



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

<b>Agenda item: 8</b>	IOPC/OCT14/8/2/2	
Original: ENGLISH	19 September 2014	
1992 Fund Assembly	<b>92A19</b>	
1992 Fund Executive Committee	<b>92EC62</b>	
Supplementary Fund Assembly	<b>SA10</b>	
1971 Fund Administrative Council	<b>71AC33</b>	●

## WINDING UP OF THE 1971 FUND

Submitted by the International Chamber of Shipping, BIMCO and INTERTANKO

<b>Summary:</b>	To inform Member States of the shipping industry's concerns with respect to the decision of the 1971 Fund Administrative Council that the 1971 Fund should be wound up by the end of 2014 notwithstanding that there remain outstanding claims against the 1971 Fund.
<b>Action to be taken:</b>	<u>1971 Fund Administrative Council</u>  Consider postponing the winding up of the 1971 Fund pending an orderly resolution of the outstanding claims against the Fund.

### 1 **Introduction**

- 1.1 This paper is submitted on behalf of the International Chamber of Shipping, BIMCO and the International Association of Independent Tanker Owners (INTERTANKO) (the "shipping industry"). The 1971 Fund Administrative Council's decision that the 1971 Fund should be wound up by the end of 2014 notwithstanding that there remain outstanding claims against the 1971 Fund is of great concern to the shipping industry. This submission highlights the industry's concerns with the approach taken by the Administrative Council in this regard and the consequences that it could have for the international liability and compensation regime for oil pollution damage arising from tanker incidents, as well as the impact that it could have on the co-operation that exists between industry, States and the Fund to ensure that claimants who suffer pollution damage receive prompt and adequate compensation.
- 1.2 The shipping industry supports a deferral in the winding up of the 1971 Fund in order to allow for an orderly resolution of the outstanding claims against the 1971 Fund.

### 2 **Outstanding incidents and treaty obligations**

- 2.1 States Parties to the 1992 Fund Convention that were previously States Parties to the 1971 Fund Convention retain obligations under that international instrument given that there remain outstanding 1971 Fund incidents.
- 2.2 The shipping industry recognises that the outstanding incidents are old cases and that the Administrative Council is seeking to resolve as many of the outstanding issues as possible in order to reach an agreement at its October 2014 session that the 1971 Fund should be dissolved by the end of 2014. However, the industry considers that it is premature and contrary to Article 44 of the 1971 Fund Convention to wind up the 1971 Fund before claims have been determined in outstanding cases. The 1971 Fund has a clear obligation under the Convention to meet its obligations in respect of any incident occurring before the Convention ceased to be in force and the industry has strong

concerns that the Administrative Council is disregarding these treaty obligations in order to meet the objective of dissolving the 1971 Fund as soon as possible.

- 2.3 The shipping industry has strong concerns that if the Administrative Council continues with this approach and agrees at its October 2014 session to dissolve the Fund by the end of 2014, this could result in fundamental changes to how pollution damage cases from oil tankers are handled in the future and that any such changes are, unfortunately, likely to be to the detriment of the system as a whole.
- 2.4 It is noted in this regard that the founding principle which underpins the international regime is to ensure that compensation is paid swiftly and efficiently to oil pollution damage claimants. The present practice of insurers facilitating interim payments arose because if the text of the Civil Liability and Fund Conventions was strictly followed, each claimant would receive payment of part of their compensation from a fund established in court by the shipowner/Club, and then, when the shipowners' limits are reached, the balance would be received from the 1971 Fund. However, the proportions due from each source are unknown until all claims have been finally determined. In a major incident with multiple claims, and some going to court, it can take years for this point to be reached.
- 2.5 If the Administrative Council continues with its current approach, then there is a greater likelihood that in future incidents, insurers will simply follow their treaty obligations and pay compensation into court, for distribution as the court sees fit, rather than make interim payments to ensure claimants receive prompt payment of compensation without having to rely on the court system. The consequences would be particularly severe for claimants with narrow operating margins, for example, in the fisheries and tourism industries. If this approach is adopted by insurers, then both the international regime and any State that experiences oil pollution damage from a future tanker spill will come under considerable pressure and criticism if claimants have to wait many years to receive their compensation. This would be extremely regrettable if this arose as a direct consequence of the current approach taken by the 1971 Fund Administrative Council and should be deeply concerning for all interested parties, including Member States Parties to the 1992 Fund.

### **3 Conclusion**

The shipping industry is strongly of the view that the winding up of the 1971 Fund should be postponed pending an orderly resolution of the outstanding claims against the Fund.

### **4 Action to be taken**

#### 1971 Fund Administrative Council

The 1971 Fund Administrative Council is invited to take note of the shipping industry's concerns, and to consider postponing the winding up of the 1971 Fund pending an orderly resolution of the outstanding claims against the Fund.

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