

INTERNATIONAL OIL POLLUTION COMPENSATION FUND  
FONDS INTERNATIONAL D'INDEMNISATION POUR LES DOMMAGES  
DUS A LA POLLUTION PAR LES HYDROCARBURES

ASSEMBLY -  
2nd session  
Agenda item 7

FUND/A.2/4  
28 February 1979  
Original: ENGLISH

ADOPTION OF INTERNAL REGULATIONS

Note by the Director

Annexed hereto is the draft revised set of Internal Regulations prepared by the Intersessional Working Group. The Group's comments on some of the Regulations are contained in its Report (document FUND/A.2/3).

In accordance with its decision at the first session, the Assembly is invited to consider these Regulations for final adoption.

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ANNEX

DRAFT REVISED INTERNAL REGULATIONS  
FOR  
THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND

REGULATION 1

DEFINITIONS

In these Internal Regulations

1. "The Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, adopted at Brussels on 18 December 1971.
2. "The Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, adopted at Brussels on 29 November 1969.
3. "The Fund" means the International Oil Pollution Compensation Fund, established pursuant to Article 2, paragraph 1 of the Fund Convention.
4. "Contracting State" means a State for which the Fund Convention is in force.
5. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", "Organization", "Contributing Oil", "Franc", "Ton", "Guarantor" and "Terminal Installation" have the same meaning as in Article 1 of the Fund Convention.
6. "Assembly" means the Assembly referred to in Article 17 of the Fund Convention or, where appropriate, the Executive Committee referred to in Article 21 of that Convention when it performs functions in accordance with Article 26 of the Fund Convention.
7. "Claim" means any application for compensation for pollution damage made to or against an owner, his guarantor or the Fund and, except for the purpose of Regulation 8, any application for indemnification made by an owner or his guarantor to or against the Fund pursuant to Article 5, paragraph 1 of the Fund Convention.
8. "Claimant" means any person making a claim.
9. "Headquarters State" means the State in which the Fund has its Headquarters.

## REGULATION 2

## CONVERSION OF FRANCS

Where an amount is expressed in francs in these Internal Regulations such amount shall be converted into the currency of the Headquarters State in accordance with the following rules:

- (a) the amount determined in francs shall be converted into Special Drawing Rights as defined by the International Monetary Fund on the basis that 15 francs are equal to one Special Drawing Right;
- (b) the number of Special Drawing Rights found pursuant to (a) shall be converted into the currency of the Headquarters State in accordance with the method of evaluation applied by the International Monetary Fund in effect for its operations and transactions at the date applicable under these Regulations.

## REGULATION 3

## CONTRIBUTIONS

3.1 The fixed sum on the basis of which initial contributions shall be calculated under Article 11, paragraph 1, of the Fund Convention shall be determined in francs. The relevant date for conversion shall be the date of the entry into force of the Fund Convention for the Contracting State in question.

3.2 The fixed sum on the basis of which annual contributions shall be calculated under Article 12, paragraph 2, of the Fund Convention shall be determined in the currency of the Headquarters State.

3.3 Initial contributions shall be payable in the currency of the Headquarters State. However, the Director may require a contributor to pay his initial contribution or a portion thereof in the national currency of the State within whose territory the relevant quantities of contributing oil were received. In the latter case, conversion from the currency of the Headquarters State to the currency in which payment is to be made shall be at the mid-market rate of exchange applied by the Central Bank of the Headquarters State on the date of the entry into force of the Fund Convention for the Contracting State in question.

3.4 Annual contributions shall be payable in the currency of the Headquarters State. However, the Director may require a contributor to pay his annual contribution or a portion thereof in the national currency of the State within whose territory the relevant quantities of contributing oil were received. In the latter case, conversion from the currency of the Headquarters State to the currency in which payment is to be made shall be at the mid-market rate of exchange applied by the Central Bank of the Headquarters State on 31 March of each year.

3.5 For the purposes of calculating the annual contributions the relevant date for conversion of the figure of 15 million francs laid down in Article 12, paragraph (1)(i)(b) and (c), shall be the date of the incident in question.

