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FUND

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INFORMATION ON AND APPROVAL OF SETTLEMENT OF CLAIMS
(PATMOS INCIDENT)

Note by the Director

1 Since the issuance of document FUND/EXC.16/4 (hereinafter referred to as the main PATMOS document) certain developments have taken place in respect of the PATMOS incident.

Appeal Proceedings

2 In paragraph 4.2 of the main PATMOS document, it is mentioned that appeals against the judgement of the Court of Messina had been lodged by Esso, the Pilot Corporation, Dr Ciotto and the Italian Government. In addition, an appeal has now been lodged by SMEB with regard to the part of its claim which was rejected by the Court.

3 The IOPC Fund and the UK Club have lodged their appeals against the judgement concerning the claims submitted by SMEB and the General National Maritime Transport Co. They have also submitted defence pleadings in respect of the appeals lodged by other parties.

Further Payments

4 As mentioned in paragraph 4.3 of the main PATMOS document, the IOPC Fund and the UK Club have decided not to appeal against the judgement with regard to the claim submitted by Francesco Mellina (claim n°5). In October 1986, the UK Club paid this claim in the amount admitted by the Court, Lit10 million (£4 300), after Mellina had undertaken not to appeal against the judgement.

Provisional Enforcement

5 In paragraph 3.5 of the main PATMOS document, it is reported that the Court of Messina had decided that the judgement of 30 July 1986 was immediately enforceable.

6 SMEB lodged a petition to the President of the Court requesting the immediate apportionment of the limitation fund. On 29 September 1986, the President issued a court order stating that the stato passivo was enforceable and that the accepted claims could therefore be paid.

7 In the view of the IOPC Fund and the UK Club, this order was not correct since, under Italian law (bankruptcy law and code of navigation), payments may not be authorised until a final judgement has been issued in respect of the oppositions. In addition, the bank guarantee which had been deposited with the Court when the limitation fund was set up (see paragraph 2.3 of the main PATMOS document) was explicitly limited to a final judgement.

8 An enforcement of the above-mentioned order could prejudice not only the UK Club but also the IOPC Fund. If the Court of Appeal were to reject SMEB's claim, or a major part of it, and that claim as accepted by the Court of first instance had already been paid, a part of the limitation amount would have been used for the payment of a non-admissible claim. Assuming that some of the other claims which had been rejected by the Court of first instance were accepted by the Court of Appeal, the IOPC Fund could risk having to pay more than if the enforcement of the order had not taken place.

9 Since it was likely that SMEB would seek payment from the bank guarantee, the IOPC Fund and the UK Club lodged an appeal to the Court of Messina against the order of its President. The Court has decided to hold an oral hearing on the matter on 18 November 1986. In addition, the IOPC Fund and the UK Club appealed to the Supreme Court of Cassation on the grounds that the President had exceeded his authority in issuing this order. The reason for the lodging of appeals to both these Courts is the uncertainty that exists under Italian law as to which of them is competent in respect of an appeal against such an order.

9 An order of provisional enforceability of a judgement is not suspended when appeals are lodged. For this reason, on 2 October 1986, the IOPC Fund and the UK Club applied to a judge at the City Court in Genoa (Praetor) for an injunction suspending any payment by the bank, the Genoa Court being competent as the bank guarantee had been issued in Genoa. A hearing on the petition was held on 6 October. In a decision of 9 October, the judge upheld the petition by the IOPC Fund and the UK Club, and ordered the bank to suspend all payments based on the bank guarantee until final judgement is rendered by the Court of Genoa. The petition will now be heard on its merits by the Court of Genoa.

10 The IOPC Fund and the UK Club have also appealed to the Court of Appeal in Messina against the order contained in the judgement of 30 July 1986 that this judgement is provisionally enforceable.
