



International Oil Pollution
Compensation Funds

Fonds internationaux
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures

Fondos internacionales
de indemnización de daños
debidos a contaminación por
hidrocarburos

EXPLANATORY NOTE

October 2021

INTRODUCTION

Compensation for pollution damage caused by spills from oil tankers is governed by an international regime elaborated under the auspices of the International Maritime Organization (IMO). The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and the International Oil Pollution Compensation Fund, 1971 (1971 Fund) ceased to exist with effect from 31 December 2014. A large number of States have also denounced the 1969 Civil Liability Convention. Therefore, this note deals with the 'new regime', i.e. the 1992 Civil Liability Convention and the 1992 Fund Convention.

The **1992 Civil Liability Convention** governs the liability of shipowners for oil pollution damage. The Convention lays down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit its liability to an amount which is linked to the tonnage of its ship.

The **1992 Fund Convention**, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate. The **International Oil Pollution Compensation Fund 1992**, generally referred to as the **1992 Fund**, was set up under the 1992 Fund Convention. The 1992 Fund is a worldwide intergovernmental organisation established for the purpose of administering the regime of compensation created by the 1992 Fund Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The IOPC Funds headquarters is based in London.

As at 30 September 2021, 144 States had ratified or acceded to the 1992 Civil Liability Convention, and 120 States had ratified or acceded to the 1992 Fund Convention. The States Parties are listed in the Annex.

1992 CIVIL LIABILITY CONVENTION

Scope of application

The 1992 Civil Liability Convention applies to **oil pollution damage** resulting from spills of **persistent** oil from **tankers**.

The 1992 Civil Liability Convention covers pollution damage suffered in the **territory, territorial sea or exclusive economic zone (EEZ)** or equivalent area of a State Party to the Convention. The flag State of the tanker and the nationality of the shipowner are irrelevant for determining the scope of application.

'**Pollution damage**' is defined as loss or damage caused by contamination. In the case of environmental damage (other than loss of profit from impairment of the environment) compensation is restricted to costs actually incurred or to be incurred for reasonable measures to reinstate the contaminated environment.

The notion of pollution damage includes measures, wherever taken, to prevent or minimise pollution damage in the territory, territorial sea or EEZ or equivalent area of a State Party to the Convention ('**preventive measures**'). Expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

The 1992 Civil Liability Convention covers spills of **cargo and/or bunker oil** from laden, and in some cases unladen seagoing vessels constructed or adapted to carry oil in bulk as cargo (but not to dry cargo ships).

Damage caused by **non-persistent oil**, such as gasoline, light diesel oil, kerosene etc., is not covered by the 1992 Civil Liability Convention.

Strict liability

The owner of a tanker has strict liability (i.e. the owner is liable also in the absence of fault) for pollution damage caused by oil spilled from its tanker as a result of an incident. The owner is exempt from liability under the 1992 Civil Liability Convention only if it proves that:

- (a) the damage resulted from an act of war or a grave natural disaster; or
- (b) the damage was wholly caused by sabotage by a third party; or
- (c) the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

Limitation of liability

The shipowner is normally entitled to limit its liability under the 1992 Civil Liability Convention. The limits were increased by some 50.37% on 1 November 2003 as follows. The increased limits apply to incidents occurring on or after that date:

- (a) for a ship not exceeding 5 000 units of gross tonnage, SDR 4 510 000 (USD 6.35 million);^{<1>}
- (b) for a ship with a tonnage between 5 000 and 140 000 units of tonnage, SDR 4 510 000 (USD 6.35 million) plus SDR 631 (USD 889) for each additional unit of tonnage; and
- (c) for a ship of 140 000 units of tonnage or over, SDR 89 770 000 (USD 126.5 million).

^{<1>} The unit of account in the 1992 Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this document, the SDR has been converted into US dollars at the rate of exchange applicable on 30 September 2021 i.e. SDR 1 = USD 1.40887.

