



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
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FUNCTIONS OF THE EXECUTIVE COMMITTEE

Note by the Director

1 Introduction

1.1 Pursuant to Article 26.1 of the Fund Convention, the functions of the Executive Committee shall be:

- (a) to elect its Chairman and adopt its own rules of procedure, except as otherwise provided in this Convention;
- (b) to assume and exercise in place of the Assembly the following functions:
 - (i) making provision for the appointment of such personnel, other than the Director, as may be necessary and determining the terms and conditions of service of such personnel;
 - (ii) approving settlements of claims against the Fund and taking all other steps envisaged in relation to such claims in Article 18, paragraph 7;
 - (iii) giving instructions to the Director concerning the administration of the Fund and supervising the proper execution by him of the Convention, of the decisions of the Assembly and of the Committee's own decisions; and
- (c) to perform such other functions as are allocated to it by the Assembly.

1.2 In the view of the Director, it might be appropriate for the Assembly to review, in the light of experience gained from fifteen years of operation of the IOPC Fund, the distribution of functions between the Assembly and the Executive Committee. The present document contains a study of this issue, and a summary table can be found in the Annex.

2 Allocations to the Executive Committee decided by the Assembly

2.1 At its 3rd session, the Assembly decided to allocate the following functions to the Executive Committee (document FUND/A.3/15, paragraph 13):

- (a) reviewing investment principles (Financial Regulations 7.1);
- (b) authorising the Director to settle claims beyond the limits established in Internal Regulations 8.4.1 and 9.5 (Internal Regulations 8.4.2 and 9.6);
- (c) authorising the Director to make provisional payments beyond the limits established in Internal Regulation 8.6 (Internal Regulation 8.7);
- (d) considering the payment for the satisfaction of claims if annual contributions are not sufficient and the Director is unable to obtain loans on reasonable terms (Internal Regulation 10.1);
- (e) deciding whether the privileges and immunities of the Director should be waived (Staff Regulation 3);
- (f) approving the classification standards on the basis of which the Director can determine the appropriate categories and grades for established posts (Staff Regulation 13); and
- (g) determining the terms and conditions of service of the Director (Staff Regulation 15).

2.2 The functions referred to under items (b), (c) and (d) of paragraph 2.1 above relate to the settlement and payment of claims. It is therefore, in the Director's view, appropriate that these tasks be carried out by the Executive Committee. It is also practical that the Executive Committee can take decisions in respect of matters referred to in items (e) and (f) of paragraph 2.1. The Director takes the view that these functions should also in the future be carried out by the Executive Committee. It appears that the function referred to in item (g) would normally be carried out by the Assembly.

2.3 As for the matter referred to in item (a) of paragraph 2.1 above, viz the review of investment principles, this has become a very important issue, in view of the large amounts held by the IOPC Fund in recent years. In fact, this review has been carried out by the Assembly (cf document FUND/A.15/28, paragraph 15). The Director proposes that the Assembly should keep the responsibility for the review of the investment policy and that, therefore, this function should no longer be allocated to the Executive Committee.

3 Other Functions of the Assembly which could be Delegated to the Executive Committee

3.1 The Assembly has a number of functions which need not necessarily be carried out by the Assembly itself but could be allocated to the Executive Committee. A number of these functions are dealt with below.

Budget, Accounts and Audit

3.2 Article 18.5 of the Fund Convention states that the Assembly shall adopt the annual budget and fix annual contributions. The Fund Convention recognises the possibility that the Assembly allocates this function to the Executive Committee, in which case the Assembly would hold regular sessions only once every two years (Article 19.1). In the view of the Director, the adoption of the budget and the levying of contributions are of such importance that these functions should not be allocated to the Executive Committee.

3.3 The Assembly shall determine the interest rate on unpaid annual contributions (Article 13.1), and whether action should be taken or continued against a defaulting contributor (Article 13.3). The Director considers that these functions should also in the future be carried out by the Assembly.

