwC). Mr Rysanek noted that the Director had subsequently been informed by the Embassy of the Republic of Turkey that the Turkish Government had decided to withdraw the nomination of the National Auditor of Turkey.

5.1.5 He informed the Administrative Council that, by the deadline for the submission of written tenders of 13 March 2015, tenders had been received from Mr Richard Q. Quartey, Auditor-General of Ghana, and the private firms BDO, Moore Stephens and PwC.

5.1.6 Mr Rysanek reported that, at its meeting held on 10 April 2015, the tender documents had been evaluated by the Audit Body on the basis set out in paragraph 3.8 of document IOPC/OCT14/6/3 which stated that the Audit Body would consider all candidates equally and would seek to identify the candidate that best met the selection criteria that the governing bodies had approved at their October 2014 sessions. He also noted that the fees proposed by the four candidates ranged from £48 000 to £80 000 and that the fee charged by the current External Auditor was some £50 000.

5.1.7 Mr Rysanek further reported that, at its meeting on 10 April 2015, the Audit Body had decided that all four candidates would be invited to an interview by the Audit Body and the Director and Deputy Director on Thursday 4 June 2015. He also reported that, as agreed by the governing bodies at their October 2007 sessions, the Chairpersons of the governing bodies (1992 Fund Assembly and Supplementary Fund Assembly) would be invited to attend the interviews.

1992 Fund Administrative Council

5.1.8 The 1992 Fund Administrative Council noted that the Audit Body would submit a full report on the selection process and its recommendation on the appointment of the External Auditor for the years 2016-2019, or any such period as may be decided by the governing bodies, to the October 2015 sessions of the governing bodies.

6 Secretariat and administrative matters

6.1	**Amendments to Rules of Procedure** **Document IOPC/APR15/6/1/Rev.1**	**92AC**		

6.1.1 The 1992 Fund Administrative Council noted the information contained in document IOPC/APR15/6/1/Rev.1 relating to amendments to the Rules of Procedure of the 1992 Fund Assembly and the introduction of a new standalone document for the Rules of Procedure of the 1992 Fund Executive Committee.

Debate

6.1.2 In addition to the proposed amendments set out in document IOPC/APR15/6/1/Rev.1, one delegation proposed that Rule 5 of the 1992 Fund Assembly's Rules of Procedure, relating to the invitation by the Director of observers to Assembly sessions should also be amended, as the existing wording was unclear.

1992 Fund Administrative Council Decisions

6.1.3 The 1992 Fund Administrative Council approved the following changes to the Rules of Procedure of the 1992 Fund Assembly:

(i) Amendment to Rule 21 to take into account that, at the opening of each regular session of the Assembly, the Director shall chair until the Assembly has elected a Chairman for the session.

(ii) Insertion of a new Rule 42*bis* relating to the inclusion of statements made by delegations in the Record of Decisions of sessions.

(iii) Amendment to Rule 5 of the Rules of Procedure of the 1992 Fund Assembly to read as follows (amendments underlined):

'The Director shall invite the following to be represented ~~by~~ as observers at any session of the Assembly:

(a) the Supplementary Fund;

(b) the United Nations;

(c) the International Maritime Organization

(d) any other specialized agency of the United Nations whose interests and those of the 1992 Fund are of common concern;

(e) any other inter-governmental organisation and any international non-governmental organisation which the Assembly has decided to admit to its meetings in accordance with Article 18.10 of the 1992 Fund Convention.'

6.1.4 The 1992 Fund Administrative Council also noted all the amendments relating to the 1971 Fund as set out in Annex I of document IOPC/APR15/6/1/Rev.1.

6.1.5 The relevant amended Rules of Procedure of the 1992 Fund Assembly are attached at Annex II.

6.1.6 Regarding the 1992 Fund Executive Committee, the 1992 Fund Administrative Council noted the new standalone format of the Rules of Procedure of the 1992 Fund Executive Committee and decided the following:

(i) To accept the Director's proposal to elect the incoming Chairman and Vice-Chairman of the 1992 Fund Executive Committee at the same time as the incoming Executive Committee is elected. It therefore decided to delete Rule 19 as set out in Annex II of document IOPC/APR15/6/1/Rev.1.

(ii) It also approved the insertion of a new Rule 41 of the Executive Committee Rules of Procedure relating to the inclusion of statements made by delegations in the Record of Decisions of sessions, as set out in section 2 and Annex II of the same document.

6.1.7 The new Rules of Procedure of the 1992 Fund Executive Committee are attached at Annex III.

6.2	**Amendments to Staff Regulations** **Document IOPC/APR15/6/2**	**92AC**		

6.2.1 The 1992 Administrative Council took note of document IOPC/APR15/6/2 and recalled that Staff Regulations were adopted by the 1992 Fund Assembly and that changes to Staff Rules were notified to the Assembly by the Director.

6.2.2 The Administrative Council noted that, in the interests of continuity and taking into account that essential recruitment procedures in practice take considerable time, particularly for specialist positions, the Director considered it desirable to increase the period of written notice of resignation from thirty days to ninety days for members of staff in the Professional and Higher categories. The Administrative Council further noted that this would be applicable for all future appointments and for all current staff members in the Professional and Higher categories on renewal of their contracts. It also noted that the period of notice for General Service category of staff would remain unchanged at thirty days' written notice. To this end, the Director was proposing an amendment to Staff Regulation 24 increasing the required period of written notice of resignation from thirty days to ninety days for staff in the Professional and Higher categories.