If it is proved that the pollution damage resulted from the shipowner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, the shipowner is deprived of the right to limit its liability.

Channelling of liability

Claims for pollution damage under the 1992 Civil Liability Convention can be made only against the registered owner of the tanker concerned. This does not preclude victims from claiming compensation outside this Convention from persons other than the owner. However, the Convention prohibits claims against the servants or agents of the owner, members of the crew, the pilot, the charterer (including bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or preventive measures. The owner is entitled to take recourse action against third parties in accordance with national law.

Compulsory insurance

The owner of a tanker carrying more than 2 000 tonnes of persistent oil as cargo is obliged to maintain insurance to cover its liability under the 1992 Civil Liability Convention. Tankers must carry a certificate on board attesting the insurance coverage. When entering or leaving a port or terminal installation of a State Party to the 1992 Civil Liability Convention, such a certificate is required also for ships flying the flag of a State which is not Party to the 1992 Civil Liability Convention.

Claims for pollution damage under the 1992 Civil Liability Convention may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage.

Competence of courts

Actions for compensation under the 1992 Civil Liability Convention against the shipowner or its insurer may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

1992 FUND CONVENTION

The 1992 Fund pays compensation to those suffering oil pollution damage in a State Party to the 1992 Fund Convention who do not obtain full compensation under the 1992 Civil Liability Convention for one of the following reasons:

- (a) the shipowner is exempt from liability under the 1992 Civil Liability Convention because it can invoke one of the exemptions under that Convention; or
- (b) the shipowner is financially incapable of meeting its obligations under the 1992 Civil Liability Convention in full and its insurance is insufficient to satisfy the claims for compensation for pollution damage; or
- (c) the damage exceeds the shipowner's liability under the 1992 Civil Liability Convention.

In order to become Parties to the 1992 Fund Convention, States must also become Parties to the 1992 Civil Liability Convention.

The 1992 Fund does not pay compensation if:

- (a) the damage occurred in a State which was not a Member of the 1992 Fund; or
- (b) the pollution damage resulted from an act of war or was caused by a spill from a warship; or
- (c) the claimant cannot prove that the damage resulted from an incident involving one or more ships as defined (i.e. a seagoing vessel or seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo).

Limit of compensation

The maximum amount payable by the 1992 Fund in respect of an incident occurring before 1 November 2003 was SDR 135 million (USD 190.2 million), including the sum actually paid by the shipowner (or its insurer) under the 1992 Civil Liability Convention. The limit was increased by some 50.37% to SDR 203 million (USD 286 million) on 1 November 2003. The increased limit applies only to incidents occurring on or after this date.

Competence of courts

Actions for compensation under the 1992 Fund Convention against the 1992 Fund may only be brought before the Courts of the State Party to that Convention in whose territory, territorial sea or EEZ or equivalent area the damage occurred.

Experience in past incidents has shown that most claims are settled out of court.

Organisation of the 1992 Fund

The 1992 Fund has an **Assembly**, which is composed of representatives of all Member States. The Assembly is the supreme organ governing the 1992 Fund, and it holds regular sessions once a year. The Assembly elects an **Executive Committee** comprising 15 Member States. The main function of this Committee is to approve settlements of claims.

The 1992 Fund shares a Secretariat with the Supplementary Fund. The joint Secretariat is headed by a Director and has at present 25 staff members.

Financing of the 1992 Fund

The 1992 Fund is financed by contributions levied on any person who has received in one calendar year more than 150 000 tonnes of crude oil and heavy fuel oil (**contributing oil**) in a State Party to the 1992 Fund Convention.

Basis of Contributions

The levy of contributions is based on reports of oil receipts in respect of individual contributors. Member States are required to communicate every year to the 1992 Fund the name and address of any person in that State who is liable to contribute, as well as the quantity of contributing oil received by any such person. This applies whether the receiver of oil is a Government authority, a State-owned company or a private company. Except in the case of associated persons (subsidiaries and commonly controlled entities), only persons having received more than 150 000 tonnes of contributing oil in the relevant year should be reported.

