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1992 Fund Assembly	<b>92A17</b>	•
1992 Fund Executive Committee	<b>92EC56</b>	
Supplementary Fund Assembly	<b>SA8</b>	
1971 Fund Administrative Council	<b>71AC29</b>	

## REVISION OF THE CLAIMS MANUAL

### Note by the Secretariat

<b>Summary:</b>	<p>At its fourth meeting held in April 2012, the 1992 Fund sixth intersessional Working Group discussed four proposed amendments to the Claims Manual as detailed in document <a href="#">IOPC/APR12/10/2</a> submitted by the Secretariat. The advantages and disadvantages of each proposal were discussed by the Working Group with a final recommendation that some minor changes be made to the proposed amendments before presenting them to the 1992 Fund Assembly in October 2012 for approval. The Working Group also supported a recommendation to the 1992 Fund Assembly that it consider developing and publishing a new guidance document on presenting claims in the tourism sector.</p> <p>This document details the proposed amendments to be incorporated into the IOPC Funds' Claims Manual:</p> <ul style="list-style-type: none"><li>(i) 'Fast track' assessment of claims;</li><li>(ii) Fraudulent claims;</li><li>(iii) Target time frame for assessing claims; and</li><li>(iv) Use of economic models</li></ul>
<b>Action to be taken:</b>	<p><u>1992 Fund Assembly</u></p> <p>Consider the Director's proposals as set out in sections 2 to 6 and give instructions as appropriate.</p>

### **1 Introduction**

- 1.1 At its fourth meeting held in April 2012, the 1992 Fund sixth intersessional Working Group discussed four proposed amendments to the Claims Manual as detailed in document [IOPC/APR12/10/2](#) submitted by the Secretariat. The Working Group requested the Secretariat to incorporate the amendments discussed and agreed during the meeting into a new document and submit it to the 1992 Fund Assembly for its consideration.
- 1.2 In the paragraphs that follow, an explanation for each of the suggested amendments is provided. For ease of reference, the proposed amendments are shown alongside the existing text in the Annex.

### **2 'Fast track' assessment of claims**

- 2.1 At the second meeting of the Working Group held in March 2011, consideration was given, *inter alia*, to whether for small claims a lump sum payment could be made on the basis of limited or no investigation and whether compensation could be paid on the basis of an estimation. Considerable disquiet was expressed at the suggestion of lump sum payments; support was, however, expressed for a little more flexibility to be introduced into the claims assessment process by accepting estimations of individual losses provided a minimum standard of proof was met and there was a clear link of

causation with the incident. 'Fast track' assessment of claims was proposed, a process under which in respect of small claims, claimants would be given a choice between having their claims assessed quickly on the basis of a limited investigation of the losses or having a more detailed comprehensive assessment which would inevitably take longer to complete.

- 2.2 The proposed 'fast track' process would only be available for small claims, where a small claim was defined in terms of quantum.
- 2.3 The suggested amendment to the Claims Manual could be made in section 2.7 by introducing a new paragraph 2.7.5 under the sub-heading 'Fast track assessment of claims':

***Fast track assessment of claims***

*2.7.5 In order to avoid undue delay in settlement of small claims, the 1992 Fund Executive Committee could decide, after considering the cost effectiveness and merit of assessing large numbers of small claims, to approve the use of 'fast track' assessments for that incident and to set the quantum of a 'small' claim for that incident. The availability of these 'fast track' assessments will be determined, on a case-by-case basis, by decision of the Executive Committee. 'Fast track' assessments will be made on the basis of a brief investigation by the Fund and its experts of the circumstances of the loss but must include confirmation that such losses did actually occur and that there was a clear link of causation with the incident. Alternatively claimants may prefer to await a settlement based on an in-depth, comprehensive assessment which will inevitably take longer. Claimants who disagree with the settlement offer under 'fast track' assessment will only have the assessment of their claim reconsidered based on the provision of new information proving their loss. This may result in higher or lower assessment than that first offered under the fast track assessment process.*

