



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
59th session
Agenda item 3

71FUND/EXC.59/5/Add.1
26 October 1998

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

BRAER

Note by the Director

Summary:	Advance notice has been given of legal action in respect of the method of calculating the maximum amount payable by the 1971 Fund. A request has been made for an undertaking by the 1971 Fund to waive the six-year time limit for taking legal action against the Fund.
Action to be taken:	Instructions in respect of these two issues.

1 Legal action by Framgard Ltd

1.1 On 21 October 1998 the Director was informed that a claimant, Framgard Ltd, had taken legal action against the 1971 Fund in the Court of session requesting a declaration judgement on two points. The claimant has requested a declaration to the effect that the 1971 Fund is not entitled to take into account payments made prior to the establishment of liability on the part of the shipowner and his insurer, when calculating the upper limit of their liability. The claimant has also requested that the Court declares that the liability of the 1971 Fund should be calculated by reference not to Special Drawing Rights but to the free market value of gold.

1.2 It is expected that the action will be served on the 1971 Fund in the near future.

1.3 Subject to any instructions that the Executive Committee may wish to give him, the Director intends to oppose the action on both these points.

2 Six-year time-bar period

2.1 In most of the cases which are the subject of legal proceedings following the *Braer* incident, the 1971 Fund was notified of the action against the shipowner/Skuld Club in accordance with Article 6.1 of the 1971 Fund Convention. The 1971 Fund indicated its interest by joining the proceedings as, in what is known under Scots law, a 'minuter'.

2.2 A solicitor acting for a number of claimants has brought to the attention of the 1971 Fund that claimants who have notified the 1971 Fund of their claims but have not brought an action against the 1971 Fund may as a result be unable to enforce a judgement against the Fund after the sixth anniversary of the incident. The solicitor has referred to the relevant sections of the Merchant Shipping Act 1974 which read:

6.(2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 1 of the Act of 1971,^{<1>} any judgement given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgement may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

7.(2) No action to enforce a claim against the Fund under this Part of this Act shall be entertained by a court in the United Kingdom unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape by reason of which the claim against the Fund arose.

2.3 The relevant section (Article 6.1) of the 1971 Fund Convention reads:

Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

2.4 The solicitor has requested an undertaking from the 1971 Fund that, if claimants are required to raise actions against the 1971 Fund after the sixth anniversary of the incident, such actions would not be opposed on the grounds that they are time-barred.

2.5 It should be noted that the consequence of the 1971 Fund's not giving such an undertaking would be that 47 claimants represented by this solicitor would be required to start legal proceedings against the 1971 Fund. It is not unlikely that the other 111 claimants whose actions against the shipowner and the Skuld Club are pending would also start such proceedings.

2.6 The Executive Committee has in previous cases taken the view that the provisions on time-bar should be applied strictly. For this reason, the Director is of the view that the 1971 Fund is unable to give an undertaking to waive the requirement that the claimant should take legal action against the Fund within six years of the incident.

3 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document;

<1> Merchant Shipping (Oil Pollution Act) 1971.

- (b) to give the Director such instructions as it deems appropriate in respect of the legal actions referred to in paragraph 1; and
 - (c) to give the Director such instructions as it considers appropriate in relation to the request to give an undertaking to waive the six-year time limit for taking legal action against the 1971 Fund (paragraph 2).
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