3.6 In respect of any State for which the Fund Convention is not in force on 1 January of a particular year the annual contribution to be paid by each person in that State for that year shall be calculated pro rata for that part of the calendar year for which the Convention is in force for that State.

3.7 The Director shall promptly issue to every person liable to pay contributions under Articles 10, 11, 12 and 14 of the Fund Convention an invoice in respect of the sums for which he is liable. A copy of each invoice shall also be sent to the State within whose territory the relevant quantities of contributing oil were received. An invoice shall state:

- (a) the amount of the contribution due and the currency in which payment shall be made;
- (b) the data on the basis of which the amount of contribution has been calculated;
- (c) the date by which payment is due;
- (d) the address at which payment shall be made;
- (e) that interest is payable in respect of overdue annual contributions;
- (f) any other relevant information.

If the payment due is less than 30 SDR the demand shall be waived.

3.8 If a contributor fails to pay an initial or annual contribution by the date payment is due, the Director shall notify the State within whose territory the

relevant quantities of contributing oil were received and request advice on the action to be taken to ensure that the obligations of that contributor are fulfilled.

3.9 Interest shall be charged on unpaid annual contributions from the date on which payment is due at an annual rate of 2 per cent higher than the minimum lending rate fixed by the Central Bank of the Headquarters State, taking into account any changes in the minimum lending rate while an annual contribution remains unpaid.

#### REGULATION 4

##### ACCOUNTS AND BUDGET

4.1 The accounts of the Fund and its annual budget shall be established in the currency of the Headquarters State.

4.2 Subject to Regulation 4.3, the accounts of the Fund shall be completed and closed at the end of each calendar year. Any surplus funds including interest from operations in a given year shall be carried forward to the next calendar year.

4.3 Annual contributions paid to the Fund under Article 12, paragraph 2(b) of the Fund Convention, including any interest thereon, shall be used exclusively for the satisfaction of the claims for which they were levied and, if exceptionally not used during that year, shall be reserved in the accounts of the Fund from year to year for this purpose.

4.4 Where, after the periods set out in Article 6 of the Fund Convention for bringing actions in respect of a particular incident have lapsed and all claims and expenses arising out of that incident have been settled, there remains a substantial amount which has been reserved in accordance with Regulation 4.3, the Assembly shall decide whether such amount shall be reimbursed pro rata to the persons who made contributions with respect to that incident in accordance with Article 12, paragraph 2(b), of the Fund Convention, or whether such amount shall be credited pro rata to the accounts of these persons.

4.5 In respect of each incident giving rise to claims against the Fund, the Director shall maintain a running record of all expenses incurred by the Fund.

## REGULATION 5

### REPORTS OF CONTRIBUTING OIL RECEIPTS

5.1 Each Contracting State shall forward to the Director an annual report using the form annexed to these Regulations. The annual report shall reach the Director not later than 31 March each year and shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Contracting State concerned oil in respect of which contributions are liable to be paid in accordance with Article 10 of the Fund Convention, together with details of the quantities of contributing oil received by all such persons during that year. Each State in respect of which the Convention enters into force after 31 March of any year shall, on or before the date of entry into force of the Fund Convention for that State, submit a report in the terms stipulated in this Regulation in respect of contributing oil received within its territory during the preceding calendar year.

5.2 For the purpose of assisting Contracting States in the preparation of the reports referred to in Regulation 5.1 the Director shall, not later than 15 January of each year, circulate to all Contracting States a list of the States in respect of which the Fund Convention will be in force on 31 March of that year. The Director shall notify these States of the date on which the Fund Convention enters into force for any other State during the course of the year.

5.3 The Director shall ascertain whether as a result of the coming into force of the Fund Convention for a State after 31 March of any year, some quantities of contributing oil have been reported to the Fund under Regulation 5.1 by more than one State. Where any such double reporting is found, the Director shall inform all Contracting States thereof and amend the reports submitted by the States concerned accordingly.