**3 Fraudulent claims**

- 3.1 As a counter to concerns over any easing of the standard of proof, it was suggested that reasonable attention should be paid to fraud detection and prosecution. There is no direct reference to fraudulent claims in the 2008 edition of the Claims Manual although reference is made in the IOPC Funds' publication 'Guidelines for presenting claims in the fisheries, mariculture and fish processing sector', paragraph 9.1 which states, '..... Don't try to 'make up' records, as these will not be accepted. Providing fake documents in support of a compensation claim is a criminal offence'.
- 3.2 Some delegations expressed concern that when large numbers of small claims were presented, the risk of fraud was likely to increase. In order to address this concern, the Working Group considered two places where the issue could be raised: the first in the Claims Manual and the second to be included in a note associated with the claims forms provided to claimants by the IOPC Funds.
- 3.3 The suggested amendment to the Claims Manual would be introduced in paragraph 1.5.1 as an additional bullet point at the end of the section:
- A claimant has to prove...by producing appropriate documents or other evidence.
  - *Claimants are required to make a declaration that their claims are a true reflection of their losses as follows:*

*'My claim is, to the best of my knowledge and belief, a true and accurate reflection of my actual loss. It includes information on all financial or material gains I have received, including from clean-up activities and aid organisation or government funds, during the period claimed. I am aware that the IOPC Funds take the presentation of fraudulent documentation seriously and if they become aware that such documentation has been submitted in support of a claim, the IOPC Funds reserve the right to inform the appropriate national authority should that be the case.'*

- 3.4 With respect to the inclusion of a note in the claims forms, wording similar to the bullet point above would be added to all claims forms distributed by the IOPC Funds.

#### **4 Target time frame for assessing claims**

- 4.1 During the second meeting of the Working Group the idea was raised of setting a time limit for the settlement of claims, for example within a period of six months. In the debate during the third meeting of the Working Group it was clarified that the six-month timescale was simply illustrative but that some target timescale should be in place, rather than none as is the case at present. On the other hand, concerns were raised that setting a prescribed timescale would put an additional administrative burden on the Secretariat. Setting a time frame on a case-by-case basis was nevertheless considered to be a possibility.
- 4.2 The Secretariat recognised the need for continuous dialogue with claimants while claims were being considered and a better indication of the time required to process claims as claimants wanted to know if compensation was to be awarded and when settlement might be expected. It was suggested that one approach might be to utilise web-based solutions to provide claimants with a better indication of the progress of a claim or group of similar claims.
- 4.3 The Secretariat noted that once it had sufficient information to assess the complexity of a claim or group of claims of a similar nature, and whether the supporting information submitted was likely to be adequate, it should be possible to offer a target time frame for assessment. The timescale for handling claims was largely dependent on how long it took claimants to provide the required information.
- 4.4 However the Secretariat also recognised that within the current Claims Manual there was no obligation upon the Secretariat to respond to claimants within a prescribed period of time. The intention therefore of the following proposed amendment to the Claims Manual was to provide claimants with a better understanding of the progress of their claim and to set realistic targets for the Secretariat to provide claimants with an initial view on their claim.
- 4.5 The proposed amendment to the Claims Manual would be a new paragraph 2.7.4 under the sub-heading 'Target time frame for assessing claims':

#### ***Target time frame for assessing claims***

*2.7.4 Within one month of receipt of a completed claim form and registration of a claim, the Secretariat will aim to provide claimants with an acknowledgement of receipt of the claim together with an explanation of the assessment procedure which will be followed thereafter. Additionally, within six months of registration of the claim, the Secretariat will aim to provide the claimant with an initial view in the form of a letter notifying the claimant, inter alia, one of the following:*

- (a) Claim is admissible and is being assessed;*
- (b) Claim is admissible in principle but further supporting documents are required to assess the claim;*
- (c) Claim is admissible but further time is required to assess the claim;*
- (d) Claim is not admissible in principle and it is therefore rejected.*

*Depending on the size and complexity of the incident, the Secretariat may have to apply different time periods.*

## **5 Use of economic models**

- 5.1 The Working Group noted that the methodologies used for the fisheries sector, including the use of economic models, were described in detail in the IOPC Funds' publication 'Technical guidelines for assessing fisheries sector claims'. However, considerable interest was also expressed by the Working Group in the methodology used in the assessment of small tourism-sector claims following the *Hebei Spirit* incident in the Republic of Korea
- 5.2 It should be noted that the economic models used by the IOPC Funds and their experts in order to estimate losses are built around actual data. Such estimates are made by using the models to fill in the gaps, interpolating or extrapolating from real data. In terms of the Claims Manual, one way to make this clear, and to clarify that claimants may use the same techniques in order to prepare a claim, would be to add the wording set out below under a new heading after paragraph 1.4.10. However, it is also suggested that the two last sentences from paragraph 3.6.6 be moved forward to this section of the Claims Manual to form a new paragraph 1.4.13, reinforcing the difference between economic models based on data and theoretical models based on abstract formulae.

