



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
9th session
Agenda item 17

FUND/A.9/14
4 September 1986

Original: ENGLISH

AMENDMENTS TO THE INTERNAL REGULATIONS

Note by the Director

Introduction

1 The IOPC Fund's Internal Regulations were adopted by the Assembly at its 2nd session in April 1979 (documents FUND/A.2/4 and FUND/A.2/16/1, paragraph 7).

2 The Internal Regulations may be amended by the Assembly (Regulation 15.1). Amendments were adopted at the 3rd, 4th, 5th and 6th sessions of the Assembly (documents FUND/A.3/15, paragraph 9, FUND/A.4/16, paragraph 13, FUND/A.5/16, paragraph 13 and FUND/A.6/14, paragraph 17.2).

3 The Director has examined the Internal Regulations in the light of experience gained from the operations of the IOPC Fund, in order to establish whether any amendments are needed. This examination has led the Director to the conclusion that the Internal Regulations should be amended, as proposed in the Annex, on the following points.

Regulation 3.8

4 Under this provision, the annual contributions shall be due on 15 January of the year following that in which the Assembly decides on the levy of annual contributions, unless the Assembly decides otherwise. The Director has been informed that, in some Member States, it is difficult to remit the contributions as early as 15 January, in view of the holidays around the new year and, particularly, if the Assembly meeting is held late in October. For this reason, it is proposed that the date of payment should be 1 February, unless the Assembly decides otherwise.

Regulation 3.9

5 Under Regulation 3.9 the Director shall notify the State within whose territory the relevant quantities of contributing oil were received, if a contributor fails to pay an initial or annual contribution by the date payment is due. The Director shall also request advice on the action to be taken to ensure that the obligations of that contributor are fulfilled.

6 This Regulation, as presently worded, implies that the Director should always inform Governments of all contributors who have not paid on the due date. The Regulation has not been applied in such a way, as most contributors who are in arrears pay either within a short period of time of the due date or on being reminded by the Director.

7 In some cases, however, the Director has informed the Government concerned when a contributor is in arrears for a considerable period of time or when repeated reminders to the contributor have been to no avail. As a result of this information, the authorities of the Government concerned have sometimes made contact with the defaulting contributor in order to make him pay as soon as possible. The Director considers that such assistance from Governments is very useful. He proposes that the present wording be amended so as to give him the possibility of informing Governments and of requesting advice, but not - as under the present wording - obliging him to do so.

Regulation 3.12 (new)

8 The Director considers that it should be stated explicitly in the Internal Regulations that any bank charges in connection with the payment of initial or annual contributions or with the payment of interest on overdue contributions shall be borne by the contributor. It is proposed that a provision to this effect be inserted as a new Regulation 3.12.

Regulation 5.2

9 Under Internal Regulation 5.1, the Contracting States shall submit reports on receipts of contributing oil to the Director before 31 March each year on a form annexed to the Regulations. Internal Regulation 5.2 provides that, for the purpose of assisting Contracting States in the preparation of the reports, the Director shall, not later than 15 January each year, circulate to these States a list of all 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 entry into force of the Fund Convention in respect of any other State during the course of the year.

10 The practice that has developed is that every year, during the month of January, the Director sends a circular letter to Governments of Member States inviting them to submit their oil reports. He also encloses an appropriate number of forms and a list of all Contracting States. It is suggested that Internal Regulation 5.2 be amended to reflect this practice.

Regulation 5.4

11 This Regulation deals with amendments to the reports on receipts of contributing oil submitted by Member States to the IOPC Fund in accordance with Regulation 5.1. The practice of the IOPC Fund has developed in a way which was not foreseen when Regulation 5.4 was adopted.

12 Under Internal Regulation 5.1, each Contracting State shall forward to the Director an annual report specifying the names and address 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. The report shall contain details of the quantities of contributing oil received by all such persons during that year. It shall reach the Director not later than 31 March each year.