5.4 Where amendments are made to the quantities of contributing oil reported in accordance with Regulation 5.1, whether or not as a consequence of action on the part of the Director under Regulation 5.3, the Director shall, at the end of such year, recalculate the annual contributions in accordance with Article 12 of the Fund Convention utilizing the amended quantities. Any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoice for the persons concerned for the next succeeding year.

5.5 Where, pursuant to Article 14 of the Fund Convention, a Contracting State assumes itself the obligations of any person who is liable to contribute to the Fund in respect of oil received within the territory of that State, such State shall, when submitting its annual reports concerning contributing oil receipts, specify therein the names and addresses of the persons in respect of which the State assumes such obligation and the quantities of contributing oil received by such persons.

#### REGULATION 6

##### FILING OF CLAIMS

6.1 Where a claim is presented to the Fund, the Director shall request the claimant to support his claim by a notice in writing containing, to the extent possible the following particulars:

- (a) the name and address of the claimant and his representative, if any;
- (b) the identity of the ship involved in the incident;
- (c) the date, the place and specific details of the incident;
- (d) the type of pollution damage and the place where it was experienced;
- (e) the amount of the claim.

6.2 The Director shall request any claimant to provide such further information and such documents as he deems necessary to determine the validity of the claim.

#### REGULATION 7

##### INTERVENTION IN LEGAL PROCEEDINGS

7.1 Where the Director considers that the Fund may be liable to meet claims arising out of a particular incident, he shall arrange to have the Fund intervene as a party in any legal proceedings against the owner or his guarantor or, to the extent permitted under the applicable national law, in any arbitration concerning any claim arising out of the incident, if the Director considers that such intervention is required to safeguard the interests of the Fund. In case he is satisfied that the interests of the Fund and those of the owner and/or his guarantor are not in conflict, he may arrange for the Fund joining the owner and/or his guarantor in any legal proceedings or arbitration.

7.2 Where the Fund has joined the owner and/or his guarantor, the Fund may share the costs incurred in such proceedings or procedures on a basis agreed between the Director and the owner and/or his guarantor, unless a court or arbitration tribunal decides otherwise. In case of dispute the Director may agree with the other parties concerned to submit to arbitration the question of how the costs should be shared.

## REGULATION 8

### SETTLEMENT OF CLAIMS

8.1 The Director shall promptly take all appropriate and necessary measures for dealing with claims.

8.2 The Director shall promptly satisfy any claims for pollution damage under Article 4 of the Fund Convention which have been established by judgment against the Fund enforceable under Article 8 of the Fund Convention.

8.3 The Director may agree with any claimant to submit a claim to binding arbitration. Claims established by such arbitration shall be promptly satisfied by the Director.

8.4.1 Where the Director is satisfied that the Fund is liable under the Fund Convention to pay compensation for pollution damage, he may, without the prior approval of the Assembly, make final settlement of any claim, if he estimates that the total costs to the Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 25 million francs. The relevant date for conversion shall be the date of the incident in question.

8.4.2 Furthermore, where an incident has occurred, the Assembly may authorize the Director to settle claims in respect of that incident beyond the limit established in Regulation 8.4.1.

8.4.3 As a condition for making a final settlement to any claimant under Regulation 8.4.1 or 8.4.2, the Director shall obtain a full and final release in favour of the Fund from the claimant in respect of all claims of that claimant arising from that incident.

8.5 All agreements to submit claims to arbitration under Regulation 8.3 and all claims settled under Regulation 8.4.1 or 8.4.2 shall be reported by the Director at the next session of the Assembly.



8.6 Where the Director is satisfied in respect of an incident that the owner is entitled to limit his liability under the Liability Convention or has no liability under the said Convention and that the Fund will be liable under the Fund Convention to pay compensation to victims of pollution damage arising from the incident, the Director shall make provisional payment to such victims if in his view this is necessary in order to mitigate undue financial hardships to them. These payments shall be at the discretion of the Director, who shall endeavour to ensure that no person receiving such payment receives more than 60 per cent of the amount which he is likely to receive from the Fund in the event of claims being abated pro rata. Total payments under this paragraph shall not exceed [90] million francs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.

