

# 1971 年設立油污損害國際賠償基金國際公約

1971 年 12 月 18 日訂於布魯塞爾，1978 年 10 月 16 日生效，2002 年 5 月 24 日停止適用

## 基金公約綜合文本 (1971~2000)

(含 1976、1992 及 2000 年修正，不含 1984 及 2003 年修正)

### International Convention on The Establishment of An International Fund for Compensation for Oil Pollution Damage

Brussels, 18, Dec. 1971; Entered into Force on 16, Oct. 1978 ; Cessation on 24 May 2002

### FUND Consolidated Texts (1971~2000)

(Including 1976, 1992 and 2000 Prots, not include 1984 and 2003 Prot)

## FUND 綜合文本 (1971~2000)

	1971 年公約	1976 年議定書	1984 年議定書	1992 年議定書	2000 年議定書	2003 年議定書
生效門檻：	8 國 + 90 日 + ≥ 750m tons	8 國 + 90 日 + ≥ 750m tons	8 國 + 90 日 + ≥ 450m tons	8 國 + 90 日 + ≥ 450m tons	+6 個月	8 國 + 90 日 + ≥ 450m tons
生效日期：	1978.10.16	1994.11.22	不生效	1996.05.30	2001.6.27	2005.03.03
停效日期：	2002.05.24					
締約國數 (2019.3)：	14	31	***	116	0	32

簡介：1969 年 CLC 公約有其適用之爭議，或其所規定之嚴格責任不為許多國家所認同，或油污責任限額太低不足補償等。另外，在 1969 年 CLC 公約制定期間亦有一爭議是，油污污染主要是因為「油」為「髒貨」之緣故，不應全由船舶所有人承擔責任。在前述因素下，便需設置一如果 CLC 無法適用或補償不足時之第二層補償機制，此即為 1971 年基金公約制定之主要原因。1971 年基金公約已完成階段任務，於 2002.5.24 停止效力，並為 1992 年公約及其後續的修正議定書所取代。2003 年修正議定書主要是增列第三層補償機制。

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**基金公約綜合文本 (1971~2000)**

**International Convention on The Establishment of An International Fund  
for Compensation for Oil Pollution Damage**  
Brussels, 18, Dec. 1971; Entered into Force on 16, Oct. 1978  
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**基金公約綜合文本 (1971~2000)**

The States Parties to the present Convention,  
Being parties to the International Convention of Civil Liability for  
Oil Pollution Damage, adopted at Brussels on 29 November 1969,  
Conscious of the dangers of pollution posed by the world-wide  
maritime carriage of oil in bulk,  
Convinced of the need to ensure that adequate compensation is  
available to persons who suffer damage caused by pollution  
resulting from the escape or discharge of oil from ships,  
Considering that the International Convention of 29 November  
1969, on Civil Liability for Oil Pollution Damage, by providing a  
regime for compensation for pollution damage in Contracting States  
and for the costs of measures, wherever taken, to prevent or  
minimize such damage, represents a considerable progress towards  
the achievement of this aim,  
Considering however that this regime does not afford full  
compensation for victims of oil pollution damage in all cases while  
it imposes an additional financial burden on shipowners,  
Considering further that the economic consequences of oil pollution  
damage resulting from the escape or discharge of oil carried in bulk  
at sea by ships should not exclusively be borne by the shipping  
industry but should in part be borne by the oil cargo interests,  
Convinced of the need to elaborate a compensation and  
indemnification system supplementary to the International  
Convention on Civil Liability for Oil Pollution Damage with a view  
to ensuring that full compensation will be available to victims of oil  
pollution incidents and that the ship-owners are at the same time  
given relief in respect of the additional financial burdens imposed  
on them by the said Convention,  
Taking note of the Resolution on the Establishment of an  
International Compensation Fund for Oil Pollution Damage which  
was adopted on 29 November 1969 by the International Legal  
Conference on Marine Pollution Damage,  
Have agreed as follows:

