



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

ASSEMBLY  
23rd session  
Agenda item 20

71FUND/A.23/17  
31 August 2000  
Original: ENGLISH

## WORKING CAPITAL

### Note by the Director

**Summary:** The Director proposes maintaining the working capital at £5 million.

**Action to be taken:** Decide the level of the working capital.

#### **1** Introduction

- 1.1 The Financial Regulations of the 1971 Fund provide that a working capital shall be maintained at such a level as the Assembly may decide from time to time (Financial Regulation 7.1(b)).
- 1.2 Under Financial Regulation 7.1(c), the 1971 Fund shall have a General Fund which shall be used:
  - (i) for the satisfaction of claims of the kind referred to in Article 12.1(i)(b) of the 1971 Fund Convention including the first one million SDR of claims in respect of any one incident where the aggregate amount of all claims exceeds one million SDR;
  - (ii) to make provisional payments pursuant to Internal Regulation 7.9;
  - (iii) to meet the costs and expenses of the administration of the 1971 Fund and any other expenditure which may be authorised by the Assembly or the Executive Committee;

(iv) to make loans to a Major Claims Fund for the satisfaction of claims of the kind referred to in Article 12.1(i)(c) of the 1971 Fund Convention, above the first one million SDR in respect of any one incident, to the extent that sufficient money is not available in that Major Claims Fund.

1.3 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 1971 Fund exceeds one million SDR (approximately £875 660). Such a major claims fund shall be used for the payment of claims arising from the relevant incident, provided that the first one million SDR in respect of each incident is to be paid from the General Fund (Financial Regulation 7.2(a) and (d)).

## **2 Decisions in recent years regarding the working capital**

In recent years the Assembly has taken the following decisions in respect of the working capital:

Assembly session	Working capital changed		Document	Paragraph
	From:	To:		
17th	£11 million	£15 million	71FUND/A.17/35	20.3
19th	£15 million	£10 million	71FUND/A.19/30	25.2 and 25.5
20th	£10 million	£5 million	71FUND/A.20/30	25

## **3 Director's analysis**

3.1 The working capital should be available to meet claims in respect of smaller incidents and the necessary administrative expenses of the 1971 Fund and to make loans to major claims funds, as required. 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 fixed by the Assembly.

3.2 Under Internal Regulation 7.4, the Director may make final settlement of any claim for compensation without the prior approval of the Assembly if he estimates that the total cost to the 1971 Fund of satisfying all such claims arising out of the relevant incident is not likely to exceed 2.5 million SDR (approximately £2.2 million). The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 666 667 SDR (approximately £583 770) in respect of each incident. The Assembly may authorise the Director to settle claims beyond this limit in respect of a particular incident (Internal Regulation 7.5).

3.3 At the time of the 23rd session of the Assembly, 39 States will be Parties to the 1971 Fund Convention. During the following 12 months, 11 States will cease to be Members of the 1971 Fund, and it is expected that in the next few years a considerable number of other States will leave the 1971 Fund. Furthermore, several States which are not Parties to the 1971 Fund Convention have ratified only the 1992 Fund Convention, and it is expected that this approach will be followed by many other States. The lower the number of Member States, the smaller the risk that the 1971 Fund will be called upon to pay compensation for oil pollution incidents.

3.4 It has been the policy of the 1971 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 of the 1971 Fund in his negotiations with claimants. In the Director's view, this policy should be maintained.

- 3.5 There is a considerable element of uncertainty in the estimates that form the basis of the Assembly's decision to levy contributions. This is due partly to the comparatively long period of time involved. The estimates are normally made in August, and are reviewed immediately before the session of the Assembly. The decision to levy contributions is usually taken by the Assembly in October, say in October 2000, and the contributions would then be due by 1 March 2001. No further contributions would normally be levied until the Assembly fixed the 2001 contributions in October 2001, for payment by 1 March 2002. Although the Assembly decided at its 3rd extraordinary session, held in April 1997, to make a supplementary levy of contributions in respect of a major incident which had occurred after the Assembly's decision in October 1996, the Director considers that such a supplementary levy should normally be avoided.
- 3.6 At its 2nd extraordinary session the Assembly introduced a deferred invoicing system. Under this system the Assembly fixes the total amount to be levied in annual contributions for a given calendar year. At the same time, the Assembly may decide that only a specific lower 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 necessary (document 71FUND/A/ES.2/22, paragraph 11.3). It was stressed by a number of delegations that the introduction of a deferred invoicing system should not be applied in such a way that the 1971 Fund would not have sufficient funds for the prompt payment of claims for compensation (document 71FUND/A/ES.2/22, paragraph 11.7). The system nevertheless allows greater flexibility in the levying of contributions, particularly with regard to the level of the working capital.
- 3.7 It is likely that during 2001 significant payments will be made from several Major Claims Funds, which will reduce the possibilities of making internal loans between funds. In his report on the Financial Statements for the financial year 1998 the External Auditor proposed that the Assembly should consider 'ringfencing' the General Fund and Major Claims Funds, to the effect that loans should be made only between Major Claims Funds having the same contributors (document 71FUND/A.22/8, Annex II, paragraph 46). At the 62nd session of the Executive Committee, acting on behalf of the Assembly, the Director expressed the view that loans should not be made between Major Claims Funds relating to incidents occurring after 15 May 1998 (ie the end of the transitional period), nor between Major Claims Funds of that group and Major Claims Funds relating to incidents occurring prior to 15 May 1998, nor from the General Fund to Major Claims Funds of either group. The Executive Committee endorsed the Director's position (document 71FUND/EXC.62/14/A.22/23, paragraphs 10.4 and 25.10). In his report on the Financial Statements for the financial year 1999 the External Auditor has referred to his previous recommendation (document 71FUND/A.23/8, Annex II, paragraph 15).

#### **4 Director's proposal**

The Director proposes that the 1971 Fund's working capital should be maintained at £5 million.

#### **5 Action to be taken by the Assembly**

The Assembly is invited to review the level of the 1971 Fund's working capital.

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