



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
17th session
Agenda item 22

FUND/A.17/19
12 September 1994

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LEGAL STATUS OF THE PROVIDENT FUND

Note by the Director

Introduction

1 The IOPC Fund operates a Provident Fund instead of a pension scheme. Both staff members and the IOPC Fund shall contribute to the Provident Fund, on such terms and conditions as are approved by the Assembly (Staff Regulation 23(b)).

2 Since the establishment of the IOPC Fund, the Provident Fund has been merged with the General Fund, the Major Claims Funds and the Contributors' Account for investments purposes, in order to enable the Provident Fund to benefit from the higher interest rates which the investment of the IOPC Fund's assets can attract.

Considerations at the Assembly's 15th Session

3 At the 15th session of the Assembly, the Director raised certain questions concerning the legal status of the assets of the Provident Fund and the investment of these assets (document FUND/A.15/12, paragraph 11). The Assembly noted the information given by the Director. It instructed him to pursue his study of these issues and invited him to submit this matter for consideration by the Assembly at its 16th session (document FUND/A.15/28, paragraph 15.10).

Considerations at the Assembly's 16th Session

4 A study by the Director of the questions relating to the investment of the Provident Fund was presented to the Assembly at its 16th session (document FUND/A.16/15). The Director proposed that the Provident Fund should be constituted as a trust in accordance with the principles of trust law in operation in England and Wales. The study had been made in consultation with the External Auditor.

5 The Assembly considered that, although the existing situation had not created and was unlikely to create any problems, the status of the Provident Fund should be clarified. The Assembly agreed, in principle, with the Director that the Provident Fund should be constituted as a trust in accordance with the principles of trust law in operation in England and Wales.

6 The Assembly instructed the Director to study in depth the various legal and practical problems involved, in consultation with the External Auditor, and to present detailed proposals for the constitution of such a trust, including a draft Trust Deed and draft Provident Fund Regulations, to the Executive Committee for consideration. The Assembly authorised the Executive Committee to take the necessary decisions for the constitution of a Provident Fund Trust, including the adoption of the Trust Deed, the appointment of Trustees and the adoption of the Provident Fund Regulations (document FUND/A.16.32, paragraphs 18.3 and 18.4).

7 The Assembly noted that the purpose of constituting a Provident Fund Trust was to protect the interests of staff members and that this should not result in reducing their benefits. For this reason, the Assembly agreed with the Director that the cost of operating such a Trust should be borne by the IOPC Fund.

8 It was noted by the Assembly that the Director had expressed the view that the assets of a Provident Fund Trust and the yield on such assets, as well as any sums paid on separation to staff members by the Trust, should be considered exempt from taxes, pursuant to Articles 8 and 9 of the Headquarters Agreement between the Government of the United Kingdom and the IOPC Fund. The United Kingdom delegation stated that it was likely that the exemptions set out in the Headquarters Agreement would be considered applicable to a Provident Fund Trust, but that the United Kingdom Government could only give a definite answer to this question when it had been able to examine the details of the proposed scheme (document FUND/A.16/32, paragraph 18.6).

Developments Since the 16th Session of the Assembly

9 As instructed by the Assembly at its 16th session, the Director has pursued his study of the various legal and practical problems involved in establishing a Provident Fund Trust. Nevertheless, there were insufficient developments to allow him to submit the matter to the Executive Committee at its sessions in February or May 1994. The Director has therefore referred the subject back to the Assembly for consideration.

10 During the Director's further examination of the issues involved, certain problems have arisen in respect of exemption of the proposed Provident Fund Trust from United Kingdom taxation. In order to enable the Director to discuss these matters further with representatives of the United Kingdom Government, the Director proposes that the Assembly postpone its consideration of the legal situation of the Provident Fund and related issues to its 18th session.

Action to be Taken by the Assembly

11 The Assembly is invited to:

- (a) take note of the information contained in this document; and
- (b) consider the Director's proposal to postpone further consideration of this issue to its 18th session.