



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
22nd session
Agenda item 4

FUND/EXC.22/4
10 August 1989

Original: ENGLISH

REVISION OF CLAIMS MANUAL

Note by the Director

1 At its 4th session, the Assembly considered a draft Claims Manual prepared by the Director, setting out the claims procedure followed by the IOPC Fund and the formalities required for the submission of claims. The Assembly decided to request the Executive Committee to consider the draft in the light of any comments received and finally adopt it for publication and circulation (document FUND/A.4/16, paragraph 13).

2 The Executive Committee considered the draft Claims Manual at its 6th session, in February 1982. The Committee adopted certain amendments to the draft and requested the Director to publish the Manual in printed form and to make it available to the Members of the IOPC Fund, as well as to all interested persons and organisations, especially those considering making a claim for pollution damage against the IOPC Fund (document FUND/EXC.6/4, paragraph 3).

3 Since the publication of the Claims Manual in 1982, the IOPC Fund has gained more experience in the handling of claims. For this reason, the Director has considered it appropriate and timely to revise the Manual. A draft revised version is at the Annex to this document.

4 In revising the Manual, the Director has also taken into account the work that has been carried out within the Marine Environment Protection Committee of the International Maritime Organization in the elaboration of a Manual on Oil Pollution which, in Section II, deals with cost recovery. The IOPC Fund's Secretariat assisted the Committee in the drafting of that section.

5 The draft revised version of the Claims Manual is submitted to the Executive Committee for examination and approval. The Committee may wish to consider whether the Director should be authorised to finalise the text of the revised Claims Manual, in the light of any observations by the Executive Committee and any comments received otherwise.

Action to be Taken by the Executive Committee

6 The Executive Committee is invited to consider the draft revised Claims Manual reproduced in the Annex to this document, and to take such decision as it considers appropriate.

* * *

ANNEX

Draft

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

C l a i m s M a n u a l

1989 Edition

1 Introduction

This Manual is a guide for the filing of claims against the International Oil Pollution Compensation Fund (IOPC Fund). Its purpose is to assist claimants by listing the particulars which a claim should contain and by explaining the nature of the supporting documentation which is required. It does not address legal questions but is intended to give information of a practical nature in respect of presentation of claims. In case of doubt, it is recommended that claimants seek appropriate advice. The IOPC Fund's Secretariat is also prepared to advise on the preparation and submissions of claims.

The intergovernmental regime for compensation of damage caused by oil spills from laden tankers is based on two international conventions, the 1969 International Convention on Civil Liability for Oil Pollution Damage (Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention). The IOPC Fund, which was established in 1978 under the Fund Convention, is a worldwide intergovernmental organisation set up to provide compensation for oil pollution damage in States which are Parties to that Convention.

Under these Conventions, claims for compensation for oil pollution damage can be brought against the owner of the tanker which caused the damage (or his insurer) and, on the conditions set out below, also against the IOPC Fund.

2 The International Conventions

The Civil Liability Convention governs the liability of the shipowner for oil pollution damage caused by the escape or discharge of oil from his tanker. The Fund Convention is supplementary to the Civil Liability Convention and provides additional compensation to victims when the compensation under the Civil Liability Convention is inadequate. Payments under the Fund Convention are made by the IOPC Fund which is financed by persons who receive crude and heavy fuel oil after sea transport in States Parties to the Fund Convention.

The shipowner has strict liability for pollution damage caused by the escape or discharge of oil from his ship, ie he is liable also in the absence of fault on his part. He is exempt from liability under the Civil Liability Convention in only a few particular instances, namely when:

- (a) the damage resulted from an act of war or a grave natural disaster; or
- (b) the damage was wholly caused by sabotage by a third party; or
- (c) the damage was wholly caused by the failure of authorities to maintain navigational aids.

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship. The limit is 170 US dollars per tonne of the ship's tonnage, or 17.9 million US dollars, whichever is the less <1>. However, the owner will be deprived of the right to limitation of liability if the incident occurred as a result of his personal fault.

The IOPC Fund will pay compensation for oil pollution damage caused in States Parties to the Fund Convention to those who cannot obtain full and adequate compensation under the Civil Liability

<1> The limit is expressed in the Convention in gold francs. Conversion into US dollars has been made on the basis of the rate of exchange applicable on 1 August 1989.

Convention for one of the following reasons:

- (a) the shipowner is exempted from liability under the Civil Liability Convention;
- (b) the shipowner is financially incapable of meeting his obligations under the Civil Liability Convention in full and the insurance is insufficient to satisfy the claims for compensation; or
- (c) the damage exceeds the limit of the shipowner's liability under the Civil Liability Convention.

Nearly all cases where the IOPC Fund has paid compensation have fallen into category (c).

The IOPC Fund is relieved of its obligation to pay compensation if the pollution damage resulted from an act of war.