6.2.3 The Administrative Council further noted that, in connection with the dissolution of the 1971 Fund on 31 December 2014, the Director was proposing removing references to the 1971 Fund in Staff Regulations 3, 4, 5, 6 and 32 where they were no longer necessary.

6.2.4 The Administrative Council noted, furthermore, that the Director had also removed references to the 1971 Fund where they were no longer necessary in the Staff Rules and that Rules I.4(b) and (e), VIII.3(a) and VIII.4 had been amended accordingly.

6.2.5 The Administrative Council also noted that, in accordance with Staff Regulation 11, each staff member of the Secretariat received a letter of appointment setting out the provisions of the appointment. It noted that the period of probation was set out in the appointment letter and had, in the past, been six months. The Administrative Council noted that the Director had increased the probation period to twelve months, which was in line with that practiced by IMO, and the corresponding change had been made to Human Resources Policy No4 which deals with probation.

Debate

6.2.6 One delegation asked whether the Director's proposal in respect of amendments to the terms and conditions of staff employed by the 1992 Fund was compatible with United Kingdom employment law. The Director responded that contracts for staff employed by the 1992 Fund were not governed by UK employment law. He clarified that the Staff Regulations governing the employment of 1992 Fund staff members were approved by the 1992 Fund Assembly and that all proposed amendments to the Regulations, were brought to the attention of the Assembly for its consideration and approval.

6.2.7 In response to a question from another delegation as to whether the Director could decide on a shorter notice period than 90 days, the Director responded that this could be the case.

1992 Fund Administrative Council Decisions

6.2.8 The 1992 Fund Administrative Council decided:

(a) to amend Staff Regulation 24 to increase the required written notice period of resignation from thirty days to ninety days for members of staff in the Professional and Higher categories; and

(b) to amend Staff Regulations 3, 4, 5, 6 and 32 in order to remove references to the 1971 Fund where they were no longer necessary.

6.2.9 The 1992 Fund Administrative Council also noted that amendments to Staff Rules I.4(b) and (e), VIII.3(a) and VIII.4 had been made to remove references to the 1971 Fund where they were no longer necessary and that the Director had increased the probation period from six months to twelve months and that the corresponding change had been made to Human Resources Policy No4.

6.3	**Appointment of Members of the Appeals Board** **Document IOPC/APR15/6/3**	**92AC**		

6.3.1 The 1992 Fund Administrative Council noted the term of office of the members and substitute members of the Appeals Board who had been elected in October 2013 would expire at the October 2015 session of the 1992 Fund Assembly.

6.3.2 It noted, however, that the Director had been informed in January 2015 that Mr Noriyoshi Yamagami was leaving his post at the Embassy of Japan and thus could no longer serve as a member of the Appeals Board. It further noted that his successor in office, Mr Jotaro Horiuchi, had kindly accepted to serve as a member of the Appeals Board until the October 2015 session of the 1992 Fund Assembly in accordance with Section II, paragraph (c) of the Statute of the Appeals Board.

6.3.3 The Administrative Council further noted that the Director had subsequently learnt in February 2015 that Mr Cho Seung-Hwan was leaving his post at the Embassy of the Republic of Korea in London and could no longer serve as a substitute member of the Appeals Board. The Administrative Council noted that his successor in office, Mr Park Jun-Young, had kindly accepted to serve as a substitute member of the Appeals Board until the October 2015 session of the 1992 Fund Assembly in accordance with Section II, paragraph (c) of the Statute of the Appeals Board.

6.4	**Relocation of the IOPC Funds' office premises** **Document IOPC/APR15/6/4**	**92AC**		

6.4.1 The 1992 Fund Administrative Council recalled that the Director had been informed by the landlord of Portland House in January 2014 that the proposed redevelopment of Portland House had been pushed back to 2016.

6.4.2 The Administrative Council also recalled that, following successful negotiations, a short-term extension to the occupancy of the 23rd floor of Portland House had been agreed and that, in particular, the new lease would commence in March 2015 and expire in March 2018 and was subject to a lease break clause whereby the landlord and tenant would be entitled to terminate the lease from June 2016.

6.4.3 The Administrative Council further recalled the Director's intention to avail himself of the break clause in the new lease to relocate the Secretariat by June 2016 rather than wait on the six month notice break that might be invoked by the landlord. The Administrative Council also recalled that the informed estimate of the costs that would arise from a relocation of the Secretariat provided by the Fund's consultants was some £850 000.

6.4.4 The Administrative Council also recalled the Director's proposal to spread the cost of relocation and that it had approved a total budget appropriation for relocation costs of £250 000 at its October 2013 session for 2014, and a further £250 000 at its October 2014 session for 2015.

6.4.5 The Administrative Council recalled that the UK Government (as Host Government) would continue to pay a percentage of the rent but that this would be no higher than the amount that it currently contributes. It further recalled that the UK Government's expectation was that the floor space of any new premises would be substantially smaller than that at Portland House. It noted that the UK Government's contribution, which amounted to 80% of the current office rent in Portland House, was £381 200 per annum and that this amount would be the maximum that the UK Government would contribute towards any future office space. The Administrative Council recalled that the consultants engaged by the Director, Deloitte Real Estate (DRE), had recommended that the property search should be based on a net internal area of between 7 000 and 7 500 square feet - a reduction of some 36% on the current office space in Portland House and that the Director had the intention to follow the consultants' recommendation. The reduction took into account the Director's intention to move to a mixture of open plan and cellular offices.