### *Use of economic models*

*1.4.11 Where insufficient documentary evidence is provided to support a claim and it is unjustified to request, or expect, additional data, compensation may be paid on the basis of an estimate of losses calculated from an economic model. Any such economic model must be derived from actual data closely associated with the loss claimed and taken from the relevant sector or industry. The model would be carefully examined by the Fund and its experts to ensure that the data used, the assumptions made and the method of calculation were valid.*

### **Environmental damage**

*1.4.12 Compensation ..... are necessary and feasible.*

*1.4.13 Compensation is not paid in respect of claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. Nor is compensation paid for damages of a punitive nature on the basis of the degree of fault of the wrong-doer.*

## **6 New guidance documents**

A further possibility considered and recommended by the Working Group, in addition to proposing the above changes to the Claims Manual, was that the 1992 Fund Assembly instruct the Secretariat to commission documents on the assessment of tourism claims, similar to those already published on fisheries assessments; 'Guidelines for presenting claims in the fisheries, mariculture and fish processing sector' and 'Technical guidelines for assessing fisheries sector claims'. One of the documents relating to the presentation and assessment of tourism claims would provide advice to claimants while the other, which would provide guidance to experts charged with assessing tourism claims, would focus in particular on how to deal with claims where full documentary evidence of losses incurred was unavailable.

**7 Action to be taken**

1992 Fund Assembly

The 1992 Fund Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to consider the Director's proposals as set out in sections 2 to 6 above and in the Annex and give instructions as appropriate.

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## ANNEX

### Comparison of existing text of Claims Manual with proposed amendments (*in italics*)

<p><b>Pure economic loss</b></p> <p>1.4.9 Under certain circumstances compensation is also payable for loss of earnings caused by oil pollution suffered by persons whose property has not been polluted (pure economic loss). For example, a fisherman whose nets have not been contaminated may nevertheless be prevented from fishing because the area of the sea where he normally fishes is polluted and he cannot fish elsewhere. Similarly, an owner of a hotel or a restaurant located close to a contaminated public beach may suffer losses because the number of guests falls during the period of the pollution.</p> <p>1.4.10 Compensation may also be payable for the costs of reasonable measures, such as marketing campaigns, which are intended to prevent or reduce economic losses by countering the negative effects which can result from a major pollution incident.</p>	<p><b>Pure economic loss</b></p> <p>1.4.9 Under certain circumstances compensation is also payable for loss of earnings caused by oil pollution suffered by persons whose property has not been polluted (pure economic loss). For example, a fisherman whose nets have not been contaminated may nevertheless be prevented from fishing because the area of the sea where he normally fishes is polluted and he cannot fish elsewhere. Similarly, an owner of a hotel or a restaurant located close to a contaminated public beach may suffer losses because the number of guests falls during the period of the pollution.</p> <p>1.4.10 Compensation may also be payable for the costs of reasonable measures, such as marketing campaigns, which are intended to prevent or reduce economic losses by countering the negative effects which can result from a major pollution incident.</p> <p><b><i>Use of economic models</i></b></p> <p><i>1.4.11 Where insufficient documentary evidence is provided to support a claim and it is unjustified to request, or expect, additional data, compensation may be paid on the basis of an estimate of losses calculated from an economic model. Any such economic model must be derived from actual data closely associated with the loss claimed and taken from the relevant sector or industry. The model would be carefully examined by the Fund and its experts to ensure that the data used, the assumptions made and the method of calculation were valid.</i></p>
<p><b>Environmental damage</b></p> <p>1.4.11 Compensation is payable for the costs of reasonable reinstatement measures aimed at accelerating natural recovery of environmental damage. Contributions may be made to the costs of post-spill studies provided that they relate to damage which falls within the definition of pollution damage under the Conventions, including studies to establish the nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible.</p>	<p><b>Environmental damage</b></p> <p>1.4.12 Compensation is payable for the costs of reasonable reinstatement measures aimed at accelerating natural recovery of environmental damage. Contributions may be made to the costs of post-spill studies provided that they relate to damage which falls within the definition of pollution damage under the Conventions, including studies to establish the nature and extent of environmental damage caused by an oil spill and to determine whether or not reinstatement measures are necessary and feasible.</p> <p><i>1.4.13 Compensation is not paid in respect of claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. Nor is compensation paid for damages of a punitive nature on the basis of the degree of fault of the wrong-doer.</i></p>