13 Under Article 12.2 of the Fund Convention, the Assembly shall for each person liable to contribute to the IOPC Fund determine the amount of his annual contribution. Under the practice developed by the Assembly, the Assembly does not determine the amounts payable by the individual contributors. Instead, the Assembly determines the total amount of contributions to be levied. On the basis of this decision, the Director calculates the amount of contribution for each person liable to pay contributions. For this purpose, the Director divides the total amount of contributions decided by the Assembly by the total quantity of contributing oil reported by Contracting States for the relevant year (cf Article 12.3 of the Fund Convention).

14 It happens that a Contracting State, after having submitted its report, changes this report by amending the quantities reported in respect of one or more persons. Under Regulation 5.4, the Director shall then, at the end of the calendar year, recalculate the annual contributions in accordance with Article 12 of the Fund Convention, using the amended quantities. Any differences between the contributions paid or invoiced and the recalculated contributions shall then be taken into account in preparing the invoice for the persons concerned for the next year in respect of which annual contributions are raised.

15 In the Director's opinion, Internal Regulation 5.4 is ambiguous. If the intention of this Regulation is that the Director should take into account the amended quantities for the

particular contributors whose reports have been amended, it only states the obvious. If, on the other hand, the purpose of this Regulation is that the Director should recalculate the contributions for all contributors who were affected by the amendment, ie because the total quantity of contributing oil reported to the IOPC Fund had changed, it would oblige the Director to recalculate the contributions for all contributors. In practically all cases, the difference for the individual contributor would be minimal.

16 The practice of the IOPC Fund in cases where oil reports are amended is as follows. Invoices are usually sent out by the end of October. Any amendments to the reports on oil receipts made before the invoices are sent out are automatically taken into account for the calculation of the contributions payable by the individual contributors concerned. If a contributor, on receiving his invoice, contacts his Government and establishes that the quantity reported by the Government with respect to him is wrong, the Government will notify the IOPC Fund that the quantity should be corrected. The Director will then issue a new invoice to this contributor, on the basis of the corrected quantity. No recalculations are made in respect of other contributors.

17 In view of the foregoing, the Director proposes that Internal Regulation 5.4 be amended to reflect clearly the practice that has been developed.

Regulation 10.3

18 Under this Regulation, 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 IOPC Fund and of any changes which have taken place since his previous report. Under the wording of this provision, the Director should submit such a report also to the Executive Committee meeting immediately preceding the annual Assembly. In the view of the Director, this is not necessary. In fact, reports on investments have not been submitted to these meetings of the Executive Committee. In the Director's opinion, it would be sufficient if reports on investments were made to the Assembly, provided the Assembly meets every year. Under Article 19.1 of the Fund Convention, the Assembly shall hold regular sessions every year unless it has allocated to the Executive Committee the functions of adopting the budget and fixing the annual contributions. It appears unlikely that the Assembly would delegate these functions to the Executive Committee. It is proposed that this provision be amended accordingly.

Action to be Taken by the Assembly

19 The Assembly is invited to consider for adoption the Director's proposals for amendments to the Internal Regulations as set out in the Annex to this document.

ANNEX

Amendments to the Internal Regulations
as Proposed by the Director

(amendments underlined)

Regulation 3.8

Payment of annual contributions shall be due on 1 February of the year following that in which the Assembly decides on the levy of annual contributions, unless the Assembly decides otherwise.

Regulation 3.9

If a contributor is in arrears with the payment of an initial or annual contribution, the Director may 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.

Regulation 3.12 (new)

Any bank charges which arise in connection with the payment of contributions or of interest on overdue contributions shall be borne by the contributor.

Regulation 5.2

The Director shall, not later than 15 January each year, invite Contracting States to submit the reports referred to in Regulation 5.1 and shall send these States an appropriate number of the forms mentioned in that Regulation as well as 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.

Regulation 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 <1> recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 12 of the Fund Convention utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised.

<1> Phrase "at the end of such year" deleted

Regulation 10.3

The Director shall submit to each session of the Assembly <2> particulars of the current investments of the Fund and of any changes which have taken place since his previous report.

<2> Phrase "and to each meeting of the Executive Committee" deleted