6.4.6 The Administrative Council noted that, since the October 2014 session of the 1992 Fund Assembly, the Director had re-engaged DRE to assist with finding suitable alternative premises for the

Secretariat and that a dual strategy had been adopted whereby the consultants would engage with the landlord of Portland House to determine whether there was the possibility of moving to other premises within the landlord's estate and, at the same time, commencing a market search to identify suitable premises including premises outside of the current landlord's estate.

6.4.7 The Administrative Council noted that the Director would continue to work in close cooperation with the UK Government so that any recommendation he made to the 1992 Fund Assembly had the support of the Government.

Debate

6.4.8 One delegation requested clarification as to whether the estimate of the costs that would arise from a relocation of the Secretariat of some £850 000 included the fit-out costs. That delegation also recalled that the United Kingdom Government paid a generous share of the cost of the rent of the IOPC Funds' office premises. It noted that it was proposed that the footplate of any new premises would be reduced by 36% and that any rent paid would be 50% higher than the current rent. It asked the Director to confirm whether this would result in the overall rent being the same or slightly lower than the current rent. With respect to the first question, the Director confirmed that the estimated relocation costs of £850 000 did include the fit-out costs although this figure could change. With respect to the second question, the Director confirmed that that delegation's assessment that the overall rent would indeed be the same or slightly less than the current rent was correct. He reiterated that the Secretariat was working in close cooperation with the United Kingdom Government to search for premises within the current rent.

6.5	**1992 Fund Headquarter's Agreement** **Document IOPC/APR15/6/5**	**92AC**		

6.5.1 The 1992 Fund Administrative Council took note of the information contained in document IOPC/APR15/6/5. It recalled that, at its May 2014 session, the Director had informed the 1992 Fund Administrative Council of the debate which had taken place in the 1971 Fund Administrative Council in respect of the freezing injunction which had been granted by the High Court in London in May 2014 to the Gard P&I Club in respect of the *Nissos Amorgos* incident and the possible implications that this decision might have for the 1992 Fund and the Supplementary Fund.

6.5.2 It further recalled that the English High Court had decided to apply section 6 of the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979, (the '1971 Fund Order') which gave effect to the Headquarters Agreement between the United Kingdom Government and the 1971 Fund (the '1971 Fund Headquarters Agreement') under United Kingdom law, rather than Article 5(2) of the 1971 Fund Headquarters Agreement, and had held that section 6 of the 1971 Fund Order did not have the effect of granting the 1971 Fund a general immunity from freezing injunctions.

6.5.3 It further recalled that the 1992 Fund Administrative Council had noted that the same discrepancy existed between the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1996, (the '1992 Fund Order') and the 1992 Fund Headquarters Agreement. It also recalled that the 1992 Fund Administrative Council had noted that therefore the 1971 Fund Administrative Council had instructed the Director to contact the UK Foreign and Commonwealth Office (FCO) to discuss the implications for the 1992 Fund and the Supplementary Fund of the freezing injunction decision upon the 1971 Fund and to revert to the governing bodies at their October 2014 sessions to report on its outcome.

6.5.4 The Administrative Council further recalled that, at its October 2014 session, it had noted that the English High Court, in its judgment on 17 October 2014, had recognised the 1971 Fund's immunity from UK jurisdiction. The Administrative Council noted that, as a result of this judgment, the freezing injunction had been automatically discharged. It further noted that the 1971 Fund had been dissolved on 31 December 2014.

6.5.5 The Administrative Council noted that in January 2015 the Secretariat had raised the issue of the discrepancy between section 6 (2) of the 1992 Fund Order and Article 5(2) of the 1992 Fund Headquarters Agreement with the FCO and had been advised that, whilst the FCO believed that the current 1992 Fund Order had fully given effect to the 1992 Fund Headquarters Agreement, it had noted the freezing injunction decision on the 1971 Fund in May 2014 and the difference in wording between the Headquarters Agreement and the 1992 Fund Order and was ready to examine the 1992 Fund Order.

6.5.6 The Administrative Council noted that the Secretariat had also requested an update on the Parliamentary process in respect of the revised 1992 Fund Headquarters Agreement and a new Headquarters Agreement for the Supplementary Fund which had been approved by the respective Assemblies in 2006. It noted that the Secretariat had been advised by the FCO that whilst the Headquarters Agreements came into force on signature under the current text of both the Agreements, the UK Government was not in a position to sign these Agreements until the Parliamentary procedure was complete, although it had taken a longer time than had been anticipated in 2006. The Administrative Council also noted that it was the recent practice of the FCO to include an entry into force provision in a Headquarters Agreement to the effect that the agreement entered into force when the Parliamentary procedure was complete instead of a provision whereby the agreement entered into force on signature as currently drafted. The FCO had also indicated that amending the text to such effect would facilitate the UK Government signing the Agreements which would allow the text to be laid before the UK Parliament for consideration.

6.5.7 The Administrative Council noted that discussions on amendments to both the 1992 Fund Headquarters Agreement and the Supplementary Fund Headquarters Agreement with the FCO and the UK Department for Transport were continuing and that the Director would report any developments to the governing bodies at a future session.

