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COMPENSATION
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Agenda item 13

FUND/A.11/10
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REIMBURSEMENT TO CONTRIBUTORS OF THE BALANCE ON THE
TANIO MAJOR CLAIMS FUND

Note by the Director

Introduction

1 As reported in document FUND/EXC.20/2, an out-of-court settlement was signed on 15 December 1987 in respect of the legal action taken by the IOPC Fund and the French Government in the Court of Brest against the owner of the TANIO and other third parties. The details of this out-of-court settlement, as well as other developments in the TANIO case, have been reported to the 20th session of the Executive Committee in that document.

2 It is expected that at the time of the 11th session of the Assembly the IOPC Fund will have made final payments in respect of this incident. After having made these payments, however, there will be a substantial balance on the major claims fund constituted for this incident. Under Internal Regulation 4.4.1, the Assembly shall, therefore, decide whether the amount remaining on that major claims fund shall be reimbursed pro rata to the persons who made contributions with respect to this incident in accordance with Article 12.2(b) of the Fund Convention, or whether this amount shall be credited pro rata to the accounts of these persons.

Amount Available for Distribution

3 At its 6th session in September 1983, the Assembly decided to levy annual contributions in an amount of £20 million for the payment of compensation in respect of the claims submitted in connection with the TANIO incident (documents FUND/A.6/16, paragraph 13.2 and FUND/A.6/WP.1, paragraph 4). The levy was based on the quantities of contributing oil received in the calendar year preceding that in which the incident occurred, ie received in 1979 (cf Article 12.2(b) of the Fund Convention). A total amount of £20 022 433 was actually paid by the contributors. In addition, an amount of £59 611 was paid by contributors as interest on overdue contributions.

4 As reported to the Executive Committee in document FUND/EXC.20/2, all claims against the IOPC Fund arising from the TANIO incident have been settled. The Director expects that final payments to victims will be made in August

1988; the IOPC Fund would then have paid compensation up to the limit of the IOPC Fund's liability under Article 4 of the Fund Convention. The time periods set out in Article 6 of the Fund Convention for bringing actions against the IOPC Fund in respect of claims arising out of this incident have elapsed. There are still some payments of fees outstanding, but at the time of the Assembly there will be no more expenses to be met by the IOPC Fund arising out of this incident.

5 The total amount paid by the IOPC Fund in compensation to victims will be FFr222 140 643 (approximately £18.3 million). In addition, the IOPC Fund will have incurred expenses in respect of fees, travel costs etc, totalling approximately £500 000 (FUND/EXC.20/2, paragraph 7.2). The total costs incurred by the IOPC Fund in respect of this incident will, therefore, be approximately £18.8 million. Detailed figures will be given in document FUND/EXC.20/2.

6 As at 31 December 1987, the balance on the TANIO major claims fund amounted to £12 736 321, as reported in the financial statements (document FUND/A.11/5, Annex IV, Statement III). The assets of this major claims fund have been invested. It is estimated that the balance on this major claims fund will amount to £13.7 million by 31 December 1988 and to £13.8 million by 1 February 1989 (cf document FUND/EXC.20/2, paragraphs 8.3 and 8.5).

Proposal by the Director

7 In the view of the Director there are, in principle, three options available:

- (a) to repay to each contributor the amount to which he is entitled from the balance on the TANIO major claims fund;
- (b) to credit each contributors' account with the IOPC Fund with the amount to which he is entitled and set off the credited amount against contributions to be levied in the subsequent years; and
- (c) to give each individual contributor the option to decide whether he wishes the amount to which he is entitled to be repaid to him, or whether he prefers to have the amount credited to his account with the IOPC Fund for set-off against annual contributions that will be levied in subsequent years.

8 In view of the considerable sum of money involved, the Director is of the opinion that the proposal set out under (c) in paragraph 7 above would be in the best interests of contributors, ie that each contributor should be given the option to decide whether he wishes to be repaid immediately or whether he prefers to have the amount to which he is entitled credited to his account with the IOPC Fund, to be set off against future contributions to be levied by the IOPC Fund Assembly.

9 The option set out in paragraph 7 (c) can be exercised in several ways. The Director considers that the best method would be for the Secretariat to raise this issue in the covering letter which will be sent to contributors with the invoices or credit notes to be issued in November 1988, stating that the relevant amount will be credited to each contributor's account except in respect of those contributors who indicate in writing before 31 December 1988 that they would prefer to be repaid. Contributors who indicate such a preference should be repaid. In addition, contributors should be entitled to request repayment at any later date, if they so desire. If such a request is received, repayment should be made as soon as is practicable.

10 Under Internal Regulation 3.11, any credit balance on a contributor's account with the IOPC Fund shall bear interest; the interest is to be calculated at the lowest London clearing bank base rate, taking into account any changes in the London clearing bank base rates. Contributors who chose to have the amount to which they are entitled credited to their account would, therefore, earn interest on the balance on their account. The Director would invest the amounts so credited together with the assets of the IOPC Fund.

11 It must be recognised that, in view of the long period which has elapsed since the contributions were levied, it may be difficult, or even impossible, to get in contact with some contributors. A contributor may have been wound up, for example, or have otherwise ceased to exist. If this is so, the matter will be reported to the 12th session of the Assembly for decision.

12 Under agenda item 15, the Assembly will be invited to decide on the levy of 1988 annual contributions. The Director has proposed that the date of payment should be that provided in Internal Regulation 3.8, ie 1 February 1989 (document FUND/A.11/12, paragraph 5). In view of this, the Director proposes that the distribution of the balance on the TANIO major claims fund should also be made as at 1 February 1989.

13 It is not possible to indicate in advance the exact amount that will be on the TANIO major claims fund as at 1 February 1989. As stated above, it is estimated that it will be approximately £13.8 million. The Director proposes that an amount of £13.7 million should be distributed to the contributors, in the manner set out in paragraphs 8 and 9 above, and that any amount in excess of £13.7 million should be transferred to the general fund (cf Internal Regulation 4.4.2).

Action to be Taken by the Assembly

14 The Assembly is invited to consider the Director's proposals in respect of the reimbursement to contributors of the balance on the TANIO major claims fund.
