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COMPENSATION  
FUND 1992

ASSEMBLY  
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Agenda item 11

92FUND/A.3/9/1  
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## REPORT ON CONTRIBUTIONS

### CONTRIBUTORS IN LIQUIDATION

#### Note by the Director

**Summary:** Two contributors have gone into liquidation: a settlement agreement has been reached for a German company, and bankruptcy proceedings are in progress for a Dutch company.

**Action to be taken:** Information to be noted.

#### 1 Introduction

##### 1.1 Article 13.3 of the 1992 Fund Convention reads:

Where a person who is liable in accordance with the provisions of Articles 10 and 12 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrear, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

##### 1.2 This document deals with a contributor to the 1992 Fund which has gone into liquidation, as well as another company in liquidation which may be a contributor to the 1992 Fund.

## **2 German contributor**

### **2.1 Background**

2.1.1 On 30 April 1996, the competent court opened liquidation proceedings in respect of a German contributor and appointed a liquidator, who decided to continue to operate the company. On 20 February 1997, some of the assets of the company in liquidation, including the oil refinery owned by that company, were sold to a newly created company with effect from the same day. In the sales agreement it was stipulated that the new company did not take over the responsibility for the debts incurred before 30 April 1996. The shareholders of the company in liquidation and those of the new company are partly the same.

2.1.2 As the Assembly was informed at its 3rd extraordinary session, in view of the considerable sum outstanding, the Director instructed a German lawyer to file a claim for outstanding contributions in the liquidation proceedings.

2.1.3 Reports on the quantities of contributing oil received in 1995 and 1996 were prepared in March 1996 and February 1997, respectively, and were submitted to the 1992 Fund via the German authorities. With regard to oil received in 1997, a report was submitted in respect of the company in liquidation for the period to 20 February, and one in respect of the new company for the period thereafter.

2.1.4 In November 1996 the 1992 Fund issued an invoice amounting to £75 832 to the company in liquidation, based on quantities of contributing oil received in 1995. This invoice (in respect of the General Fund) was paid in full in January 1997.

2.1.5 Further invoices were issued by the 1992 Fund in June 1997 and in November 1997, for totals of £176 564 and £162 743. The invoices comprised contributions to the General Fund (based on oil receipts in 1995 and 1996) and the *Nakhodka* Major Claims Fund (based on oil receipts in 1996). The aggregate amount of these invoices, £339 307, was outstanding.

2.1.6 It should be noted that an invoice for £130 931 was issued by the 1971 Fund to the company in liquidation in November 1996. This invoice was paid in full. Invoices were also issued to that company in June 1997 and in November 1997 by the 1971 Fund. These contributions, which amount to £519 290, were outstanding (cf document 71FUND/A/ES.4/6).

### **2.2 Settlement negotiations**

2.2.1 Lengthy discussions were held with the liquidator and the newly created company. At the beginning of the discussions, the liquidator refused to make any payments to the IOPC Funds alleging that there was no money available. Later, the liquidator indicated that, since the contributions to the 1971 Fund and the 1992 Fund did not have preferential status, there would be only a fairly low dividend to the Funds. After negotiations, however, the liquidator suggested that a solution might be found, in co-operation with the new company, which would result in the company in liquidation and the new company together paying some £570 000 of the outstanding amounts to the 1971 Fund and the 1992 Fund, out of a total outstanding of £858 597. It was understood that the new company might also undertake to pay a portion of any future levies based on oil quantities received during the period 1990-1996 by the company in liquidation.

2.2.2 At its 3rd extraordinary session, the Assembly authorised the Director to agree with the liquidator and the new company which had acquired some of the assets of the company in liquidation on a settlement on terms which he considered reasonable (document 92FUND/A/ES.3/21, paragraph 13.1).

2.2.3 Further negotiations were held with the liquidator and the new company. In August 1998 an Agreement was concluded between the 1971/1992 Funds, the liquidator and the new company. The main elements of the Agreement were as follows:

- The liquidator of the company in bankruptcy would pay in full the amounts invoiced by the 1971 Fund in respect of the *Nakhodka* Major Claims Fund (£337 267) and the amounts invoiced by the 1992 Fund in respect of the *Nakhodka* Major Claims Fund and a General Fund levy (£176 564), ie a total of £513 831.
- The newly created company would pay £22 797 to the 1971 Fund (in respect of the *Nissos Amorgos* and *Osung N°3* Major Claims Funds) and £123 816 to the 1992 Fund (in respect of the *Osung N°3* Interim Major Claims Fund and a General Fund levy), ie a total of £146 613 (compared with the invoiced amount of £192 708).
- The new company undertook to pay future annual contributions to Major Claims Funds in respect of incidents which occurred in 1997 or in previous years, but these contributions would be calculated on the basis of a quantity of 6 972 581 tonnes (being the quantity actually received by that company between 20 February and 31 December 1997, the period after the company's acquisition of the refinery) and not on the full tonnage received in the relevant years.
- The new company's obligation to pay contributions on the basis of 1997 oil receipts would be calculated on the basis of the quantity actually received by that company between 20 February and 31 December 1997 (the period after the company's acquisition of the refinery), ie 6 972 581 tonnes. Contributions in respect of oil received in 1998 or later years would be based on the quantities actually received by that company in the relevant year.

2.2.4 As a result of the Agreement, an amount of £152 058 invoiced by the 1971 Fund in respect of levies to the *Sea Prince/Yeo Myung/Yuil N°1* and *Sea Empress* Major Claims Funds would remain unpaid.

2.2.5 The amount of £513 831 was paid by the liquidator to the IOPC Funds in September 1998. The newly created company has not yet paid the amount agreed (£146 613).

### **3 Dutch contributor**

3.1 A company in the Netherlands was declared bankrupt on 27 May 1997. The report on the quantity of contributing oil received by the company in 1996 has not been submitted.

3.2 In July 1997 the Director informed the receiver of the Dutch contributor that the company was a debtor to the 1971 Fund for a sum of £10 427, and the 1971 Fund filed a claim for outstanding contributions in the bankruptcy proceedings. It appears that contributions payable to the 1971 Fund do not have preferential status under Dutch law. The receiver has informed the Director that it is not expected that there will be any dividend to unsecured creditors, and that it is uncertain whether there will be any dividend to creditors with preferential status other than the Tax Receiver and the Social Security Fund. It is expected that the bankruptcy proceedings will take some considerable time.

3.3 If the 1992 Fund were to receive a report on contributing oil received by the company in 1996, the company would become a debtor to the 1992 Fund. However, it would appear unlikely that such a report will be submitted. Furthermore, contributions payable to the 1992 Fund would have the same status as those to the 1971 Fund, and it is unlikely that there would be any dividend to the 1992 Fund.

4 **Action to be taken by the Assembly**

The Assembly is invited:

- (a) to note the agreement relating to the German contributor referred to in section 2; and
  - (b) to note the information regarding the status of the 1992 Fund's claim in respect of the Dutch contributor referred to in section 3, and as regards the bankruptcy proceedings.
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