Debate

6.5.8 One delegation stated that it did not foresee the possibility of any freezing injunction on the 1992 Fund. Nevertheless, it expressed its view that it was important to take timely action to resolve the issue of the difference in wording between the Headquarters Agreement and the 1992 Fund Order. It also noted that that the Supplementary Fund Headquarters Agreement, which had been adopted in 2006, had not yet entered into force and expressed its hope that the entry into force would take place as soon as possible with the help of the United Kingdom Government.

6.5.9 Another delegation noted that bilateral discussions would be taking place between the United Kingdom Government and the Secretariat on the important issue of immunity and that bilateral talks would also be taking place between the International Group and the Secretariat where the issue of immunity was an important factor to consider. That delegation asked what would be the relation between both sets of discussions. The Director responded that the discussions with the United Kingdom Government were in relation to the Headquarters Agreement whereas the discussions with the International Group related to interim payments and that there was a clear distinction between the two even though both were likely to involve the issue of the immunity of the 1992 Fund and the Supplementary Fund. The Director would report to the governing bodies on the outcome of both discussions at their next sessions.

7 Other matters

7.1	**Any other business**	**92AC**	**92EC**	

Discussions at the meeting of the IMO Legal Committee on the interpretation of the 1971 and 1992 Fund Conventions

7.1.1 The Director informed the 1992 Fund Administrative Council of the discussions at the meeting of the IMO Legal Committee during the previous week. He referred to document LEG 102/11/3, which had been presented by the United Kingdom delegation concerning two conflicting interpretations of the

1971 Fund Convention. The Director explained that the Legal Committee had been invited to consider whether liability fell on contributors in those States that were members of the 1971 Fund on the date of the incident, or on the date before the Convention ceased to be in force. It was noted that the delegation of the United Kingdom had requested the Committee to provide a definitive interpretation of the 1992 Fund Convention, taking into account that the relevant provisions of the 1992 Fund Convention were similar to those of the 1971 Fund Convention.

7.1.2 It was noted that the Director had attended the session of the Legal Committee and had provided background information relating to the 2014 October meeting and the legal interpretations provided at that time.

7.1.3 The Director pointed out that the IMO Secretariat had provided information regarding the competencies of IMO and of the 1992 Fund Assembly with respect to interpreting the Convention and had advised that there was a basis in law to conclude that either body was an appropriate venue for interpretation, but that the interpretation itself was a matter for the Contracting States.

7.1.4 The Director pointed out a number of views expressed during the discussions within the Legal Committee, including that:

- the interpretation of the relevant Articles of the 1992 Fund Convention should be extended to other conventions such as the Supplementary Fund Protocol and the HNS Convention;
- following the recent winding up of the 1971 Fund, this was the right time and that the Legal Committee was the correct forum for resolving the conflicting interpretations, taking into account the financial implications;
- the interpretation as provided for in paragraphs 19 of LEG 102/11/3 was correct;
- the matter of interpretation was not urgent as the 1971 Fund had been wound up and there was no intention to terminate the 1992 Fund Convention in the foreseeable future;
- the matter of interpretation of the 1992 Fund Convention should rest with Member States to that Convention and the 1992 Fund Assembly was therefore the correct forum;
- although the document raised an important issue, this required further study and deliberation and, as such, the Committee at this time should not offer a definitive interpretation.

7.1.5 The Director pointed out that the Legal Committee had concluded that, although there was a desire for clarity of interpretation, a majority felt that the Member States of the 1992 Fund Convention should interpret the Convention, and that the 1992 Fund Assembly, rather than the Legal Committee, would be a more suitable body for considering the issue. Moreover, there was no need or urgency to provide such an interpretation as the 1971 Fund had been wound up.

7.1.6 The Director pointed out that the issue raised by the UK delegation had not been resolved by the IOPC Funds' governing bodies at the October 2014 session nor considered previously.

7.1.7 The 1992 Fund Administrative Council took note of the information provided by the Director and agreed that the subject could be considered further in the future.

Statement by ICS in response to discussions on insurers who do not fulfil their obligations under the 1992 CLC

7.1.8 The observer delegation of ICS made the following statement:

> 'We asked to make a statement today because we think it is important to respond, on behalf of the shipping industry, to the statement yesterday from the delegation of France

reminding us that the compensation system depends on the obligations and cooperation between shipowners on the one hand and the Funds on the other.

This system is of course underpinned by the compulsory insurance certificate which is certified by a state Party. This does therefore place a responsibility on each certifying state Party to make sure that the insurance - verified by the Blue Card - is sufficient in accordance with the CLC and that it is effective. The Blue Card also allows claimants to pursue the insurer directly for the CLC amounts if the shipowner is unable to pay.

As an industry, the shipping associations here today cover about 80% of the world's international shipping fleet. The large majority is insured by the International Group of P&I Associations, which is an effective, reliable and responsive group of insurers. However, there are also ships operating which are not in the membership of ICS, Intertanko, BIMCO (which all are represented here today), and which are not insured by the International Group Clubs but by other insurers which do not participate in discussions here. These shipowners provide a service too but for them, the state Parties have to play their part and to make sure that the insurance verified by the Blue Card is actually sufficient, and that it will be effective.