本公約締約國，  
作為 1969 年 11 月 29 日布魯塞爾油污損害  
民事責任國際公約之締約國，  
鑒於全球海上運載散裝貨油所致污染危  
險，  
確認由此載運船舶洩漏或排出之油之污  
染所致之損害，有必要對受害者給予適  
當補償。  
認為 1969 年 11 月 29 日油污損害民事責  
任國際公約所提供締約國間之油污損害  
及為防止或減少該污損所採取任何措施  
之費用之賠償制度，係表示對此目標達  
成相當之進展。

然顧及此制度於所有案例中，並未給予  
油污損害受害者充分之賠償，反使船舶  
所有人增加額外之財務負擔。  
復認為因船舶在海上運載散裝貨油所洩  
漏或排出造成油污損害對經濟上之影  
響，不應專由海運業者所承擔，其部分  
應由貨油業者承擔。  
確信有必要盡力達成一項補充油污損害  
民事責任國際公約之賠償及補償制度，  
以確保油污事件之受害者能有效獲得充  
分賠償，並對因該公約所課以船舶所有  
人之額外財務負擔亦可給予救濟。

鑒於 1969 年 11 月 29 日國際海洋污染損  
害國際法律會議所通過設立油污損害國  
際賠償基金之決議，

爰經協議如次：

## GENERAL PROVISIONS

### Article 1

For the purposes of this Convention –

1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992. <sup>[1992]</sup>
- 1 bis "1971 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol. <sup>[1992]</sup>
2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article I of the 1992 Liability Convention. <sup>[1992]</sup>
3. "Contributing Oil" means crude oil as fuel oil as defined in sub-paragraphs (a) and (b) below:
  - (a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "Topped Crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).
  - (b) "Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification or Number Four Fuel Oil (Designation D 396 – 69)", or heavier.
4. "Unit of account" has the same meaning as in Article V, paragraph 9, of the 1992 Liability Convention. <sup>[1976][1992]</sup>
5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the 1992 Liability Convention. <sup>[1992]</sup>
6. "Ton", in relation to oil, means a metric ton.
7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1, of the 1992 Liability Convention. <sup>[1992]</sup>
8. "Terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.
9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

### Article 2

1. An International Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund

## 總 則

### 第 1 條

為本公約之目的：

1. 1992 年責任公約係指 1992 年國際油污損害民事責任公約。
- 1-1 "1971 年基金公約"係指 1971 年設立國際油污損害賠償基金國際公約。就該公約 1976 年議定書之締約國而言，應認為包括經該議定書修正之 1971 年基金公約。
2. "船舶"、"人"、"船舶所有人"、"油類"、"油污損害"、"預防措施"、"事件"及"本組織"等名詞之意義與 1992 年責任公約第 1 條有關名詞之意義相同。
3. "攤款油"請依下列(a)款及(b)款定義之原油及燃料油：
  - (a) "原油"係指於地底自然產生之任何液態碳氫混合物，不論其是否業經處理及適於運輸。其並包括業已除去某些餾化物之原油(通稱"高級原油")或業已加進某些餾化物之原油(通稱"改質"或"再生"原油)。
  - (b) "燃油"係指自原油加重蒸餾所得殘留物或混合物，用作燃料可供產生性質相當於「美國材料試驗協會」第 4 號燃油(編號 D396-69)之熱或能或更重者。
4. "記帳單位"與 1992 年責任公約第 5 條第 9 項所規定之意義相同。
5. "船舶噸位"與 1992 年責任公約第 5 條第 10 項所規定之意義相同。
6. "噸"與油有關者，指公噸。
7. "保證人"係指依 1992 年責任公約第 7 條第 1 項為船舶所有人之賠償責任提供保險或其他財務擔保之人。
8. "終端設備"係指任何儲放散裝貨油之場所，而該場所能經水路運送而收受油料，並包括位於離岸與該場所相連結之任何設施。
9. 於一事故由一系列事件組成者，應以該等事件首次發生之日視為已發生之日。

### 第 2 條

1. 用於賠償污染損害之國際基金，定名為"1992 年國際油污賠償基金"(以下

1992" and hereinafter referred to as "the Fund", is hereby established with the following aims: <sup>[1992]</sup>

- (a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;
  - (b) to give effect to the related purposes set out in this Convention.
2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceeding before the courts of the State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as "The Director") as the legal representative of the Fund.