Oil is counted for contribution purposes each time it is **received** at a port or terminal installation in a Member State after carriage by sea. The term received refers to receipt into tankage or storage immediately after carriage by sea. The place of loading is irrelevant in this context; the oil may be imported from abroad, carried from another port in the same State or transported by ship from an off-shore production rig. Also, oil received for transshipment to another port or received for further transport by pipeline is considered received for contribution purposes.

Payment of contributions

Annual contributions are levied by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. The amount levied is decided each year by the Assembly. The 1992 Fund has a General Fund which covers expenses for administration. The General Fund also covers compensation payments and claims-related expenditure, to the extent that the aggregate amount payable by the Fund does not exceed a given amount per incident (SDR 4 million). If an incident gives rise to substantial payments of compensation and claims-related expenditure by the 1992 Fund, a Major Claims Fund is established to cover payments in excess of the amount payable from the General Fund for that incident.

The Director issues an invoice to each contributor, following the decision taken by the Assembly to levy annual contributions. Each contributor pays a specified amount per tonne of contributing oil received. A system of deferred invoicing exists whereby the Assembly fixes the total amount to be levied in contributions for a given calendar year but decides that only a specific lower total amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof, to be invoiced later in the year if it should prove to be necessary.

The contributions are payable by the individual contributors directly to the 1992 Fund. A State is not responsible for the payment of contributions levied on contributors in that State, unless it has voluntarily accepted such responsibility.

Level of contributions

Payments made by the 1992 Fund in respect of claims for compensation for oil pollution damage may vary considerably from year to year, resulting in fluctuating levels of contributions. The following table sets out the most recent contributions levied by the 1992 Fund to both the General Fund and Major Claims Funds, covering the period 2013–2020. Further information and a detailed history of contributions levied by the 1992 Fund is available [here](#).

| Annual contributions | Date due | Fund | Total contribution (£) | Contribution per tonne of contributing oil (£) |
|----------------------|------------|---|------------------------|--|
| 2013 | 01.03.2014 | General Fund | 3 300 000 | 0.0021077 |
| | | <i>Prestige</i> Major Claims Fund | 2 500 000 | 0.0018429 |
| | | <i>Volgoneft 139</i> Major Claims Fund | 7 500 000 | 0.0048892 |
| 2014 | 01.03.2015 | General Fund | 3 800 000 | 0.0024779 |
| 2015 | 01.03.2016 | General Fund | 4 400 000 | 0.0029061 |
| 2016 | 01.03.2017 | General Fund | 9 700 000 | 0.0062582 |
| | | <i>Alfa I</i> Major Claims Fund | 6 400 000 | 0.0041634 |
| 2017 | 01.03.2018 | General Fund | 1 500 000 | 0.0009734 |
| | | <i>Agia Zoni II</i> Major Claims Fund | 26 000 000 | 0.0168720 |

| Annual contributions | Date due | Fund | Total contribution (£) | Contribution per tonne of contributing oil (£) |
|----------------------|------------|---|------------------------|--|
| 2018 | 01.03.2019 | General Fund | 5 900 000 | 0.0037193 |
| | | <i>Agia Zoni II</i> Major Claims Fund | 10 000 000 | 0.0064666 |
| | | <i>Alfa I</i> Major Claims Fund | 1 675 000 | 0.0010836 |
| | | Reimbursement <i>Volgoneft 139</i> Major Claims Fund | - 3 675 000 | - 0.0024278 |
| 2019 | 01.03.2020 | General Fund | 2 300 000 | 0.0014586 |
| | | <i>Agia Zoni II</i> Major Claims Fund | 5 000 000 | 0.0032333 |
| | | <i>Nesa R3</i> Major Claims Fund | 3 600 000 | 0.0022823 |
| 2020 | | There was no levy of contributions to the General Fund or the Major Claims Funds in 2020 ^{<2>} . | | |

SUPPLEMENTARY FUND PROTOCOL

The Supplementary Fund Protocol entered into force on 3 March 2005 creating a third tier in the liability and compensation regime, which provides additional compensation over and above that available under the 1992 Fund Convention for pollution damage in the States that become Parties to the Supplementary Fund Protocol. As a result, the total amount available for compensation for each incident for pollution damage in the States which become Members of the Supplementary Fund is SDR 750 million (USD 1057 million), including the amounts payable under the 1992 Civil Liability Convention and the 1992 Fund Convention, SDR 203 million (USD 286 million).

