



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 8	IOPC/OCT14/8/2/3	
Original: ENGLISH	19 September 2014	
1992 Fund Assembly	92A19	
1992 Fund Executive Committee	92EC62	
Supplementary Fund Assembly	SA10	
1971 Fund Administrative Council	71AC33	●

WINDING UP OF THE 1971 FUND

Submitted by the International Group of P&I Associations

Summary:	To inform the Member States of the ramifications of any decision to wind up the 1971 Fund by the end of 2014 while there remain outstanding cases, and the effects of such a decision.
Action to be taken:	<u>1971 Fund Administrative Council</u> Information to be noted.

1 **Introduction/Background information**

1.1 At the meeting of the 1971 Fund Administrative Council in May 2014, the delegation of the International Group of P&I Associations (International Group) strongly opposed the winding up of the 1971 Fund on the basis that there remain outstanding cases, and informed the meeting that:

- the International Group was deeply concerned at the evident intention of the 1971 Fund Administrative Council to withdraw from its treaty obligations, under Article 44 of the Convention, through the assertion of an immunity defence in the court action brought by the Gard P&I Club against the 1971 Fund in the English High Court;
- there will be implications that impact the future relationship and cooperation between the International Group and the Fund if the decision to wind up the 1971 Fund by the end of 2014 is pursued, and
- there will be uncertainty as to how Civil Liability Convention (CLC)/Fund cases would be handled and managed in the future if the Fund could simply ignore agreements with the International Group of P&I Associations.

1.2 At the meeting in May 2014, the 1971 Fund Administrative Council confirmed its intention to dissolve the 1971 Fund by the end of 2014.

2 **Current Position and Consequences for the CLC/Fund regime**

2.1 The International Group remains strongly opposed to the winding up of the 1971 Fund by the end of 2014 while there remain outstanding cases and believes that it is wholly premature and improper to continue with this action.

2.2 The International Group is strongly of the view that winding up of the 1971 Fund should be halted pending a satisfactory settlement to all parties of the outstanding cases.

- 2.3 However, if the 1971 Administrative Council confirms its previous decision to dissolve the 1971 Fund by the end of 2014, the International Group notes that the ramifications of such a decision will, regrettably, result in significant changes to the way in which CLC/Fund claims are handled and managed in the future.
- 2.4 If this previous decision is confirmed by the 1971 Fund Administrative Council, the International Group invites the Council to consider and take note of these additional comments:
- the ramifications of such a decision will be that in cases where claims may, or will, exceed the CLC limit, any funding of interim compensation payments may pose an unacceptable risk to insurers and their reinsurers;
 - this will have a detrimental effect on the reputation and operation of the IOPC Funds compensation regime;
 - a significant consequence of the decision of the 1971 Fund Administrative Council is that it will disadvantage all claimants, including governments and other parties whose territory and interests are affected by a major oil spill;
 - the cooperation that has existed between the International Group and the Fund will be reviewed since it will no longer be possible for the International Group Clubs to rely:
 - on agreements with the Fund on the handling of claims that have been followed in the past, but are valueless if the Fund is able to assert immunity from suit, and
 - on collaboration with the Fund Secretariat on the joint handling of future claims as has occurred in the past.
- 2.5 As a consequence of the decisions taken to date by the 1971 Fund Administrative Council and the recommendations submitted to the Council by the Fund Secretariat, the International Group feels that it has been left with no choice but to inform delegations of the potential ramifications on the system as a whole, including the 1992 Civil Liability and Fund Conventions, if the Council proceeds with dissolving the 1971 Fund by the end of 2014.
- 2.6 The International Group regrets that discussions on winding up of the 1971 Fund have reached this stage.

3 Action to be taken

1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited to take note of the information contained in this document and take action as appropriate.
