

INTERNATIONAL OIL POLLUTION COMPENSATION FUND
FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES
DUS A LA POLLUTION PAR LES HYDROCARBURES

EXECUTIVE COMMITTEE -
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Agenda item 3

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ADOPTION OF CLAIMS MANUAL

Note by the Director

1 The fifth Intersessional Working Group of the Fund, at its meeting in February 1981, endorsed the Director's suggestion that the Fund should prepare and publish a brochure setting out in detail the claims procedure followed by the Fund and the formalities required for the submission of claims (see paragraph 11 of the Chairman's report, document FUND/A.4/10). A draft claims manual was submitted by the Director to the Assembly for consideration at its fourth session (document FUND/A.4/10/2). The Assembly decided to ask the Executive Committee to discuss and adopt the draft claims manual.

2 A revised draft claims manual, taking into account comments and suggestions submitted to the Director by France, the Federal Republic of Germany, Belgium, the USSR, CRISTAL and ITOFF, is attached as the Annex.

3 The Executive Committee is invited to consider this draft and adopt it as the Fund's claims manual.

ANNEX

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

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C L A I M S M A N U A L

Submitted by the Director of the
International Oil Pollution Compensation Fund

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 in making claims against the IOPC Fund by listing the particulars which a claim should contain and by setting out how claims can best be made. It does not seek to set out legal details. In case of doubt it is recommended that legal advice be obtained.

Claims for compensation for oil pollution damage can be brought against the owner of the ship which caused the damage and, on the conditions set out below, also against the IOPC Fund. The basis for such claims are the International Convention on Civil Liability for Oil Pollution Damage, 1969 (Liability Convention or CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund Convention), as implemented by national law. The person primarily liable for the damage is the shipowner; however, by constituting a limitation fund he can limit his liability to a maximum amount determined by the size of the ship. The IOPC Fund will pay compensation for oil pollution damage if the person suffering such damage has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention,

- (a) because no liability for the damage arises under the Liability Convention,
- (b) because the owner liable for the damage under the Liability Convention is financially incapable of meeting his obligations in full,
- (c) because the damage exceeds the owner's liability under the Liability Convention as limited pursuant to that Convention.

Under certain circumstances the Fund is exempted from liability to pay compensation. The IOPC Fund's procedure regarding the settlement of claims is contained in the IOPC Fund's Internal Regulations.

The Liability Convention and the Fund Convention provide for compensation for oil pollution damage up to an amount of at present 675 million (gold) francs per any one incident (as at 1 January 1982 equivalent to US \$ 52.3 million). This amount may be increased by the Fund's Assembly up to 900 million (gold) francs. The oil causing the damage must have been "persistent" and must have escaped or been discharged from a sea-going vessel actually carrying oil in bulk as cargo. 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, ...". It includes the costs of preventive measures and further loss or damage caused by preventive measures. Only damage caused on the territory, including the territorial sea, of a State Party to the Fund Convention can be claimed against the IOPC Fund.

Claimants should be aware of the fact that the length of time within which claims will be settled by the IOPC Fund depends largely on how long it takes for claimants to provide the IOPC Fund with the information required. It is therefore in the interest of claimants to follow this Manual as closely as possible. However, it is suggested that claimants should always 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 which they may have.

2 Who is eligible to claim?

Any person who has suffered pollution damage in the territory, including the territorial sea, of a State Party to the Fund Convention may make a claim against the IOPC Fund. It may be any private or public body be it a private person, a company, the Government of a State or any other public authority.

It is the claimant's option whether to request an appropriate organisation or authority or a lawyer to represent his interests and to file the claim against the IOPC Fund on his behalf. In some cases, it may be helpful for several claimants suffering similar damage to present co-ordinated claims.