We would like to remind the governments here that we have a set of guidelines already in relation to the Bunkers Convention under IMO Assembly Resolution and this was extended to the CLC just last year. We refer to IMO Circular Letter 3145. This contains comprehensive guidance for States as to the issues to take into consideration and provides a list of criteria to take into account and provides guidance if a ship is insured outside the International Group. We would suggest that the Secretariat brings these Guidelines to the attention of Member States and underlines their importance to avoid situations of insufficient insurance.

Having said this, we are not clear if actually the cases we discussed yesterday are indeed related to problems with insufficient or ineffective insurance. Perhaps we can ask the Secretariat then to also drill down into these cases and establish the precise problems and then we can address the question of whether the existing guidelines need to be further developed.'

Debate

7.1.9 One delegation welcomed the intervention by ICS and acknowledged that there were sometimes challenges for those insurers who were not part of the International Group. That delegation supported the proposal that Member States should look at the guidance made available by IMO and also the proposal that the Director should look further into the issues in respect of those open incidents where the insurer was not meeting its obligations.

7.1.10 Another delegation thanked ICS for drawing attention to the IMO Guidelines and encouraged delegations to look at their content and draw attention to any issues which may not be covered. That delegation pointed out however, that since the IMO Legal Committee had developed and adopted the text of the Guidelines, that any proposed amendments should be brought to that Committee for its consideration.

1992 Fund Administrative Council Decision

7.1.11 The 1992 Fund Administrative Council thanked ICS for its statement and instructed the Director to look into the specific issues in respect of the open cases where the insurer had not fulfilled its obligations under the 1992 CLC and report back to the 1992 Fund Assembly at a future session.

7.1.12 The Administrative Council also encouraged States to consider the IMO Guidelines (Guidelines for accepting documentation from insurance companies, financial security providers and P&I Clubs - IMO Circular Letter 3145) and instructed the Secretariat, in consultation with the IMO Secretariat, to

explore whether the IOPC Funds could develop some additional guidance documents, such as flowcharts, to assist States when verifying CLC certificates.

8 1992 Fund seventh intersessional Working Group (Definition of 'ship') – fourth meeting

The 1992 Fund seventh intersessional Working Group held its fourth meeting on 22 April 2015. It was noted that, in keeping with past practice, the Report of that meeting would be prepared by the Director, in consultation with the Working Group's Chairman, and issued at a later date. The Report will be considered by the 1992 Fund Assembly at its next regular session in October 2015.

9 Adoption of the Record of Decisions

1992 Fund Administrative Council and 1992 Fund Executive Committee Decision

The draft Record of Decisions of the April 2015 sessions of the IOPC Funds' governing bodies, as contained in documents IOPC/APR15/9/WP.1 and IOPC/APR15/9/WP.1/1, was adopted, subject to certain amendments.

* * *

ANNEX I

1.1 Member States present at the sessions

		1992 Fund Assembly	1992 Fund Executive Committee
1	Algeria	●	●
2	Angola	●	
3	Argentina	●	
4	Australia	●	
5	Bahamas	●	●
6	Belgium	●	
7	Bulgaria	●	
8	Cameroon	●	●
9	Canada	●	●
10	China[<1>]	●	
11	Colombia	●	
12	Côte d'Ivoire	●	
13	Cyprus	●	
14	Denmark	●	
15	Dominica	●	
16	Dominican Republic	●	
17	Ecuador	●	
18	Estonia	●	
19	Finland	●	
20	France	●	
21	Germany	●	
22	Ghana	●	
23	Greece	●	
24	Ireland	●	
25	Islamic Republic of Iran	●	
26	Italy	●	●
27	Japan	●	
28	Kenya	●	
29	Latvia	●	
30	Liberia	●	
31	Malaysia	●	●
32	Malta	●	
33	Marshall Islands	●	●
34	Mexico	●	●
35	Monaco	●	
36	Morocco	●	
37	Netherlands	●	●
38	New Zealand	●	
39	Nigeria	●	●
40	Norway	●	
41	Oman	●	
42	Panama	●	
43	Philippines	●	
44	Poland	●	
45	Portugal	●	
46	Qatar	●	
47	Republic of Korea	●	●
48	Russian Federation	●	
49	Singapore	●	

[<1>] The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

50	South Africa	●	
51	Spain	●	●
52	Sweden	●	●
53	Trinidad and Tobago	●	
54	Tunisia	●	
55	Turkey	●	●
56	United Arab Emirates	●	
57	United Kingdom	●	
58	United Republic of Tanzania	●	
59	Uruguay	●	
60	Venezuela (Bolivarian Republic of)	●	

1.2 States represented as observers

		1992 Fund
1	Brazil	●
2	Saudi Arabia	●
3	Thailand	●
4	Ukraine	●

1.3 Intergovernmental organisations

		1992 Fund
1	European Commission	●
2	International Maritime Organization (IMO)	●

1.4 International non-governmental organisations

		1992 Fund
1	BIMCO	●
2	International Association of Classification Societies Ltd (IACS)	●
3	International Association of Independent Tanker Owners (INTERTANKO)	●
4	International Chamber of Shipping (ICS)	●
5	International Group of P&I Associations	●
6	International Spill Control Organization (ISCO)	●
7	International Tanker Owners Pollution Federation Ltd (ITOPF)	●
8	Oil Companies International Marine Forum (OCIMF)	●
9	World Liquid Petroleum Gas Association (WLPGA)	●

* * *

RULES OF PROCEDURE FOR THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as adopted by the Administrative Council at its 13th session, acting on behalf of the Assembly at its 19th extraordinary session, held from 20 – 23 April 2015)

Rule 1

For the purpose of these Rules:

(a) "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

(b) "Member" means a State for which the 1992 Fund Convention is in force;

(c) "1992 Fund" means the International Oil Pollution Compensation Fund established under the 1992 Fund Convention;

(d) "Supplementary Fund" means the International Oil Pollution Compensation Supplementary Fund established under the Protocol of 2003 to the 1992 Fund Convention.