3.4 As mentioned above, the Executive Committee shall in place of the Assembly make provision for the appointment of such personnel, other than the Director, as may be necessary and shall determine the terms and conditions of service of such personnel (Article 26.1 (b)). The Executive Committee has in recent years exercised that function, by authorising the Director to create the post of Claims Officer in May 1991 and the post of Clerk-Secretary in June 1993 (documents FUND/EXC.27/6, paragraph 5.2 and FUND/EXC.35/5, paragraph 5.1). The creation of posts will necessarily have budgetary implications. So far, the Executive Committee has not had the power to amend the budget in order to make budgetary appropriations to cover the cost of new posts. In the above-mentioned cases, the persons concerned were employed initially to carry out specific tasks relating mainly to major incidents, and the Executive Committee decided that their salaries and other benefits would for the running financial year be paid from one or several Major Claims Funds. The Assembly then had the possibility of including these costs in the regular budget for the following financial year. In the view of the Director, the Executive Committee should not only have the power to create new posts but also to decide on appropriations necessary to cover the costs resulting from the creation of such posts (such as salaries, allowances, furniture, office equipment and increased office space) until the Assembly can take these costs into account in connection with the adoption of the budget for the following year.

3.5 The Assembly shall appoint auditors and approve the accounts of the IOPC Fund (Article 18.6). The Director considers that the Assembly should retain these important functions.

Credit Facilities

3.6 The Assembly shall specify the conditions for granting credit facilities to Contracting States under Article 4.8 of the Fund Convention (Internal Regulation 12.2). The Director considers that the Assembly should take such decisions.

Replacement of Instruments

3.7 Under Article 5.4 of the Fund Convention, the Assembly shall take decisions on the replacement of instruments enumerated in Article 5.3(a). Although this decision is of a technical nature, it has important legal effects in the law of Member States. The Director takes the view that for this reason decisions in this regard should be taken by the Assembly.

4 Action to be Taken by the Assembly

The Assembly is invited to:

- (a) take note of the information contained in this document; and
- (b) take decisions on the functions of the Executive Committee in respect of the tasks dealt with in paragraphs 2.1-2.3 and 3.1-3.7 of this document, in particular as regards:
 - (i) review of investment policy (paragraph 2.3); and
 - (ii) appropriations necessary to cover costs resulting from the creation of new posts (paragraph 3.4).

ANNEX**FUNCTIONS OF THE EXECUTIVE COMMITTEE****FUNCTIONS ALLOCATED TO EXECUTIVE COMMITTEE IN THE FUND CONVENTION (ART 26.1(B)):**

- Make provisions re appointment of personnel other than Director
- Approving settlement of claims
- Instructions to Director re administration of Fund

FUNCTIONS WHICH COULD BE ALLOCATED TO THE EXECUTIVE COMMITTEE UNDER ART 26.1(C):

Function	Function Outlined in	Exercised at Present by	Director's Proposal
<i>Functions Previously Allocated by the Assembly (FUND/A.3/15)</i>			
Reviewing investment principles	Fin Reg 7.1	ExCom	Assembly
Authorising Director to settle claims beyond limits in Int Regs	{Int Reg 8.4.2 {Int Reg 9.6	ExCom	ExCom
Authorising Director to make provisional payments beyond limits in Int Regs	Int Reg 8.7	ExCom	ExCom
Consideration of cash-flow problems re payment of claims if Director unable to obtain loans on reasonable terms	Int Reg 10.1	ExCom	ExCom
Waiving of Director's privileges and immunities	Staff Reg 3	ExCom	ExCom
Approving classification standards for posts	Staff Reg 13	ExCom	ExCom
Determining Director's conditions of service	Staff Reg 15	ExCom	ExCom
<i>Other Functions Which Could be Allocated</i>			
Adoption of budget and levying of contributions	FC: Art 18.5	Assembly	Assembly
Determining interest on unpaid contributions	FC: Art 13.1	Assembly	Assembly
Determining that action should not be taken against defaulting contributor	FC: Art 13.3	Assembly	Assembly
Making budget appropriations for new posts	–	Assembly	ExCom
Appointing auditors and approving accounts	FC: Art 18.6	Assembly	Assembly
Specifying conditions for granting credit facilities	Int Reg 12.2	Assembly	Assembly
Replacement of Instruments	FC: Art 5.4	Assembly	Assembly