



International Oil Pollution
Compensation Funds

Agenda Item 7	IOPC/OCT19/7/2	
Date	18 October 2019	
Original	English	
1992 Fund Assembly	92A24	●
1992 Fund Executive Committee	92EC73	
Supplementary Fund Assembly	SA16	●

HEADQUARTERS AGREEMENT

Note by the Secretariat

Summary: This document provides an update on the recent developments regarding the 1992 Fund Headquarters Agreement and the Supplementary Fund Headquarters Agreement between the IOPC Funds and the United Kingdom as the Host State.

Action to be taken: 1992 Fund Assembly and Supplementary Fund Assembly

Information to be noted.

1 Introduction

- 1.1 The relationship between an international organisation and its Host State is governed by a Headquarters Agreement. In the case of the 1992 Fund, a Headquarters Agreement was concluded in 1996 between the United Kingdom (UK) Government and the 1992 Fund. This Agreement sets out, *inter alia*, the privileges and immunities of the 1992 Fund, the delegates to the meetings of the IOPC Funds' governing bodies, the experts and the staff members.
- 1.2 In 2004, given the significant increase in the number of Member States and the considerable expansion of the activities of the IOPC Funds, the then Director felt that it was necessary to reconsider a number of substantive issues dealt within the Agreement as there was also a requirement for a separate Headquarters Agreement for the Supplementary Fund. Discussions took place between the UK Government and the then Director in 2006 and the approach proposed by the Director at that time, which was to follow the structure of the Headquarters Agreement between the International Maritime Organization and the UK Government, was accepted.
- 1.3 The Headquarters Agreement for the 1992 Fund and the new Headquarters Agreement for the Supplementary Fund were submitted to the October 2006 sessions of the 1992 Fund Assembly and the Supplementary Fund Assembly, and they were approved by the two governing bodies (see documents 92FUND/A.11/18, 92FUND/A.11/35, paragraph 19.8, and SUPPFUND/A.2/23, paragraph 13.8). After their approval by the governing bodies in 2006, they were subsequently submitted to the UK Government for approval, and thereafter laying in the UK Parliament, and implementation into domestic legislation.

2 Recent discussions with the United Kingdom Government

- 2.1 Since June 2018, the Director and members of the Secretariat have had several meetings with the Foreign and Commonwealth Office (FCO) and Department for Transport (DfT) of the UK Government. At the request of the Director, Professor Dan Sarooshi Q.C., with expertise in public international law, also attended the meetings.
- 2.2 At these meetings, the following draft texts were proposed by the UK Government and discussed:

- (i) a draft 2019 Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Oil Pollution Compensation Fund 1992 (1992 Fund Headquarters Agreement);
- (ii) a draft 2019 Headquarters Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Oil Pollution Compensation Supplementary Fund 2003, (Supplementary Fund Headquarters Agreement); and
- (iii) a draft International Oil Pollution Compensation Funds (Immunities and Privileges) Order 2019 (UK domestic legislation), which implements both (i) and (ii) above.

2.3 In the discussions, it was recalled that in 2014 a freezing order had been granted against the 1971 Fund which prevented the Fund from disposing of its assets, which was in breach of the 1971 Fund Headquarters Agreement. The freezing order was based on the International Oil Pollution Compensation Fund (Immunities and Privileges) Order 1979 which contained different wording from that of the 1971 Fund Headquarters Agreement. In view of the fact that the same discrepancy of wording is found between the 1992 Fund Headquarters Agreement and the International Oil Pollution Compensation Fund 1992 (Immunities and Privileges) Order 1996, and in order to avoid the recurrence of a freezing order in the future, the UK Government and the Director agreed that the immunity provisions of both Headquarters Agreements and the UK domestic legislation should have the same wording and would explicitly protect both Funds from a freezing order.

2.4 It was also recalled that the Supplementary Fund, which entered into force in 2005, still does not have its Headquarters Agreement and corresponding domestic legislation and the need to have those as soon as practicable is recognised by both parties. Without such Agreement and legislation, the Supplementary Fund has no legal personality which would result in claimants not being able to take legal action against the Supplementary Fund, and the Supplementary Fund having no protection of its assets which could be risky given the large amounts that may be held by the Fund.

2.5 The drafts are at an advanced stage and it is expected that the texts of the Headquarters Agreements will be agreed by the UK government and the Secretariat soon and will be submitted to the governing bodies for approval at their next sessions.

3 Director's considerations

3.1 The Director very much appreciates the efforts made by the UK Government to finalise these important Agreements.

3.2 The Director is of the view that it is important to conclude the Headquarters Agreements as early as possible, since the number of Supplementary Fund Member States is steadily increasing, and the risk of incidents involving the Supplementary Fund is therefore increasing.

3.3 The Director notes that an agreement has not been possible in time for approval by the governing bodies at these sessions, however, he is hopeful that an agreement will be reached very soon and that the new Headquarters Agreements for the two organisations will be ready for approval at the next sessions of the governing bodies.

4 Action to be taken

1992 Fund Assembly and the Supplementary Fund Assembly

The 1992 Fund Assembly and the Supplementary Fund Assembly are invited to take note of the information contained in this document.