Rule 4

The Director with the approval of the Chairman shall invite:

(a) States which have signed the 1992 Fund Convention or which have deposited the appropriate instrument in respect of that Convention, but for which that Convention is not yet in force;

(b) States which have notified the 1992 Fund that they are considering accession to the 1992 Fund Convention; and

(c) States which were Members of the 1971 Fund but are not Members of the 1992 Fund to send observers to sessions of the Assembly.

Rule 5

The Director shall invite the following to be represented as observers at any session of the Assembly:

(a) the Supplementary Fund;

(b) the United Nations;

(c) the International Maritime Organization

(d) any other specialized agency of the United Nations whose interests and those of the 1992 Fund are of common concern;

(e) any other inter-governmental organisation and any international non-governmental organisation which the Assembly has decided to admit to its meetings in accordance with Article 18.10 of the 1992 Fund Convention.

Rule 14

The provisional agenda of each regular session of the Assembly shall include in addition to those items required by the application of Article 18 of the 1992 Fund Convention:

(a) all items, the inclusion of which has been requested by the Assembly at a previous session;

(b) all items, the inclusion of which has been requested by a subsidiary body established by the Assembly;

(c) any item proposed by a Member of the 1992 Fund;

(d) any item on matters pertaining to the budget, accounts and financial arrangements of the 1992 Fund;

(e) subject to such preliminary consultations as may be necessary, any item proposed by any of the specialised agencies of the United Nations;

(f) any items, the inclusion of which has been requested by the Assembly of the Supplementary Fund.

Rule 21

At the opening of each regular session of the Assembly, the Director shall chair until the Assembly has elected a Chairman for the session.

Rule 42

In addition to exercising the powers conferred upon him or her elsewhere by these Rules, the Chairman shall declare the opening and the closing of the session of the Assembly and, subject to the Assembly's wishes, he or she shall determine the hours of meetings and may adjourn meetings. The Chairman shall direct the discussion and ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions resulting from the voting.

Rule 42*bis*

During the discussions of any matter, a representative of a Member State or observer delegation who would like their entire statement to be inserted in the Record of Decisions of the session should say so at the moment that they make their statement. In such cases, a written copy of the statement should be passed to a member of the Secretariat immediately after it is made. Otherwise, it will be understood that a summary, drafted by the Secretariat, reflecting the key points and sense of the intervention will be acceptable in the Record of Decisions of the session.

* * *

ANNEX III

RULES OF PROCEDURE FOR THE EXECUTIVE COMMITTEE OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1992 FUND CONVENTION

(as adopted by the Administrative Council at its 13th session, acting on behalf of the Assembly at its 19th extraordinary session, held from 20 – 23 April 2015)

Definitions

Rule 1

For the purpose of these Rules:

(a) "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;

(b) "Member" means a State for which the 1992 Fund Convention is in force;

(c) "1992 Fund" means the International Oil Pollution Compensation Fund established under the 1992 Fund Convention;

(d) "Supplementary Fund" means the International Oil Pollution Compensation Supplementary Fund established under the Protocol of 2003 to the 1992 Fund Convention.

Sessions

Rule 2

The Executive Committee shall meet at least once every calendar year at thirty days' notice upon convocation by the Director, either on his or her own initiative or at the request of its Chairman or of at least one-third of its members. It shall meet at such places as may be convenient.

Rule 3

The Executive Committee shall hold its sessions in London (United Kingdom) unless it decides otherwise on any particular occasion. If, between sessions, the Director, with the Chairman's approval, or any Member proposes that the next session be held elsewhere, an affirmative decision to that effect may be taken by a majority of Members giving their approval in writing (including by telefax or electronic mail) to the Director. Such majority approval should be communicated to Members at least forty-five days before the commencement of that session.

Rule 4

The Director shall invite Members of the 1992 Fund who are not Executive Committee members to attend meetings of the Executive Committee as observers.

The Director with the approval of the Chairman shall normally invite those States and organisations which would be invited to attend sessions of the Assembly. However, the Director shall have the discretion, after consultation with the Chairman, not to invite all or any of these States and organisations to be represented at meetings of the Executive Committee which are to be held in private.

Rule 5

Observers may, with the consent of the Executive Committee, participate without vote in the deliberations of the Executive Committee in matters of direct concern to them. They shall have access to non-confidential documents and to such other documents as the Director, with the approval of the Chairman, may decide.

Rule 6

The Executive Committee may invite a representative of any other body or any individual to participate without voting in the discussion of any subject in which such a person may have a special interest or expertise.

Delegations

Rule 7

Each Member shall designate a representative, and may also designate alternates and such advisers and experts as may be required.

Upon designation by a representative, the Chairman may allow any other member of the representative's delegation to speak on any particular point at any meeting of the Executive Committee.