3 To whom should a claim be addressed?

Any claimant may make his claim directly to the IOPC Fund at the following address:

[new address and particulars to be given]

4 Within what period has a claim to be made?

It is in the interest of claimants to make 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 to compensation shall be extinguished unless an action is brought within three years of the date on which the damage occurred. However, in no case may an action be brought after six years from the date of the incident which caused the damage. Since these "actions" mean court actions, claimants would be advised to bring their claims against the IOPC Fund well in advance of the expiry of the dates mentioned above, in order to be in a position to bring court actions within that period should they feel it necessary to sue the IOPC Fund for compensation. Such a court action would be necessary if the claimant and the IOPC Fund could not agree on an amicable settlement of the claim.

5 How should a claim be presented?

A claim against the IOPC Fund should be made in writing (including cable or telex) in one of the two working languages of the IOPC Fund, ie in either English or French. A claim must be supported by the appropriate documentation (eg invoices and vouchers). However, this documentation need not be translated into one of the working languages if the contents of a particular document is evident or if a summary of its contents in English or French is attached. If the documentation is very voluminous, claimants should discuss its presentation with the Director.

6 What particulars should a claim contain?

Each claim should contain the following particulars:

- (a) the name and address of the claimant and his representative, if any;
- (b) the identity of the ship involved in the incident;
- (c) the date, the place and specific details of the incident;
- (d) the type of pollution damage and the place where it was experienced;
- (e) the amount of the claim.

Depending on the amount claimed and the sort of pollution damage suffered, a claim should be broken down into different items. Examples of claims which may be admissible under the Fund Convention and under the relevant national law and how they may be broken down are given below.

6.1 Costs of prevention and clean-up of pollution

- 6.1.1 Summary of events including a description of the work carried out in different areas and of the working methods chosen in relation to the circumstances prevailing during the incident.
- 6.1.2 Analytical and/or circumstantial evidence linking the oil pollution with the ship involved in the incident (eg chemical analysis, relevant wind and current data, observations of floating oil movements).
- 6.1.3 Dates on which work was carried out (weekly or daily costs).
- 6.1.4 Labour costs (number and categories of labourers, rates of pay, days/hours worked, total costs).
- 6.1.5 Material costs (types of materials used, rate of hire or cost of purchase, quantity used, total costs).
- 6.1.6 Transport costs (number and types of vehicles used, number of days/hours operated, rate of hire or cost of purchase, total cost).

6.2 Replacement and repair costs

- 6.2.1 Extent of pollution damage to property.
- 6.2.2 Description of the item written off or damaged and needing replacement or repairs (eg fishing net, sail, boat), including description of its location at the time of oil pollution damage.
- 6.2.3 Cost of replacement or of repair work.
- 6.2.4 Age of item to be replaced.
- 6.2.5 Labour costs incurred.

6.3 Economic loss

- 6.3.1 Nature of loss, including demonstration that loss resulted directly from the incident.
- 6.3.2 Comparative figures for profits earned in previous periods and for the period during which damage was suffered.
- 6.3.3 Method of assessment of loss.

6.4 There may be other categories of claims. In all cases, the break-down of the amount claimed has to be done in such a way that the IOPC Fund is in a position to assess the amount of damage suffered on the basis of the facts and the documentation presented.

7 Claims procedure

Claims submitted to the IOPC Fund will be dealt with promptly. Claims arising out of incidents in respect of which the aggregate amount of all claims is not likely to exceed the limit of 25 million (gold) francs (approximately £1 million) can be settled by the Director without prior approval of the IOPC Fund's Executive Committee. These claims will normally be paid out with minimum delay. Under certain conditions and within certain limits, the Director can make provisional payments before the final settlement of a claim if this is necessary in order to mitigate undue financial hardship to a victim.

Generally, the IOPC Fund will try to co-operate closely with the ship's liability insurer (P & I Club). The investigation into the incident and the assessment of the damage will be done jointly by the P & I Club and the IOPC Fund. It will not normally be necessary, therefore, for claims for pollution damage and for the documentation to be submitted to the P & I Club and the IOPC Fund separately. However, notice of a claim against the IOPC Fund should always be given to the IOPC Fund.
