



**INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992**

ASSEMBLY
3rd extraordinary session
Agenda item 13

92FUND/A/ES.3/12
24 April 1998
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CONTRIBUTOR IN LIQUIDATION

Note by the Director

Summary:	One contributor to the 1992 Fund has gone into liquidation. Another company which may be a contributor to the 1992 Fund has also gone into liquidation.
Action to be taken:	Authorise the Director to agree a settlement in respect of a German contributor. Information to be noted in respect of a Dutch contributor.

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 11 to make contributions to the Fund does not fulfil his obligation in respect of any such contribution or any part thereof and is in arrear for a period exceeding three months, the Director shall take all appropriate action against such a 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 On 30 April 1996, the competent court decided to open liquidation proceedings in respect of a contributor in Germany 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, were sold to a newly created company. 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.

2.2 In view of the considerable sum outstanding, the Director instructed a German lawyer to file a claim for outstanding contributions in the liquidation proceedings.

2.3 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 has been 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.

2.4 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.

2.5 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, remains outstanding.

2.6 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, are outstanding (cf document 71FUND/A/ES.4/6).

2.7 Lengthy discussions have been 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. The liquidator has recently indicated, however, 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 is 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. The Director is examining this proposal, in consultation with the Funds' German lawyer. The Director would seek an improvement of this offer. The Director proposes that he be authorised to agree with the liquidator and the new company on a settlement on terms which he considers reasonable.

3 Dutch company

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 company that the company was a debtor to the 1971 Fund for a sum of £10 427. 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 consider the Director's proposal that he should be authorised to agree with the liquidator of the German contributor referred to in section 2 on a settlement on terms which he considers reasonable; 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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