



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971**

ASSEMBLY  
20th session  
Agenda item 25

71FUND/A.20/23  
29 August 1997

Original: ENGLISH

**WORKING CAPITAL**

Note by the Director

**Introduction**

- 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)).
  
- 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.
  
- 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 £830 000). 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 are to be paid from the General Fund (Financial Regulation 7.2(a) and (d)).

### Decisions in recent years regarding the working capital

4 At its 17th session, the Assembly decided to increase the 1971 Fund's working capital from £11 million to £15 million. It was confirmed that the level of the working capital should be kept under review (document FUND/A.17/35, paragraph 20.3).

5 At its 19th session, the Assembly decided to reduce the working capital from £15 million to £10 million, in particular in the light of the entry into force of the 1992 Protocols to the 1969 Civil Liability Convention and the 1971 Fund Convention and the ensuing denunciations by a number of States Parties to the 1971 Fund Convention (document 71FUND/A.19/30, paragraphs 25.2 and 25.5).

### Consideration by the Director

6 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.

7 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 £2.1 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 £550 000) 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).

8 At the time of the 20th session of the Assembly, 74 States will be Parties to the 1971 Fund Convention. On 16 May 1998, 24 of those States will cease to be Members of the 1971 Fund. Recently, 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.

9 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.

10 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. It has been the policy of the Director to include in his estimates for the 1971 Fund, which form the basis of the Assembly's decision, only those incidents in respect of which that Organisation's payments can be assessed with a reasonable degree of accuracy. The estimates would normally be made in July or August, and would be reviewed immediately before the session of the Assembly. The decision to levy contributions would usually be taken by the Assembly in October, say in October 1997, and the contributions would then be due by 1 February 1998. No further contributions would normally be levied until the Assembly fixed the 1998 contributions in October 1998, for payment by 1 February 1999. 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.

11 At its 2nd extraordinary session, the Assembly introduced a deferred invoicing system. Under this system whereby 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 total amount should be invoiced for payment by 1 February 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 levy of contributions, *inter alia* with regard to the level of the working capital.

12 It is likely that during 1998 the 1971 Fund will continue to hold significant amounts in some major claims funds, although it is possible that significant payments will be made from several major claims funds in the near future which will reduce the possibilities of making internal loans between funds. Recognising the importance of limiting the financial burden on contributors, the Director considers that it would be possible to make a further reduction of the 1971 Fund's working capital from £10 million to £5 million, in the light of the considerable reduction in membership that will take place during 1998.

**Action to be taken by the Assembly**

13 The Assembly is invited to decide whether to decrease the level of the working capital of the 1971 Fund, and if so by what amount.

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