



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
39th session
Agenda item 3

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INCIDENTS INVOLVING THE IOPC FUND

KEUMDONG N°5

Note by the Director

Auction Proceedings

1 The owner of KEUMDONG N°5 has arrested the BI JIA SHAN (the other vessel involved in the collision) to secure claims relating to damage caused by the collision, and proceedings have commenced for the sale of the BI JIA SHAN at auction. However, several auctions have failed since there was no successful bidder. The minimum auction price fixed by the Court for the next auction is approximately US\$2.2 million. If nobody bids an amount exceeding the minimum auction price, another auction will take place about four weeks later; in such an event, the minimum auction price for the subsequent auction will be reduced by 20%. It appears that the value of the ship is approximately US\$700 000.

2 The IOPC Fund may join the auction proceedings for the recourse claims relating to the clean-up costs which have been paid (US\$6.7 million). If the IOPC Fund were to join the auction proceedings, the auction proceeds would be distributed on a pro rata basis between the owner of the KEUMDONG N°5, the IOPC Fund and the other creditors who have also joined these proceedings. Since the IOPC Fund has not yet paid any fishery claims, the Fund may not join the auction proceedings in respect of these claims. The costs to be incurred by the IOPC Fund in joining are estimated at US\$20 000, representing legal fees. The cost of maintaining the ship is US\$15 000 - US\$20 000 per month, and this will have to be paid by the applicant, ie the owner of the KEUMDONG N°5, who will then be reimbursed from the proceeds of the sale as a priority over other claims. A party who joins in the auction proceedings is not obliged to pay the maintenance costs except that if the owner of the KEUMDONG N°5 were to withdraw his application for auction proceedings, however, there is a risk that a party joining the proceedings would be ordered by the Court to pay these costs.

- 3 The Standard Club has informed the Director that it will not join the auction proceedings.
- 4 Assuming that the vessel would be sold at an auction for US\$700 000, and assuming that the IOPC Fund would join the auction proceedings in respect of the clean-up claims of US\$6.7 million, it is estimated that the IOPC Fund would recover some US\$420 000.
- 5 The Director takes the view that the IOPC Fund should join in the auction proceedings in order to recover part of the amount paid to claimants.
- 6 The IOPC Fund may seek to arrest the BI JIA SHAN based on a pre-judgement attachment in order to obtain a security for its future recourse claims relating to the compensation to be paid to the fishery interests. If the IOPC Fund were to arrest the vessel, the IOPC Fund may later receive also the portion of the auction proceeds relating to the fishery claims once these claims have been paid. In order to obtain a pre-judgement attachment order, the IOPC Fund should pay about 1/8 of the amount of the fishery claims in cash to the court as a counter security. At present these claims stand at some £75 million. It has been indicated that the fishery interests will present further claims in the region of £75 million. In order to be able to obtain such an arrest order, the IOPC Fund would therefore have to deposit a significant amount with the Court. For this reason, the Director takes the view that the IOPC Fund should not seek to arrest the BI JIA SHAN based on a pre-judgement attachment.

Action to be Taken by the Executive Committee

- 7 The Executive Committee is invited to:
- (a) take note of the information contained in the present document; and
 - (b) give the Director such instructions as it may deem appropriate in respect of the auction proceedings referred to in this document.
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