8.7 Where in respect of a particular incident, the Director considers the level of provisional payments permitted under Regulation 8.6 is insufficient to mitigate undue financial hardships to victims, he may bring the matter to the attention of the Assembly. The Assembly may decide, in respect of such incident, that provisional payments may be made beyond the limit of [90] million francs as laid down in Regulation 8.6.

8.8 As a condition of making a provisional payment in respect of a claim, the Director shall obtain from the claimant concerned a transfer to the Fund of any right that such claimant may enjoy under the Liability Convention against the owner or his guarantor, up to the amount of the provisional payment to be made by the Fund to that claimant.

8.9 Where a person who is in arrears in respect of any payment due to the Fund is entitled to receive payment from the Fund for the satisfaction of a claim, the Director shall, unless this is not permitted under the applicable national law, deduct the amount of the arrears from the amount of the payment to be made to such person by the Fund.

#### REGULATION 9

##### INDEMNIFICATION OF SHIPOWNER

9.1 The Director shall promptly take all appropriate and necessary measures for dealing with applications by an owner or his guarantor for indemnification under Article 5 of the Fund Convention.

9.2 The Director shall promptly indemnify an owner or his guarantor to the extent provided in Article 5, paragraph 1, of the Fund Convention in respect of any amount which has been established by a judgment against the Fund enforceable under Article 8 of the Fund Convention.

9.3 Where, in respect of any incident, an owner or his guarantor has paid compensation for pollution damage to satisfy a judgment enforceable under Article X of the Liability Convention, the Director shall promptly indemnify the owner or his guarantor to the extent that the aggregate amount of such compensation thus paid falls within the limits laid down in Article 5, paragraph 1 of the Fund Convention.

9.4 The Director may agree with an owner or his guarantor to submit to binding arbitration the question whether and to what extent the Fund is under an obligation to indemnify such owner or his guarantor under Article 5, paragraph 1 of the Fund Convention. Any amount established by such arbitration to be payable by the Fund shall be promptly satisfied by the Director.

9.5 Where the Director is satisfied that the Fund is liable under the Fund Convention to indemnify an owner or his guarantor for compensation for pollution damage paid to victims or for such expenses or sacrifices as are referred to in Article 5, paragraph 7, of the Fund Convention, he may, without the prior approval of the Assembly, indemnify such person within the limits laid down in Article 5, paragraph 1 of the Fund Convention if the total amount of indemnification to be paid in respect of the incident in question does not exceed 25 million francs. The relevant date for conversion shall be the date of the incident in question.

9.6 Where an incident has occurred, the Assembly may authorize the Director to indemnify an owner or his guarantor beyond the limit established in Regulation 9.5, in respect of that incident.

9.7 As a condition of indemnifying an owner or his guarantor under Regulation 9.5 or 9.6, the Director shall obtain a full and final release in favour of the Fund from such owner or his guarantor in respect of the Fund's liability in relation to that incident.

9.8 All agreements to submit disputes to arbitration under Regulation 9.4 and all indemnification payments made under Regulation 9.5 or 9.6 shall be reported by the Director at the next session of the Assembly.

9.9 Where a person who is in arrears in respect of any payment due to the Fund is entitled to receive indemnification payment from the Fund, the Director shall, unless this is not permitted under the applicable national law, deduct the amount of the arrears from the amount of the payment to be made to such person by the Fund.

## REGULATION 10

### LOANS AND INVESTMENTS

10.1 Where annual contributions determined by the Assembly do not in fact produce sufficient and timely funds for the payments to be made by the Fund for the satisfaction of claims, provisional payments or other expenses incurred in the operation of the Fund, the Director may make arrangements for obtaining short-term credit facilities or loans meeting the cash-flow requirements of the Fund. If the Director is unable to arrange the required credit facilities or loans on terms which he feels are reasonable, he shall refer the matter to the Assembly.

