



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
15th session
Agenda item 13

FUND/A.15/10
10 August 1992

Original: ENGLISH

INCREASE OF THE WORKING CAPITAL

Note by the Director

Introduction

1 The IOPC Fund maintains a working capital, the level of which is decided by the Assembly. At its 14th session, the Assembly increased the working capital from £4 million to £6 million and decided to review, at its 15th session, the question of the need for a further increase (document FUND/A.14/23, paragraph 15.2).

Financial Regulations

2 Under Financial Regulation 5.1(a) and (c), the IOPC Fund shall have a General Fund which shall be used:

- (a) for the satisfaction of claims arising from smaller incidents, ie incidents where the aggregate amount to be paid by the IOPC Fund does not exceed 15 million (gold) francs (1 million SDR);
- (b) for the payment of the first 15 million (gold) francs in respect of larger incidents;
- (c) to meet the administrative costs and expenses of the IOPC Fund;
- (d) to make provisional payments pursuant to Internal Regulation 8.6; and
- (e) to make loans to a major claims fund for the satisfaction of claims to the extent that sufficient money is not available in that major claims fund.

3 The General Fund shall be maintained at such a level as the Assembly may decide from time to time (Financial Regulation 5.1(b)).

4 Separate major claims funds shall be established in respect of each larger incident, ie each incident where the aggregate amount of the payments by the IOPC Fund exceeds 15 million (gold) francs. Such a major claims fund shall be used for the payment of claims arising from the relevant incident, provided that the first 15 million (gold) francs in respect of each incident are to be paid from the General Fund (Financial Regulation 5.2(a) and (d)).

5 The Financial Regulations do not mention the notion of working capital, nor does the Fund Convention.

Previous Decisions Regarding the Working Capital

6 In 1979, at its 2nd session, the Assembly decided that the IOPC Fund should maintain a working capital of £2 million. The working capital should include the initial contributions and annual contributions raised to meet claims in respect of smaller incidents, and it would be available to meet such claims and the necessary administrative expenses of the IOPC Fund. If the working capital were to fall below an amount reasonably required to meet the administrative expenses and anticipated claims, annual contributions should be raised to restore the working capital to the level of £2 million (document FUND/A.2/16/1, paragraph 9).

7 At its 11th session, in October 1988, the Assembly decided to increase the working capital from £2 million to £4 million (document FUND/A.11/20, paragraph 14).

8 In October 1991, at its 14th session, the Assembly considered a proposal by the Director that the working capital should be increased from £4 million to £8 million (document FUND/A.14.12). This proposal was made in view of the increased membership of the IOPC Fund and the experience of recent incidents. The Assembly agreed with the Director that the IOPC Fund should have a working capital at a sufficient level so as to enable it to make rapid payments of compensation to victims of oil pollution. It also agreed with the Director that it would not be appropriate for the IOPC Fund to rely on the possibility of raising money by way of bank loans, at least not in normal circumstances. In the view of the Assembly it was necessary, however, to take into account the financial burden on contributors resulting from an increase of the working capital. The Assembly decided to increase the working capital of the IOPC Fund from £4 million to £6 million. In addition, the Assembly decided to review, at its 15th session, the question of whether a further increase of the working capital would be required.

Experience Regarding the Payment of Claims

9 Under Internal Regulation 8.4.1, the Director may make final settlement of any claim for compensation without the prior approval of the Executive Committee, if he estimates that the total cost to the IOPC Fund of satisfying all such claims arising out of the relevant incident is not likely to exceed 37.5 million (gold) francs (2.5 million SDR), which corresponds to approximately £1.9 million. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 10 million (gold) francs (£0.5 million) in respect of each incident. In respect of the Director's authority to settle claims for indemnification of the shipowner the limit is 25 million (gold) francs (£1.3 million) (Internal Regulation 9.5). The Executive Committee may authorise the Director to settle claims beyond these limits in respect of a particular incident (Internal Regulations 8.4.2 and 9.6, respectively).

10 Since its establishment, it has been the policy of the IOPC Fund that victims of oil pollution incidents should be compensated as soon as possible. This has been the policy underlying the decisions of the Assembly and the Executive Committee in respect of claim settlements, and it has

guided the Director in his negotiations with claimants. The IOPC Fund has also gained a reputation for the rapid payment of claims. In respect of minor and medium-sized incidents, payments are normally made within a short period of time, provided that claims are submitted rapidly and that they are accompanied by sufficient supporting documentation. However, rapid payments can only be guaranteed if the IOPC Fund's working capital is maintained at an appropriate level.

11 In recent years there have been several incidents involving the IOPC Fund in which there was no P & I insurer who could make payments rapidly to individual claimants and small businesses, such as fishermen, boat owners and hoteliers. In such cases, it is imperative that the IOPC Fund is in a position to act promptly in order to mitigate undue financial hardship to the victims. The rapid payment of compensation is particularly important in respect of individuals and small businesses, and generally in respect of victims in developing countries.