Credentials

Rule 8

Each Member shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than the opening day of the Executive Committee. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or the Ambassador or High Commissioner either accredited to the country where the Headquarters of the IOPC Funds are located or where a session takes place or by an appropriate authority as determined by the Government and communicated to the Director. Where such authority is a person who is not a Government employee, such authorisation shall be communicated to the Director in advance of the opening day of the Executive Committee.

Rule 9

When the Executive Committee holds sessions in conjunction with sessions of the Assembly, the Credentials Committee established by the Assembly shall examine also the credentials of delegations of States members of the Executive Committee and report to the Executive Committee without delay. Should a session of the Executive Committee be held not in conjunction with a session of the Assembly, the Executive Committee shall at the beginning of the session appoint a Credentials Committee. It shall consist of three members who shall be appointed by the Executive Committee on the proposal of the Chairman. The Credentials Committee shall examine the credentials of delegations of States members of the Executive Committee and report without delay.

Rule 10

Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives until the Credentials Committee has reported and the Executive Committee has given its decision.

Access to meetings by the public

Rule 11

Sessions of the Executive Committee shall be held in public unless the Committee decides otherwise. The Executive Committee may decide that a particular meeting or part of a meeting shall be held in private. If a meeting or part of a meeting is held in private, any decisions taken shall be reflected in the Record of Decisions. Even if a meeting of the Executive Committee is held in public, the Committee may exclude at any time from attendance groups or individuals who interrupt or disturb the meeting or if the Committee considers there is a risk that they may do so.

Agenda

Rule 12

The provisional agenda of each session of the Executive Committee shall be prepared by the Director and submitted to the Chairman for approval prior to issue.

Rule 13

The provisional agenda of each regular session of the Executive Committee shall include items required to be dealt with by the application of the mandate of the Committee, as adopted by the Assembly, as well as items which have been requested by the Assembly or by a Member of the 1992 Fund.

Rule 14

The first item on the provisional agenda for each session shall be the adoption of the agenda.

Rule 15

Any item of the agenda of a session of the Executive Committee, consideration of which has not been completed at that session, shall be included in the agenda of the next session unless otherwise decided by the Executive Committee.

Rule 16

The provisional agenda for each session shall normally be communicated by the Director to the members of the Executive Committee and to other Member States at least 30 days before the session. Supporting documents should be distributed as early as possible, taking into account the need for Member States to prepare the sessions, the availability of the necessary information and the importance of claims for compensation and other urgent issues to be dealt with promptly.

Rule 17

The Director may, with the approval of the Chairman, include any other questions which may arise between the despatch of the provisional agenda and the opening day of the session, in a supplementary provisional agenda which will be communicated to Members promptly.

Chairman and Vice-Chairmen

Rule 18

The Executive Committee shall elect a Chairman and a Vice-Chairman from among the representatives of the Committee members. The Chairman and Vice-Chairman shall hold office at all sessions of the Executive Committee until the next regular session of the Assembly.

Rule 19

If the Chairman is absent from a meeting, or any part thereof or, for any reason, is unable to carry out his or her duties, the Vice-Chairman shall act as Chairman.

Rule 20

A Chairman or a Vice-Chairman acting as Chairman shall not vote but may appoint another member of his or her delegation to act as the representative of his or her Government.

Secretariat

Rule 21

The Director shall act as Secretary of the Executive Committee and shall be responsible for making the necessary arrangements for its meetings. The Director may delegate his or her functions to another member of the Secretariat.

Rule 22

The Director or another member of the Secretariat designated by him or her for the purpose may make either oral or written statements concerning any question under consideration.

Rule 23

The Secretariat shall prepare a Record of Decisions of each session of the Executive Committee.

Rule 24

It shall be the duty of the Secretariat to receive, translate and circulate to Members all reports and other documents of the Executive Committee. Non-confidential documents shall also be circulated to observers.

Languages

Rule 25

The official and working languages of the 1992 Fund are English, French and Spanish.

Rule 26

Speeches at the Executive Committee shall be made in one of the official languages and will be interpreted into the other official languages. Another language may be used if the speaker provides interpretation into one of the official languages.

Rule 27

All reports of the Executive Committee and all supporting documents to agenda items of the Executive Committee shall be issued in the official languages.

Voting

Rule 28

Subject to Article 33 of the 1992 Fund Convention, decisions of the Executive Committee shall be made, elections shall be determined, reports and recommendations shall be adopted, by a majority of the Members present and voting.

Rule 29

If a Committee member or a public authority of a Committee member has a claim against the 1992 Fund, such a member shall have no voting right when that claim is being considered by the Executive Committee.

Rule 30

The Executive Committee shall normally vote by show of hands. However, any Member may request a roll-call which shall be taken in the alphabetical order of the names of the Members in English, beginning with the Member whose name is drawn by lot by the Chairman.

Rule 31

The vote of each Member participating in any roll-call shall be inserted in the Record of Decisions of the session.

Rule 32

If a vote is equally divided, a second vote shall be taken at the next meeting. If this vote also is equally divided, the proposal shall be regarded as rejected.

Rule 33

Elections shall be decided by secret ballot unless the Executive Committee decides otherwise.

Rule 34

In a secret ballot two scrutineers shall, on the proposal of the Chairman, be appointed by the Executive Committee from the Members present and shall proceed to scrutinize the votes cast. All invalid votes cast shall be reported to the Executive Committee.