<p><b>Use of advisers</b></p> <p>1.4.12 Claimants may wish to use advisers to assist them in presenting claims for compensation. Compensation is paid for reasonable costs of work carried out by advisers in connection with the presentation of claims falling within the scope of the Conventions. The question of whether such costs will be compensated is assessed in connection with the examination of the particular claim for compensation. Account is taken of the necessity for the claimant to use an adviser, the usefulness and quality of the work carried out by the adviser, the time reasonably needed and the normal rate in the country concerned for work of that kind.</p> <p><b>1.5 WHEN ARE CLAIMS ADMISSIBLE FOR COMPENSATION?</b></p> <p>1.5.1 The 1992 Fund's governing bodies, that is, the Assembly and the Executive Committee, have emphasised that a uniform interpretation of the Conventions in all Member States is essential for the functioning of the compensation regime. They have established the Fund's claims policy and have adopted criteria on the admissibility of claims, that is, when claims qualify for compensation. The following general criteria apply to all claims:</p> <ul style="list-style-type: none"> <li>• Any expense, loss or damage must actually have been incurred.</li> <li>• Any expense must relate to measures that are considered reasonable and justifiable.</li> <li>• Any expense, loss or damage is compensated only if and to the extent that it can be considered as caused by contamination resulting from the spill.</li> <li>• There must be a reasonably close link of causation between the expense, loss or damage covered by the claim and the contamination caused by the spill.</li> <li>• A claimant is entitled to compensation only if he or she has suffered a quantifiable economic loss.</li> <li>• A claimant has to prove the amount of his or her expense, loss or damage by producing appropriate documents or other evidence.</li> </ul>	<p><b>Use of advisers</b></p> <p>1.4.14 Claimants may wish to use advisers to assist them in presenting claims for compensation. Compensation is paid for reasonable costs of work carried out by advisers in connection with the presentation of claims falling within the scope of the Conventions. The question of whether such costs will be compensated is assessed in connection with the examination of the particular claim for compensation. Account is taken of the necessity for the claimant to use an adviser, the usefulness and quality of the work carried out by the adviser, the time reasonably needed and the normal rate in the country concerned for work of that kind.</p> <p><b>1.5 WHEN ARE CLAIMS ADMISSIBLE FOR COMPENSATION?</b></p> <p>1.5.1 The 1992 Fund's governing bodies, that is, the Assembly and the Executive Committee, have emphasised that a uniform interpretation of the Conventions in all Member States is essential for the functioning of the compensation regime. They have established the Fund's claims policy and have adopted criteria on the admissibility of claims, that is, when claims qualify for compensation. The following general criteria apply to all claims:</p> <ul style="list-style-type: none"> <li>• Any expense, loss or damage must actually have been incurred.</li> <li>• Any expense must relate to measures that are considered reasonable and justifiable.</li> <li>• Any expense, loss or damage is compensated only if and to the extent that it can be considered as caused by contamination resulting from the spill.</li> <li>• There must be a reasonably close link of causation between the expense, loss or damage covered by the claim and the contamination caused by the spill.</li> <li>• A claimant is entitled to compensation only if he or she has suffered a quantifiable economic loss.</li> <li>• A claimant has to prove the amount of his or her expense, loss or damage by producing appropriate documents or other evidence.</li> <li>• <i>Claimants are required to make a declaration that their claims are a true reflection of their losses as follows:</i></li> </ul>
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<p>1.5.2 A claim therefore qualifies for compensation only to the extent that the amount of the loss or damage is actually demonstrated. All elements of proof are considered, but sufficient evidence must be provided to give the shipowner, his insurer and the 1992 Fund the possibility of making their own judgement as to the amount of the expense, loss or damage actually suffered. The extent to which claimants are able to reduce their losses is taken into account.</p> <p><b>SECTIONS 1.5 – 2.6 continued.....</b></p> <p><b>2.7 HOW LONG DOES IT TAKE TO ASSESS AND PAY CLAIMS?</b></p> <p>2.7.1 The 1992 Fund and the P&amp;I Clubs try to reach agreement with claimants and pay compensation as promptly as possible. They may make provisional payments before a final agreement can be reached if a claimant would otherwise suffer undue financial hardship. However, provisional payments are subject to special conditions and limits, particularly if the total amount of claims exceeds the total amount of compensation available under the two 1992 Conventions.</p> <p>2.7.2 The speed with which claims are agreed and paid depends largely on how long it takes for claimants to provide the required information. Claimants are therefore advised to follow this Manual as closely as possible and to co-operate fully with the Fund's experts and provide all information relevant to the assessment of the claims.</p> <p>2.7.3 The working languages of the 1992 Fund are English, French and Spanish. Claims will be handled more quickly if claims, or at least claim summaries, are submitted in one of these languages.</p>	<p><i>'My claim is, to the best of my knowledge and belief, a true and accurate reflection of my actual loss. It includes information on all financial or material gains I have received, including from clean-up activities and aid organisation or government funds, during the period claimed. I am aware that the IOPC Funds take the presentation of fraudulent documentation seriously and if they become aware that such documentation has been submitted in support of a claim, the IOPC Funds reserve the right to inform the appropriate national authority should that be the case.'</i></p> <p>1.5.2 A claim therefore qualifies for compensation only to the extent that the amount of the loss or damage is actually demonstrated. All elements of proof are considered, but sufficient evidence must be provided to give the shipowner, his insurer and the 1992 Fund the possibility of making their own judgement as to the amount of the expense, loss or damage actually suffered. The extent to which claimants are able to reduce their losses is taken into account.</p> <p><b>SECTIONS 1.5 – 2.6 continued.....</b></p> <p><b>2.7 HOW LONG DOES IT TAKE TO ASSESS AND PAY CLAIMS?</b></p> <p>2.7.1 The 1992 Fund and the P&amp;I Clubs try to reach agreement with claimants and pay compensation as promptly as possible. They may make provisional payments before a final agreement can be reached if a claimant would otherwise suffer undue financial hardship. However, provisional payments are subject to special conditions and limits, particularly if the total amount of claims exceeds the total amount of compensation available under the two 1992 Conventions.</p> <p>2.7.2 The speed with which claims are agreed and paid depends largely on how long it takes for claimants to provide the required information. Claimants are therefore advised to follow this Manual as closely as possible and to co-operate fully with the Fund's experts and provide all information relevant to the assessment of the claims.</p> <p>2.7.3 The working languages of the 1992 Fund are English, French and Spanish. Claims will be handled more quickly if claims, or at least claim summaries, are submitted in one of these languages.</p>
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**Target time frame for assessing claims**

