



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
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DIRECTOR'S AUTHORITY TO SETTLE CLAIMS

Note by the Director

Introduction

1 The Director's authority to make final settlement of claims for compensation and indemnification against the IOPC Fund is governed by Internal Regulations 8 and 9. These Internal Regulations were adopted by the Assembly at its 2nd session. Internal Regulation 8 was amended by the Assembly at its 14th session in 1991. The Director submits for consideration by the Assembly whether Internal Regulation 8 should now be amended, in the light of the experience gained by the IOPC Fund since the 14th session, so as to enable the Fund to continue its policy of providing prompt compensation to victims of oil pollution.

Present Situation

2 Under Internal Regulation 8.4.1, the Director may make final settlement of any claim for compensation without the prior approval of the Executive Committee, if he estimates that the total cost to the IOPC Fund of satisfying all claims arising out of the relevant incident is not likely to exceed 37.5 million (gold) francs (2.5 million SDR), which corresponds to approximately £2.4 million. The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 10 million (gold) francs or 0.67 million SDR (£600 000) in respect of any one incident. The Director has the authority to settle claims for indemnification of the shipowner if the total amount of indemnification does not exceed 25 million (gold) francs or 1.67 million SDR (£1.6 million) (Internal Regulation 9.5). The Executive Committee may authorise the Director to settle claims beyond these limits in respect of a particular incident (Internal Regulations 8.4.2 and 9.6, respectively).

3 Under Internal Regulation 8.6, the Director may make provisional payments to victims if in his view this is necessary in order to mitigate undue financial hardships to them. Such payments are at

the discretion of the Director who shall endeavour to ensure that no person receiving such a payment receives more than 60% of the amount which he is likely to receive from the IOPC Fund in the event of claims being reduced pro rata. The total provisional payments shall not exceed 90 million (gold) francs (6 million SDR), corresponding to approximately £5.7 million, in respect of any one incident.

Director's Analysis of the Situation

4 It has been the policy of the IOPC Fund that victims of pollution incidents should be compensated as soon as possible. In recent years the Executive Committee has held several sessions every year, often at short notice. This has greatly facilitated prompt settlement, since the Committee has been able to approve claims or authorise the Director to make final settlements beyond the limits laid down in the Internal Regulations. In addition, the fact that the Director was authorised in 1991 to approve claims from individuals and small businesses up to approximately £600 000 has also proved very useful.

5 Experience has shown that the present wording of Internal Regulation 8.4.1 as regards the general limit of the Director's authority to settle claims has given rise to certain difficulties in ensuring prompt compensation to victims. The general limit only applies if it is likely that the total cost to the IOPC Fund of satisfying all claims for compensation arising out of a given incident does not exceed 37.5 million (gold) francs (2.5 million SDR), which corresponds to approximately £2.4 million. This means that, since in the case of a major incident the total cost to the Fund of all claims arising out of the incident might exceed that limit, the Director is not authorised to make any final settlements at all (except in respect of claims from individuals and small businesses as set out above). In the Director's view, this is not satisfactory.

6 For this reason, the Assembly may wish to consider authorising the Director to settle claims up to a global amount in respect of each incident, independent of the total estimated cost to the Fund of satisfying all claims for compensation arising out of this incident. It might be appropriate to fix that limit at the same level as the present general limit, viz 37.5 million (gold) francs or 2.5 million SDR (£2.4 million). In order to safeguard the interests of victims who are individuals or small businesses, the Director believes that the special limit for such claims should be retained.

7 In the past the Director has submitted to the Executive Committee for consideration claims involving questions of principle, for example as regards the interpretation of the definitions of "pollution damage" and "preventive measures" in the Civil Liability Convention, even in cases where he would have been entitled to make final settlements under Internal Regulation 8.4.1. It goes without saying that the Director will continue this policy.

Amendments to the Internal Regulations

8 In view of the considerations set out above, the Director submits the following text for amendments to Internal Regulation 8.4.1 for examination by the Assembly (amendments underlined):

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^{<1>}, make final settlement of claims^{<2>} up to an aggregate amount of 37.5 million francs in respect of any one incident. The Director may in any

<1> Under Internal Regulation 1.6 the reference to the Assembly is in this case to be construed as a reference to the Executive Committee, since the Assembly has delegated to the Executive Committee the task of approving settlement of claims against the IOPC Fund.

<2> The words "if he estimates that the total cost to the Fund of satisfying all claims arising out of the relevant incident is not likely to exceed" have been deleted.

case make final settlement of claims from individuals and small businesses up to an aggregate amount of 10 million francs in respect of any one incident. The relevant date for conversion shall be the date of the incident in question.

Action to be Taken by the Assembly

- 9 The Assembly is invited to:
- (a) consider whether the provisions in Internal Regulation 8.4.1 governing the Director's authority to make final settlement of claims for compensation should be modified (paragraph 6 above); and
 - (b) adopt such amendments to Internal Regulation 8.4.1 as the Assembly may deem appropriate (paragraph 8 above).
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