Rule 35

If one person or Member only is to be elected and no candidate obtains a majority in the first ballot, a second ballot shall be taken confined normally to the two candidates obtaining the largest number of votes save where the Executive Committee decides otherwise. If in the second ballot the votes are equally divided, the election shall be deferred until the next meeting, when, if another tie results, the Chairman shall decide between the candidates by drawing lots.

Rule 36

(a) When two or more places are to be filled by election at one time under the same conditions, those candidates obtaining the majority required under Rule 28 in the first ballot shall be declared elected.

(b) If the number of candidates obtaining the requisite majority is greater than the number of seats to be filled, those candidates obtaining the greatest number of votes shall be declared elected.

(c) If the number of candidates obtaining the requisite majority is less than the number of persons or Members to be elected, there shall be an additional ballot or ballots, as necessary, to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot and the number of candidates being not more than twice as many as the places remaining to be filled. Should the same number of votes be obtained, however, by two or more candidates for the last place in this restricted list, they shall all be placed on the list.

(d) If two or more candidates obtain the same number of votes for the last seat or seats to be filled, there shall be a further ballot among these candidates only. Should the votes again be divided equally, the Chairman shall draw by lot the name of the candidate to be eliminated in the subsequent ballot.

(e) A voting paper containing the names of a greater number of candidates than the number required to be elected shall be considered invalid.

Conduct of Business

Rule 37

At least two-thirds of the members of the Executive Committee shall constitute a quorum for its meetings.

Rule 38

In addition to exercising the powers conferred upon him or her elsewhere by these Rules, the Chairman shall declare the opening and the closing of the session of the Executive Committee and, subject to the Executive Committee's wishes, he or she shall determine the hours of meetings and may adjourn meetings. The Chairman shall direct the discussion and ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions resulting from the voting.

Rule 39

Proposals and amendments shall normally be introduced in writing and handed to the Director who shall circulate copies to delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Executive Committee unless copies of it have been circulated to delegations not later than the day preceding the meeting. The Chairman may, however, permit the discussion and consideration of amendments or of motions as to procedure even though these amendments and motions have not been circulated or have been circulated only the same day.

Rule 40

The Executive Committee may on the proposal of the Chairman limit the time to be allowed to each speaker on any particular subject under discussion.

Rule 41

During the discussions of any matter, a representative of a Member State or observer delegation who would like their entire statement to be inserted in the Record of Decisions of the session should say so at the moment that they make their statement. In such cases, a written copy of the statement should be passed to a member of the Secretariat immediately after it is made. Otherwise, it will be understood that a summary, drafted by the Secretariat, reflecting the key points and sense of the intervention will be acceptable in the Record of Decisions of the session.

Rule 42

During the discussions of any matter a representative of a Member may rise to a point of order and the point of order shall be decided immediately by the Chairman, in accordance with these Rules of Procedure. A representative of a Member may appeal against the ruling of the Chairman. The appeal shall be put to the vote immediately and the Chairman's ruling shall stand unless overruled by a majority of the Members present and voting.

A representative rising to a point of order may not speak on the substance of the matter under discussion.

Rule 43

Subject to the provisions of Rule 38 the following motions shall have precedence, in the order indicated below, over all other proposals or motions before the meeting:

(a) to suspend a meeting;

(b) to adjourn a meeting;

(c) to adjourn the debate on the question under discussion; and

(d) to close the debate on the question under discussion.

Permission to speak on a motion falling within (a) to (d) above shall be granted only to the proposer and in addition to one speaker in favour of and two against the motion, after which it shall be put immediately to the vote.

Rule 44

If two or more proposals relate to the same question, the Executive Committee, unless it decides otherwise, shall vote on the proposals in the order in which they have been submitted.

Rule 45

Parts of a proposal or amendment thereto shall be voted on separately if the Chairman, with the consent of the proposer, so decides, or if any representative of a Member requests that the proposal or amendment thereto be divided and the proposer raises no objection. If objection is raised, permission to speak on the point shall be given first to the mover of the motion to divide the proposal or amendment, and then to the mover of the original proposal or amendment under discussion, after which the motion to divide the proposal or amendment shall be put immediately to the vote.

Rule 46

Those parts of a proposal which have been approved shall then be put to the vote as a whole; if all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall be considered to be rejected as a whole.

Rule 47

A motion is considered to be an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal. An amendment shall be voted on before the proposal to which it relates is put to the vote, and if the amendment is adopted, the amended proposal shall then be voted on.

Rule 48

If two or more amendments are moved to a proposal, the Executive Committee shall first vote on the amendment furthest removed therefrom and so on until all amendments have been put to the vote. The Chairman shall determine the order of voting on the amendments under this Rule.

Rule 49

A motion may be withdrawn by its proposer at any time before voting on it has begun, provided that the motion has not been amended or that an amendment to it is not under discussion. A motion withdrawn may be reintroduced by any Member.

Rule 50

When a proposal has been adopted or rejected, it may not be reconsidered at the same session of the Executive Committee unless the Executive Committee, by a majority of the Members present and voting, decides in favour of reconsideration. Permission to speak on a motion to reconsider shall be accorded only to the mover and one other supporter and to two speakers opposing the motion, after which it shall be put immediately to the vote.

Amendments of Rules of Procedure

Rule 51

These Rules of Procedure may be amended by the Assembly.

Overriding Authority of the 1992 Fund Convention

Rule 52

In the event of any conflict between any provision of these Rules and any provision of the 1992 Fund Convention, that Convention shall prevail.