The Conventions cover cases in which the oil has escaped or been discharged from a sea-going vessel actually carrying oil in bulk as cargo at the time of the spill, ie normally a laden tanker. Spills from a tanker during a ballast voyage and spills from ships other than tankers are therefore not covered by the Conventions.

The Conventions apply to damage caused by spills of persistent oil (eg crude oil, fuel oil, heavy diesel oil and lubricating oil). Damage caused by spills of non-persistent oils, such as gasoline, light diesel oil and kerosene, is not compensated under the Conventions.

The term "pollution damage" is defined as "loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, ...". The definition includes the costs of reasonable "preventive measures", ie measures taken after a spill has occurred to prevent or minimise pollution damage, and further loss or damage caused by preventive measures. The Conventions do not cover "pure threat removal measures", ie measures which are so successful that there is no actual spill of oil from the tanker concerned.

The IOPC Fund pays compensation for oil pollution damage caused in the territory, including the territorial sea, of a State Party to the Fund Convention. It also compensates for the cost of measures taken outside the territorial sea to prevent pollution damage in the territory or territorial sea of such a State.

The compensation payable by the IOPC Fund in respect of any one incident is limited to 900 million (gold) francs, which as at 1 August 1989 corresponded to about US\$77 million, including the sum actually paid by the shipowner and his insurer under the Civil Liability Convention.

3 Who is Entitled to Compensation?

Any person who has suffered pollution damage in a State which is a Party to the Fund Convention may make a claim against the IOPC Fund for compensation. Claimants may be individuals or partnerships or public or private bodies, including a State itself, municipalities and other local authorities.

The claimant should decide whether to represent his own interests or to request an appropriate organisation, authority or a lawyer to file the claim on his behalf. It may sometimes be helpful for several claimants who have suffered similar damage to present co-ordinated claims. In some countries, submission of claims is co-ordinated by a government agency.

4 To Whom Should a Claim be Addressed?

Claims for compensation for oil pollution damage under the Civil Liability Convention can be brought against the shipowner liable for the damage or directly against his insurer. The insurer will normally be one of the Protection and Indemnity Associations (P & I Clubs) which insure the third party liabilities of shipowners.

In order to obtain compensation under the Fund Convention, claimants should submit their claims directly to the IOPC Fund at the following address:

International Oil Pollution Compensation Fund
4 Albert Embankment
London SE1 7SR
United Kingdom

Telephone: 01-582 2606
Telex: 23588 IMOLDN G
Telefax: 01-587 3210

The IOPC Fund will co-operate closely with the shipowner's P & I Club in the settlement of claims. The investigation of the incident and the assessment of the damage will be done jointly by the P & I Club and the IOPC Fund. It will normally not be necessary, therefore, for claims and supporting documentation to be submitted to the P & I Club and the IOPC Fund separately. However, the IOPC Fund should always be notified directly of any claim against it under the Fund Convention.

5 Within what Period has a Claim to be Made?

It is in the interest of claimants to submit their claims as soon as possible after the damage has occurred. If a formal claim cannot be made shortly after the incident, the IOPC Fund would appreciate being notified as soon as possible of the claimant's intention to file a claim at a later stage.

Rights of compensation shall be extinguished unless an action is brought within three years of the date on which the damage occurred. It should be noted that the damage may occur some time after the incident took place. However, in no case may an action be brought after six years from the date of the incident. The expression "action" means court action.

The IOPC Fund endeavours to settle claims out of court. However, claimants would be advised to bring their claims against the IOPC Fund well in advance of the expiry of the periods mentioned above, in order to safeguard the possibility of suing the IOPC Fund for compensation, if the claimant and the IOPC Fund cannot agree on an amicable settlement of the claim.

6 How Should a Claim be Presented?

A claim against the IOPC Fund should be made in writing (including telefax or telex). In all cases, a claim should be presented clearly and in sufficient detail so that it is possible for the IOPC Fund to assess the amount of the damage on the basis of the facts and the documentation presented. Each item of a claim must be supported by an invoice or other relevant documentation, such as work sheets or explanatory notes. In the case of clean-up measures, it is essential that the expenses are linked with the actions taken at specified work sites. If the documentation is very voluminous, claimants should discuss the presentation with the Director of the IOPC Fund.

It is essential that comprehensive records are kept detailing all operations and expenditures resulting from the incident. Daily work sheets should be compiled by supervisory personnel to record the

operations in progress, the equipment in use, where and how it is being used, the number of personnel employed, how and where they are deployed and the materials consumed. Recording such information is facilitated by using standard work sheets which should be designed to suit the particular circumstances of the spill and the response organisation in the country concerned.

