



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

THIRD INTERSESSIONAL  
WORKING GROUP  
Agenda item 2

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## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

### SHIPOWNERS' LIABILITY

Submitted by the United Kingdom

***Summary:***

At previous meetings of the Third Intersessional Working Group consideration has been given to a review of the shipowner's liability and existing limits under the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC). The UK proposes that the Working Group develops a suitable means of revising the tacit acceptance procedures in the CLC & IOPC Fund regimes.

***Action to be taken:***

The Working Group is invited to consider the issues raised in this paper and the recommendations in section 4.

### 1 **Introduction**

The UK sees the adoption of a third tier level of compensation to the 1992 Fund as being of paramount importance. However, the UK believes that there is also a strong case for maintaining an appropriate balance between the financial liability between shipowners and cargo interests throughout the whole regime and, therefore, supports the continuing consideration of this issue by the Working Group. In this regard the UK proposes that the Working Group develops a suitable means of revising the tacit acceptance procedures in the CLC/IOPC Fund regimes to ensure that:

- a) the limits of liability under the 1992 Conventions maintain their real value to enable claims for compensation to be met; and
- b) those States that do not become party to the proposed Supplementary Fund Protocol retain an equitable and balanced sharing of the burden of costs under the 1992 regimes without significantly increasing the maximum amount of compensation available at any one time.

## 2 Background

### *IMO Legal Committee – 2003 increases*

At the 82<sup>nd</sup> session of the IMO Legal Committee (LEG 82), convened in October 2000, the limits of compensation available under the 1992 Protocols were increased by 50.37% in respect of both regimes - the first time the Legal Committee had been asked to amend the limits in the 1992 Protocols by means of the tacit acceptance procedure contained in those Protocols. In particular, these increases were adopted in relation to specific incidents which were, at the time, likely to result in the total amount of established claims exceeding the maximum level of compensation under the 1992 Conventions i.e. 135 million SDR (59.7 million SDR under 1992 CLC). The increases agreed at Legal Committee are due to come into force on 1 November 2003 and will ensure that the relevant levels of compensation available under the 1992 Protocols are established at:

*1992 CLC - 89,800,000 million SDR; and*

*1992 IOPC Fund - 203,000,000 SDR.*

During the discussions at LEG 82 on the increases the International Group of P&I Clubs suggested more regular reviews of increases in limits should be undertaken (document LEG 82/12 paragraph 113). This would be a means of avoiding infrequent but significant increases to maintain the value of the CLC/IOPC Fund limits.

The regime currently imposes time restrictions on subsequent reviews. Following the increase in the limits agreed at LEG 82, it is not possible for a further increase of the limits to be **considered** until November 2008 (5 years after the entry into force of a previous amendment – Article 15 (6) (a) of 1992 CLC). Any further amendment that might be agreed **shall not have effect** for a further 3 years (Article 15 (7) & (8) of 1992 CLC).

Therefore, as a consequence, entry into force of any new proposal will only take place 11 years, at the earliest, after agreement was previously reached at the Legal Committee.

The tacit acceptance procedure was designed, amongst other considerations, to enable the membership of the IOPC Fund to react easily to problems relating to the limits. In particular it can provide the means to restore the real value of the limits. However, the constraints on the timings of such increases under the current text of the 1992 CLC and IOPC Fund regimes means that there is potential for the levels to lose their real value, or, for the need for periodic dramatic increases to the detriment of shipowners, insurers, cargo interests and claimants. Such a lengthy and time consuming process that exists in the 1992 CLC and IOPC Fund regimes to increase the limits effectively precludes such an objective from being attained if the necessity to react quickly to problems relating to the limits arises 5 years since any previous amendment entered into force.

## 3 Proposal

The UK proposes amending the tacit acceptance procedure in the CLC and IOPC Fund regimes, so as to allow an automatic revision of the limits in accordance with a suitable formula which would trigger any increase. This should be backed up by an arrangement for less frequent changes to take account of any special factors not adequately dealt with by the automatic revision procedure. However, in order to facilitate the Working Group's consideration of this issue, the UK specifically requests the Working Group to agree that the IOPC Fund Secretariat undertake a review of:

- a) the real value of the total costs of each individual incident that has been governed, and paid, under the CLC/IOPC Fund regime; and

- b) an estimate of the future costs of oil spills based on reasonable inflation assumptions applied to the total costs of each individual incident governed, and paid, under the CLC/IOPC Fund regime.

Such a review should provide the Working Group with a clear picture of the actual apportionment of payment between the shipowner and cargo interests, and an estimate of how this apportionment may be reflected in the future. Furthermore, it should facilitate the Working's Group consideration of the means by which the tacit acceptance procedure should be amended, and a reflection of the real value of the limits of the regime in the future.

In particular, the UK proposes that the Secretariat undertakes the analysis on the costs of each incident governed, and paid, by the CLC/IOPC Fund regimes according to their real value in 2003 and the next two earliest dates on which an increase in the limits of liability could enter into force under the use of the tacit acceptance procedure i.e. 2011 and 2019.

There are, of course, a number of ways, and inflation indexes, that could be used to provide the real value of costs in 2003, and an update of costs. However, if the Working Group agrees to request the IOPC Fund Secretariat to undertake such a review, the UK proposes that this should be based on the individual applicable inflation statistics, taken on an annual basis from when the spill took place, in the Member State in which the specific incident occurred. This should ensure that costs are not distorted by using a world 'average' inflation index.

Recognising that it is not possible to provide an entirely accurate picture of the future costs of spills, the UK proposes that the IOPC Fund Secretariat also provides a forecast of the future costs of incidents (that have already occurred) in 2011 and 2018 based on these past inflation increases. This should provide an estimated cost of each spill at these two future periods in time.

The UK acknowledges that the costs, frequency and extent of future spills is entirely unpredictable. Important factors affecting costs includes the type of oil, amount spilled and rate of spillage, location, clean up response, and the effects of applicable safety regulations.

However, the UK believes that it is in the best interests of all Contracting States to the 1992 CLC/IOPC Fund regimes to consider amending the tacit acceptance procedures in the 1992 Protocols, irrespective of the proposed Supplementary Fund Protocol. The UK also believes that such necessary, and detailed, consideration cannot be given until the Working Group has a picture of the apportionment of costs of incidents, and a sense of how this apportionment may be reflected in the future.

The UK notes the information on the cost of incidents contained in the paper submitted by the Oil Companies Marine Forum (OCIMF) to this Working Group session, and in the International Group of P&I Clubs paper submitted to the June 2001 Working Group (92 FUND/WGR.3/8/3). However, in order to ensure that an impartial, and accurate, picture of the total cost of all incidents governed, and paid by the CLC/IOPC Fund regimes, can be considered by the Working Group the UK believes that the IOPC Fund Secretariat is best placed to undertake such a review, with the necessary help from the relevant industry sectors.

#### **4 Conclusion**

The UK invites the Working Group to:

- a) agree, in principle, an amendment is needed to the tacit acceptance procedure, and
  - b) agree the recommendation that the IOPC Fund Secretariat undertakes a review of incidents governed, and paid by, the CLC/IOPC Fund regimes to determine the current real value of past incidents, and projected future costs of such incidents, based on reasonable inflation assumptions.
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