10.2 With a view to securing the assets of the Fund the Director may invest any funds which are not required for the short term operation of the Fund.<sup>1/</sup> In making any investments all necessary steps shall be taken to ensure the maintenance of sufficient liquid funds for the operation of the Fund, to avoid undue currency risks and generally to obtain a reasonable return on the investments of the Fund.

10.3 The Director shall submit to each session of the Assembly and to each meeting of the Executive Committee particulars of the current investments of the Fund and of any changes which have taken place since his previous report.

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<sup>1/</sup> The French delegation proposed that this sentence read as follows:

"With a view to securing the assets of the Fund the Director may invest any funds which, exceptionally, there may have been no occasion to use for payments by the Fund."

## REGULATION 11

### ASSISTANCE TO STATES IN EMERGENCY SITUATIONS

11.1 At the request of a Contracting State the Director shall, to the extent that he deems it practicable and reasonable, endeavour to assist that State in obtaining the materials, equipment, services or personnel required for preventing or mitigating pollution damage if he is satisfied that the Fund may be called upon to pay compensation under the Fund Convention in respect of pollution damage arising from the incident in question.

11.2 In particular, the Director shall, as appropriate, assist such a Contracting State to identify specialist organisations and to enlist their services for these purposes.

## REGULATION 12

### EXTENSION OF CREDIT FACILITIES IN RESPECT OF PREVENTIVE MEASURES

12.1 On the application of a Contracting State which is in imminent danger of substantial pollution damage arising from a particular incident the Director may, if he estimates that the Fund will be called upon to pay compensation under the Fund Convention in respect of that incident, provide that State with reasonable credit facilities to enable it to initiate or continue with the taking of adequate preventive measures.

12.2 Subject to conditions specified by the Assembly regarding, inter alia, the data and supporting justifications to be provided by a State requesting credit facilities, the Director shall determine whether in the light of all the circumstances of the case the provision of credit facilities by the Fund in respect of a particular incident is justified.

12.3 An application for credit facilities under this Regulation shall include:

- (a) full particulars of the incident;
- (b) the nature and extent of pollution damage which has already occurred, including preventive measures already taken;
- (c) the preventive measures envisaged as well as the estimated costs thereof.

Particulars in respect of preventive measures taken or envisaged shall be presented in a manner which will enable the Director to determine the measures which can be taken with personnel, material and equipment available locally and which measures should, in the interest of speed and efficiency, involve personnel, material or equipment to be procured from elsewhere.

12.4 Credit facilities provided by the Fund to a State may be given in the form of:

- (i) guarantee by the Fund in respect of an advance to that State from a specified person, whose principal place of business is outside such State, or
- (ii) guarantee by the Fund to make payment of the cost of preventive measures in respect of which the State concerned has entered into a contract with a specified person whose principal place of business is outside such State.

12.5 Credit facilities provided by the Fund with respect to any one incident may not exceed 60 per cent of the total amount which the Director estimates the Fund will ultimately be liable to pay in respect of the cost of preventive measures under the Fund Convention in respect of such incident, or 45 million francs, whichever is the less. The relevant date for conversion shall be the date of the incident in question.

12.6 All expenses incurred by the Fund as a consequence of providing credit facilities to a State shall be reimbursable to the Fund by such State. The Director shall, in consultation with the State concerned, stipulate the manner in and the time within which such reimbursement shall be made.

12.7 Before providing credit facilities to any State under Article 4, paragraph 8 of the Fund Convention, the Director shall require such State to agree in writing that the expenses incurred by the Fund in providing such credit facilities, including any amount which the Fund has paid in consequence of a guarantee referred to in Regulation 12.4, may be deducted from any sums which that State may be entitled to receive from the Fund for the satisfaction of claims under the Convention.

### REGULATION 13

#### WAIVER OF IMMUNITY

The Director may in a particular case waive the immunity from jurisdiction and execution enjoyed by the Fund or by staff members or experts.