12 In October 1991, at its 28th session, the Executive Committee approved claims presented by the Canadian Government in the RIO ORINOCO case at an aggregate amount of Can\$10 218 848 (£4.9 million). The IOPC Fund had to make payment in respect of these claims in two instalments, since the IOPC Fund's working capital was insufficient to cover such a significant payment in respect of an incident which, having occurred shortly after the 13th session of the Assembly, had not been taken into account in the assessment of the 1990 annual contributions. The first instalment, Can\$6 million (£2 962 232), was made on 20 November 1991 and the second instalment, Can\$4 218 848 (£1 964 539), on 10 February 1992, after the 1991 annual contributions had been received.

13 The total assets invested by the IOPC Fund in recent years have usually been in the region of £6 million. It has been possible, therefore, to spread the maturity dates of the investments over the year, thus ensuring that amounts of £500 000 to £1 million would always be available at short notice. This has considerably facilitated the settlement negotiations with claimants and the rapid payment of accepted claims.

Assessment of Contributions

14 It is obvious that there is considerable uncertainty in the estimates that form the basis of the Assembly's decision to levy annual contributions. This is partly due to the comparatively long time period involved. It has been the policy of the Director to include in his estimates which form the basis of the Assembly's decision only those incidents in respect of which the IOPC Fund's payments can be assessed with a reasonable degree of accuracy. These estimates are normally made in July or August, and additional estimates are made immediately before the session of the Assembly. The decision to levy contributions is usually taken by the Assembly in October, say in October 1992, and the contributions are then due by 1 February 1993. No further contributions will be payable until the 1993 contributions, fixed by the Assembly in October 1993, are due on 1 February 1994.

15 It would be possible to keep the working capital at a comparatively low level if the Director's estimates for the assessment of contributions included figures based on the worst possible outcome from the IOPC Fund's point of view in respect of incidents where there is a large degree of uncertainty as to the level at which the claims will finally be established. However, this would be at variance with the method of assessment applied so far, and the Director is not in favour of a change in this direction.

16 The IOPC Fund is at present holding a considerable amount in the HAVEN Major Claims Fund, and the Director has proposed that a further levy of £15 million in 1992 annual contributions should be made for this Major Claims Fund (document FUND/A.15/11). If this proposal were to be approved by the Assembly, the balance on this major claims fund would on 1 February 1993 be over £30 million.

In view of the complexity of the HAVEN case and the on-going legal proceedings in the Court of Genoa, it is reasonable to assume, in the Director's view, that a major part of this amount will not be used during 1993 for payment of claims arising out of the HAVEN incident. It would therefore be possible to take a loan from the HAVEN Major Claims Fund for the satisfaction of claims arising out of other incidents to the extent that sufficient money were not available in the General Fund or the Major Claims Fund in question, as the case may be.

Director's Proposal

17 When the Assembly fixed the working capital at £6 million, the IOPC Fund had 45 Member States. Since then three more States have become Members, and it is expected that a number of other States will join the IOPC Fund in the near future. The larger the number of Member States, the greater the risk that the IOPC Fund will be called upon to pay compensation for oil pollution incidents.

18 In document FUND/A.14/12, the Director set out the reasons why, in his view, a working capital of at least £10 million would be desirable. He emphasised the importance of rapid payments of compensation and indemnification. He mentioned that the Executive Committee may hold meetings early in the year (as was the case in March and June 1991 and in May 1992) and either approve claims for significant amounts or authorise the Director to do so. The IOPC Fund should in his view hold sufficient liquid funds to enable it to pay such claims without having to wait for the receipts of contributions in February of the following year. In addition, the Director considered that the working capital should be sufficiently large so that bank loans were not required for the rapid payment of accepted claims, at least not in normal circumstances. Acknowledging the importance of limiting the financial burden on contributors, he stated, however, that it would be possible to operate the IOPC Fund in a satisfactory manner with a working capital of £8 million.

19 As mentioned above, the Assembly decided at its 14th session to increase the working capital to £6 million and not to £8 million, as proposed by the Director.

20 The Director still maintains that a working capital of at least £10 million would be desirable. However, he acknowledges the importance of limiting the financial burden on contributors. He also takes into account the possibility of taking loans from the HAVEN Major Claims Fund for the purpose of making rapid payment of claims arising out of other incidents and is of the opinion that at present it would be possible to operate the IOPC Fund in a satisfactory manner with a working capital of £6 million. For these reasons, the Director proposes that the working capital of the IOPC Fund should for the time being be maintained at £6 million.

21 If experience were to show that, as a result of growing membership or other factors, a working capital of £6 million were insufficient, the Director would bring the matter to the attention of the Assembly.

Action to be Taken by the Assembly

22 The Assembly is invited to consider the Director's proposal that the working capital of the IOPC Fund should for the time being be maintained at £6 million.



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