



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971**

ASSEMBLY  
19th session  
Agenda item 16

71FUND/A.19/14  
18 October 1996

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## **LEGAL STATUS OF THE PROVIDENT FUND**

Note by the Director

### **1 Introduction**

1.1 The 1971 Fund operates a Provident Fund instead of a pension scheme. Both staff members and the 1971 Fund shall contribute to the Provident Fund, on such terms and conditions as are approved by the Assembly (Staff Regulation 26(b)).

1.2 Since the establishment of the 1971 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 1971 Fund's assets can attract.

### **2 Consideration at previous sessions of the Assembly**

2.1 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).

2.2 A study by the Director of the questions relating to the legal status 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.

2.3 The Assembly considered at that session 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.

2.4 At its 16th session, 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. 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 1971 Fund (document FUND/A.16/32, paragraphs 18.3 and 18.5).

2.5 It was noted by the Assembly at its 16th session 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 1971 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).

2.6 The Director informed the Assembly at its 17th session that, during his further examination of the issues involved, certain problems had 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 Assembly decided to postpone until its 18th session further consideration of the legal status of the Provident Fund (document FUND/A.17/35, paragraph 22).

2.7 At its 18th session, the Assembly instructed the Director to pursue his discussions with the United Kingdom Government on the problems which had arisen in respect of exemption of the proposed Provident Fund Trust from United Kingdom taxation (document FUND/A.18/26, paragraph 19).

### **3 Developments since the 18th session of the Assembly**

3.1 The United Kingdom Government has recently informed the Director that, after very careful consideration of the legal situation, it is regretfully of the opinion that the proposed Provident Fund Trust could not be granted exemption from United Kingdom taxation. While the terms of the 1971 Fund Convention and the 1971 Fund's Headquarters Agreement provide that the operations of the 1971 Fund and its assets are exempt from tax, the United Kingdom Government has maintained that the Provident Fund Trust would, by definition, be separate from the activities and operations of the 1971 Fund. The United Kingdom Government has therefore concluded that it would not be consistent with United Kingdom law to grant the proposed Provident Fund Trust the same privileges and immunities as enjoyed by the 1971 Fund, including exemption from taxation.

3.2 In the light of the position taken by the United Kingdom Government, and bearing in mind that the purpose of constituting a Provident Fund Trust would be to protect the interests of staff members without reducing their benefits, the Director would like to consider further the best way in which to protect the interests of staff members in this matter.

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

4 The Assembly is invited to take note of the information contained in this document.

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