The Supplementary Fund only pays compensation for pollution damage for incidents which occur after the Protocol has entered into force for the State concerned.

Membership of the Supplementary Fund is optional and any State which is a Member of the 1992 Fund may join the Supplementary Fund. The Supplementary Fund, which is administered by the 1992 Fund Secretariat, has its own Assembly composed of representatives of its Member States. 32 States have ratified or acceded to the Protocol.

Annual contributions to the Supplementary Fund will be made in respect of each Member State by any person who, in any calendar year, has received total quantities of oil exceeding 150 000 tonnes after sea transport in ports and terminal installations in that State. However, the contribution system for the Supplementary Fund differs from that of the 1992 Fund in that there is a minimum annual receipt of 1 million tonnes of contributing oil in each Member State. In Member States where the combined quantity of contributing oil received by contributors is less than one million tonnes, the contributors are liable to pay their share based on the oil they receive, and the State must assume the obligation of paying the remaining amount of contributions due to the Supplementary Fund.

^{<2>} At its December 2020 session, the 1992 Fund Assembly approved the Director's proposal to meet the estimated deficit on the General Fund for 2021 by taking out a loan of £3.9 million from the *Hebei Spirit* Major Claims Fund on 1 March 2021 until 1 March 2022 when 2021 contributions shall be due. For further information please see [here](#).

The Supplementary Fund has a General Fund which only covers administrative expenses, and so a Claims Fund will be set up for any incident for which the Supplementary Fund has to pay compensation. No incidents have occurred which have involved the Supplementary Fund.

The most recent contributions levied to the Supplementary Fund were in 2017, when the Supplementary Fund Assembly decided to reimburse £830 000 to contributors in the 19 Member States who paid the original 2006 contributions to the General Fund. It also decided to levy contributions of £1.5 million to contributors in the 31 States Parties to the Supplementary Fund Protocol at the time of the April 2017 session of the Assembly, as set out in the following table.

| Annual contributions | Oil Year | Date due | Total contribution (£) | Contribution per tonne of contributing oil (£) |
|----------------------|----------|------------|------------------------|--|
| 2017 | 2016 | 01.03.2018 | 1 500 000 | 0.0014891 ^{<3>} |
| Reimbursement | | | | |
| 2006 | 2005 | 01.03.2018 | -830 000 | -0.0010249 |

STOPIA AND TOPIA

The international liability and compensation regime, created by the 1992 Civil Liability and Fund Conventions, was intended to ensure an appropriate proportion of the economic consequences of marine oil spills from tankers between the shipping and oil industries. In order to address the imbalance created by the establishment of the Supplementary Fund, which will be financed by the oil industry, the International Group of P&I Associations (a group of 13 mutual insurers that between them provide liability insurance for approximately 90% of the world's tanker tonnage) introduced two agreements, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006, and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006.

These agreements are voluntarily concluded among shipowners and indemnify the compensation made by the 1992 Fund and the Supplementary Fund in accordance with the Convention. Under STOPIA, the 1992 Fund will be indemnified by the shipowner of the compensation payments it has made to claimants up to SDR 20 million (USD 28.2 million). Under TOPIA 2006, the Supplementary Fund will be indemnified by the shipowner of 50% of the compensation payments it has made to claimants.