Major expenditures are often incurred for the use of aircraft, vessels, specialised equipment, heavy machines, trucks and personnel. Some of these resources may be government owned whereas others may be the subject of contractual arrangements. Detailed records should be kept of actual time employed on clean-up and for what purpose. The appointment of a financial controller to the response team may be valuable, to ensure that adequate records are kept and that expenditure is controlled.

The speed with which claims are settled depends largely on how long it takes for claimants to provide the IOPC Fund with the information required. It is in the interest of claimants, therefore, to follow this Manual as closely as possible. It is suggested that claimants should get in contact with the Director of the IOPC Fund as soon as possible after the incident and discuss with him the presentation of claims.

The working languages of the IOPC Fund are English and French, and it will facilitate speedy settlement if claims are submitted in one of these languages.

7 What Particulars Should a Claim Contain?

7.1 General

Each claim should contain the following particulars:

- (a) the name and address of the claimant or any representative;
- (b) the identity of the ship involved in the incident;
- (c) the date, place and specific details of the incident, including the type of oil involved;
- (d) the clean-up measures taken and/or the kind of pollution damage sustained, as well as the places affected;
- (e) the amount of the claim.

Pollution incidents may give rise to claims of different types. Examples of types of claims which may be admissible under the Civil Liability Convention and the Fund Convention are given below, along with guidance on how each type may be broken down under various headings.

7.2 Costs of Preventive Measures and Clean-up Operations

- (a) Delineation of the area affected describing the extent of pollution and identifying those areas which were most heavily contaminated. This should be presented in the form of a map or nautical chart, supported by photographs or video tapes.
- (b) Analytical and/or other evidence linking the oil pollution with the tanker involved in the incident (eg chemical analysis of oil samples, relevant wind, tide and current data, observation and plotting of floating oil movements).
- (c) Summary of events, including a description of the work carried out at sea, in coastal waters and on shore, together with an explanation of why the various working methods were selected.
- (d) Dates on which work was carried out.
- (e) Labour costs (number and categories of response personnel, regular or overtime rates of pay, hours or days worked, other costs).
- (f) Travel, accommodation and living costs for response personnel.
- (g) Equipment costs (types of equipment used, rate of hire or cost of purchase, quantity used, over what period).
- (h) Consumable materials (description, quantity, unit cost and where used).

- (i) In respect of purchased equipment and materials, any remaining value at the end of the operations.
- (j) In respect of equipment not purchased for the incident in question, the age of the items.
- (k) Transport costs (number and types of vehicles, vessels or aircraft used, number of hours or days operated, rate of hire or operating cost).
- (l) Cost of temporary storage (if applicable) and of final disposal of recovered oil and oily material.

7.3 Replacement and Repair Costs

- (a) Extent of pollution damage to property.
- (b) Description of items destroyed, damaged or needing replacement, repair or cleaning (eg boats, fishing gear, roads, clothing), including their location.
- (c) Cost of repair work, cleaning or replacement of items.
- (d) Age of items to be replaced.
- (e) Cost of restoration after clean-up, such as repair of roads, piers and embankments damaged by the clean-up operations.

7.4 Economic Loss

- (a) Nature of loss, including proof that the alleged loss resulted directly from the incident.
- (b) Comparative figures for profits earned in previous periods and during the period when economic loss was suffered.
- (c) Comparison with similar areas outside the area affected by the oil spill.
- (d) Method of assessment of loss.

Economic losses can include (but are not limited to): loss of income resulting from restriction of fishing activity or from closure of coastal industrial or processing installations, as well as loss of income by resort operators (hoteliers and restaurateurs). However, any saved overheads or other normal expenses not incurred as a result of the incident must be subtracted in the claims calculation.

If a claimant has received any extra income as a result of the incident, this should be indicated. For example, information should be given of any proceeds from the sale of recovered oil. Similarly, allowance should be made in the claims for income earned as a result of the incident, for instance, by fishermen through employment in the clean-up operations.

It should be noted that the IOPC Fund pays compensation only for quantifiable economic loss actually sustained as a result of a spill. Claims for non-economic environmental damage, such as those based on calculations made on the basis of theoretical models, will not be accepted.

8 Claims Settlement Procedure

The IOPC Fund's procedure for settling claims is set out in the IOPC Fund's Internal Regulations.

Claims submitted to the IOPC Fund will be dealt with promptly. In respect of incidents where it is unlikely that the aggregate amount to be paid by the IOPC Fund will exceed 25 million (gold) francs (approximately US \$2.1 million), the claims can be settled by the Director without prior approval of the IOPC Fund's Executive Committee. These claims will normally be paid with a minimum of delay. If the aggregate amount to be paid by the IOPC Fund exceeds that limit, the claims will have to be submitted to the Executive Committee for approval.

On certain conditions and within certain limits, the Director may make provisional payments before the final settlement of a claim, if this is necessary in order to mitigate undue financial hardship to the victim.