### REGULATION 14

#### RIGHT TO DIRECT CORRESPONDENCE

The Director and other members of the Secretariat acting under his instructions may correspond or otherwise communicate directly with any person in the performance of their functions.

### REGULATION 15

#### DESIGNATION OF COMPETENT AUTHORITY

Any Contracting State may designate an authority to act on behalf of that State with regard to a particular aspect of the Fund's activities. Any Contracting State having made such designation shall notify the Director of that designation.

### REGULATION 16

#### AMENDMENTS

- 16.1 These Internal Regulations may be amended by the Assembly.
- 16.2 Any amendment adopted in accordance with Regulation 16.1 shall enter into force one month after its adoption, unless the Assembly decides, in a particular case, that it shall enter into force immediately or after a period of time other than the aforementioned period.
- 16.3 Amendments adopted in accordance with Regulation 16.1 shall be communicated by the Director to all Contracting States.

**REPORT ON CONTRIBUTING OIL RECEIPTS**  
made pursuant to Article 15, paragraph 2 of the International Convention on the  
Establishment of an International Fund for Compensation for Oil  
Pollution Damage, hereinafter "Fund Convention"

**Note:** Particulars in respect of only one receiving person should be entered on this form except in cases referred to in explanatory note 8. Figures refer to the explanatory notes.

STATE .....

AUTHORITY MAKING THE REPORT .....

OIL RECEIPTS DURING (Calendar year) .....

Name and address of person <sup>3</sup>	Contributing oil <sup>4</sup> received <sup>5</sup> directly after carriage by sea		Contributing oil <sup>4</sup> received <sup>5</sup> from a non-Contracting State <sup>6</sup> by modes of transport other than carriage by sea <sup>10</sup>	
	received from other States	received otherwise (e.g. from terminal at sea; from offshore oil field; after cabotage)	tons received <sup>2</sup>	State from which received
	tons received <sup>2</sup>	tons received <sup>2</sup>	tons received <sup>2</sup>	mode of transport into receiving State

Issued at ..... On .....  
(Place) (Date)

Signature of authorized official .....

Title .....

Explanatory notes:

1. This report shall be submitted to the Director of the Fund to reach him not later than 31 March of each year.
2. Quantities of contributing oil shall be given in metric tons and rounded out to the nearest ton.
3. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
4. Article 1, paragraph 3 of the Fund Convention defines "contributing oil" as follows:

"Contributing oil" means crude oil and fuel oil as defined under (a) and (b) below:

- (a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).
  - (b) "Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.
5. "Contributing oil received" includes all contributing oil received during the relevant calendar year:
    - (a) in the ports or terminal installations in the territory of the reporting State if such oil was carried by sea to such ports or terminal installations; and



- (b) in any installation situated in the territory of the reporting State if such oil has been carried by sea and discharged in a port or terminal installation of a non-Contracting State and has thereafter been carried to the reporting State from the non-Contracting State by modes of transport other than carriage by sea (e.g. transport by pipeline, non-sea-going barge, road, rail, etc.), provided, however, that in such case oil receipts shall only be taken into account on first receipt in a Contracting State.

6. "Contracting State" means a State for which the Fund Convention is in force. When completing the report only those States for which the Convention is in force on 31 March shall be considered Contracting States.

7. A report shall be made in respect of a person only if the total quantities of receipts of contributing oil received by such person during the relevant calendar year exceeds 150,000 tons.

8. Notwithstanding explanatory note 7, a report shall be made also in respect of any person who, in the relevant calendar year, has received contributing oil in a quantity not exceeding 150,000 tons if the quantity of contributing oil received in that year by that person, when aggregated with quantities received in the reporting State in that same calendar year by a person or persons associated with that person, exceeds 150,000 tons.

9. "Associated person" as used in explanatory note 8 means any subsidiary or commonly controlled entity.

10. With respect to oil received from non-Contracting States and carried into the reporting State by modes other than carriage by sea as described in explanatory note 5(b), for each receipt, specify the State from which the oil was received and the mode of transport involved, it being understood that only such oil is to be considered contributing oil which at some stage has been carried by sea.

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