In 2016, these agreements were reviewed and amended based on the 10 years' experience of claims since the entry into force of the agreements. The new versions, the Small Tanker Oil Pollution Indemnification Agreement (STOPIA) 2006 (as amended 2017) and the Tanker Oil Pollution Indemnification Agreement (TOPIA) 2006 (as amended 2017), became effective on 20 February 2017.

^{<3>} At its April 2017 session, the Supplementary Fund Assembly decided to reimburse £830 000 from the General Fund on 1 March 2018 to those contributors in the 19 Member States who contributed to the 2006 levy to the Supplementary Fund. It was noted that a capping levy had been applied to the 2006 levy of contributions in accordance with Article 18.1 (Transitional provisions) of the Supplementary Fund Protocol and the capping levy would also be applied to the reimbursement of those contributions. The capping deduction and additional reimbursement are set out below:

| | Levy per tonne £ |
|--|------------------|
| Capping deduction on reimbursement for contributors in Japan | 0.0003794 |
| Additional reimbursement for contributors in other States | -0.0001765 |

CONCLUSIONS

The advantages for a State being Party to the 1992 Civil Liability Convention and the 1992 Fund Convention can be summarised as follows. If a pollution incident occurs involving a tanker, compensation is available to governments or other authorities which have incurred costs for clean-up operations or preventive measures and to private bodies or individuals who have suffered damage as a result of the pollution. For example, fisherfolk whose nets have become polluted are entitled to compensation, and compensation for loss of income is payable to fisherfolk and to hoteliers at seaside resorts. This is independent of the flag of the tanker, the ownership of the oil or the place where the incident occurred, provided that the damage is suffered within a State Party.

The 1992 Civil Liability Convention and the 1992 Fund Convention provide a wider scope of application on several points and much higher limits of compensation than the Conventions in their original versions. For these reasons, it is recommended that States which have not already done so should accede to the 1992 Protocols to the Civil Liability Convention and the Fund Convention (and not to the 1969 Convention) and thereby become Parties to the Conventions as amended by the Protocols (the 1992 Conventions). The 1992 Conventions would enter into force for the State in question 12 months after the deposit of its instrument(s) of accession.

States which are already Parties to the 1969 Civil Liability Convention are advised to denounce that Convention at the same time as they deposit their instruments in respect of the 1992 Protocols, so that the denunciation of that Convention would take effect on the same day as the 1992 Protocols enter into force for that State.

As regards the Supplementary Fund Protocol, a State will have to consider whether, in light of its particular situation, ratification of or accession to the Protocol is in the interests of that State.

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ANNEX
States Parties to both the 1992 Civil Liability Convention and the
1992 Fund Convention
as at 30 September 2021
(and therefore Members of the 1992 Fund)

118 STATES FOR WHICH 1992 FUND CONVENTION IS IN FORCE

| | | |
|----------------------------|----------------------------|---------------------------------------|
| Albania | Greece | Palau |
| Algeria | Grenada | Panama |
| Angola | Guinea | Papua New Guinea |
| Antigua and Barbuda | Guyana | Philippines |
| Argentina | Hungary | Poland |
| Australia | Iceland | Portugal |
| Bahamas | India | Qatar |
| Bahrain | Iran (Islamic Republic of) | Republic of Korea |
| Barbados | Ireland | Russian Federation |
| Belgium | Israel | Saint Kitts and Nevis |
| Belize | Italy | Saint Lucia |
| Benin | Jamaica | Saint Vincent and the Grenadines |
| Brunei Darussalam | Japan | Samoa |
| Bulgaria | Kenya | Senegal |
| Cabo Verde | Kiribati | Serbia |
| Cambodia | Latvia | Seychelles |
| Cameroon | Liberia | Sierra Leone |
| Canada | Lithuania | Singapore |
| China ^{<1>} | Luxembourg | Slovakia |
| Colombia | Madagascar | Slovenia |
| Comoros | Malaysia | South Africa |
| Congo (the) | Maldives | Spain |
| Cook Islands | Malta | Sri Lanka |
| Côte d'Ivoire | Marshall Islands | Sweden |
| Croatia | Mauritania | Switzerland |
| Cyprus | Mauritius | Syrian Arab Republic |
| Denmark | Mexico | Thailand |
| Djibouti | Monaco | Tonga |
| Dominica | Montenegro | Trinidad and Tobago |
| Dominican Republic | Morocco | Tunisia |
| Ecuador | Mozambique | Turkey |
| Estonia | Namibia | Tuvalu |
| Fiji | Nauru | United Arab Emirates |
| Finland | Netherlands | United Kingdom |
| France | New Zealand | United Republic of Tanzania |
| Gabon | Nicaragua | Uruguay |
| Gambia (the) | Nigeria | Vanuatu |
| Georgia | Niue | Venezuela (Bolivarian Republic of) |
| Germany | Norway | |
| Ghana | Oman | |