2.7.4 Within one month of receipt of a completed claim form and registration of a claim, the Secretariat will aim to provide claimants with an acknowledgement of receipt of the claim together with an explanation of the assessment procedure which will be followed thereafter. Additionally within six months of registration of the claim, the Secretariat will aim to provide the claimant with an initial view in the form of a letter notifying the claimant, inter alia, of one of the following:

- (a) Claim is admissible and is being assessed;
- (b) Claim is admissible in principle but further supporting documents are required to assess the claim;
- (c) Claim is admissible but further time is required to assess the claim;
- (d) Claim is not admissible in principle and it is therefore rejected.

Depending on the size and complexity of the incident, the Secretariat may have to apply different time periods.

**Fast track assessment of claims**

2.7.5 In order to avoid undue delay in settlement of small claims, the 1992 Fund Executive Committee could decide, after considering the cost effectiveness and merit of assessing large numbers of small claims, to approve the use of 'fast track' assessments for that incident and set the quantum of a 'small' claim for that incident. The availability of these 'fast track' assessments will be determined, on a case-by-case basis, by decision of the Executive Committee. 'Fast track' assessments will be made on the basis of a brief investigation by the Fund and its experts of the circumstances of the loss but must include confirmation that such losses did actually occur and that there was a clear link of causation with the incident. Alternatively claimants may prefer to await a settlement based on an in-depth, comprehensive assessment which will inevitably take longer. Claimants who disagree with the settlement offer under 'fast track' assessment will only have the assessment of their claim reconsidered based on the provision of new information proving their loss. This may result in higher or lower assessment than that first offered under the fast track assessment process.

**SECTIONS 2.8 – 3.6.5 continued.....**

3.6.6 Claims are assessed on the basis of the information available when the reinstatement measures were undertaken. Compensation is paid only for reasonable measures of reinstatement actually undertaken or to be undertaken. Claims for economic loss as a result of environmental damage that can be quantified in monetary terms are assessed in a similar way to other economic loss claims. Compensation is not paid in respect of claims for environmental damage based on an abstract quantification calculated in accordance with theoretical models. Nor is compensation paid for damages of a punitive nature on the basis of the degree of fault of the wrong-doer.

**SECTIONS 2.8 – 3.6.5 continued.....**

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