2 States which have deposited instruments of accession, but for which the 1992 Fund Convention does not enter into force until date indicated

| | |
|------------|---------------|
| San Marino | 19 April 2022 |
| Costa Rica | 19 May 2022 |

^{<1>} The 1992 Fund Convention applies to the Hong Kong Special Administrative Region only.

States Parties to the Supplementary Fund Protocol
as at 30 September 2021
(and therefore Members of the Supplementary Fund)

32 STATES PARTIES TO THE SUPPLEMENTARY FUND PROTOCOL

| | | |
|-------------|----------------------------------|-------------------|
| Australia | Greece | Norway |
| Barbados | Hungary | Poland |
| Belgium | Ireland | Portugal |
| Canada | Italy | Republic of Korea |
| Congo (the) | Japan | Slovakia |
| Croatia | Latvia | Slovenia |
| Denmark | Lithuania | Spain |
| Estonia | Montenegro | Sweden |
| Finland | Morocco | Turkey |
| France | Netherlands ^{<2>} | United Kingdom |
| Germany | New Zealand | |

States Parties to the 1992 Civil Liability Convention but not to the 1992 Fund Convention
as at 30 September 2021
(and therefore not Members of the 1992 Fund)

24 STATES FOR WHICH 1992 CIVIL LIABILITY CONVENTION IS IN FORCE

| | | | |
|-------------|-----------|---------------------|-----------------|
| Azerbaijan | Honduras | Myanmar | Solomon Islands |
| Chile | Indonesia | Pakistan | Togo |
| China | Jordan | Peru | Turkmenistan |
| Egypt | Kuwait | Republic of Moldova | Ukraine |
| El Salvador | Lebanon | Romania | Viet Nam |
| Guatemala | Mongolia | Saudi Arabia | Yemen |

1 State which has deposited an instrument of accession, but for which the 1992 Civil Liability Convention does not enter into force until date indicated

| | |
|---------------------------------------|--------------|
| Democratic People's Republic of Korea | 13 July 2022 |
|---------------------------------------|--------------|

States Parties to the 1969 Civil Liability Convention
as at 30 September 2021

32 STATES PARTIES TO THE 1969 CIVIL LIABILITY CONVENTION

| | | |
|--------------------|-------------------|-----------------------|
| Azerbaijan | Equatorial Guinea | Maldives |
| Benin | Georgia | Mongolia |
| Brazil | Ghana | Peru |
| Cambodia | Guatemala | Saint Kitts and Nevis |
| Chile | Guyana | Sao Tomé and Príncipe |
| Costa Rica | Honduras | Saudi Arabia |
| Côte d'Ivoire | Indonesia | Senegal |
| Dominican Republic | Kazakhstan | Syrian Arab Republic |
| Ecuador | Kuwait | Turkmenistan |
| Egypt | Lebanon | United Arab Emirates |
| El Salvador | Libya | |

^{<2>}

The Netherlands, Aruba, Curaçao and Sint Maarten are autonomous partners within the Kingdom of the Netherlands. The Supplementary Fund has not been extended to Aruba, Curaçao or Sint Maarten.