### Article 3 <sup>[1992]</sup>

This Convention shall apply exclusively:

- (a) to pollution damage caused:
  - (i) in the territory, including the territorial sea, of a Contracting State, and
  - (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law baselines from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

## COMPENSATION <sup>[1992]</sup>

### Article 4

1. For the purpose of fulfilling its function under Article 2, paragraph 1(a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1992 Liability Convention,
2. because no liability for the damage arises under the 1992 Liability Convention;
3. because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

稱為“本基金”)謹為下列目的而設立：

- (a) 為 1992 年責任公約所提供之防護不足部分提供污染損害賠償；
  - (b) 為實現本公約所規定之有關目的。
2. 基金於各締約國內應被承認為該國法院法律程序之一法律實體，並於該國法律下具有同樣之權利及義務，各締約國應承認基金之董事(以下簡稱為「董事」)為基金之法定代表。

### 第 3 條

本公約專屬適用於：

- (a) 於下列區域所造成之污染損害：
  - (i) 締約國領土，包括領海；及
  - (ii) 締約國依國際法設立之專屬經濟區；如締約國尚未設立該區域，則為該國依國際法所確定，其領海以外與領海毗連之區域，自該國測量其領海寬度之基線起算，外延不超過 200 浬；
- (b) 為預防或減輕該污染損害而於任何地點所採取之預防措施。

## 賠償

### 第 4 條

1. 為達成第 2 條第 1 項(a)款目的，如遭受污損之人其所受污損依責任公約規定未能獲得充分及適當之賠償時，基金應對此遭受污損之任何人給予賠償；
2. 因依責任公約無損害責任；
3. 因依責任公約，對損害應負責之所有人於財務上無法充分履行其義務，且依該公約第 7 條所提供之任何財務擔保，無法賠償或無法滿足損害賠償之要求；所有人於財務上無法充分履行其義務，及財務擔保不充分之認定，以受到損害之人於採取所有合理步驟尋求適當之法律救濟後，仍無法完全獲得依責任公約規定所應得之賠償額為定；

4. because the damage exceeds the owner's liability under the 1992 Liability Convention as limited pursuant to Article V, paragraph 1, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purpose of this Article.
5. The Fund shall incur no obligation under the preceding paragraph if:
- it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Governmental non-commercial service; or
  - the claimant cannot prove that the damage resulted from an incident involving one or more ships.
6. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the Fund with regard to preventive measures. <sup>[1992]</sup>
- 7.
- Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 203 million units of account. <sup>[1992]</sup> <sup>[2000 Amendment]</sup>
  - Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional inevitable and irresistible character shall not exceed 203 million units of account. <sup>[1992]</sup> <sup>[2000 Amendment]</sup>
  - The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 300,740,000 units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons. <sup>[1992]</sup> <sup>[2000 Amendment]</sup>
  - Interest accrued on a fund constituted in accordance with
4. 因依責任公約第 5 條第 1 項規定之限制，或依其他於本公約簽訂日業已生效、公開供簽署、批准或加入之任何國際公約之規定，損害超過所有人之責任。依本條之目的，所有人為防止或減少污損自願所耗費之合理損失或負擔之費用，應列為污損賠償。
5. 於有下列情況時，基金不依前述擔負義務：
- 經證明污損係因戰爭行為、敵對行為、內戰或暴亂，或由軍艦或其他政府作非商業用途使用之國有或徵用船舶，所洩漏或排出之油所致；或
  - 求償者無法證明損害係由一事故所涉及之一艘或多艘船舶所致。
6. 經本基金證明，污染損害係全部或部分由受害人故意造成損害之作為或不作為或因受害人之疏忽所致，本基金可全部或部分地免除對此人之賠償義務。於任何情況下，本基金均可在船舶所有人依 1992 責任公約第 3 條第 3 項免除責任之範圍內，免除其責任。然就預防措施而言，本基金不得享有該免責。
- 7.
- 除本項第 (b) 及第 (c) 項另有規定外，本基金依本條對任一事件應付之賠償總額應限於：該總額加上依 1992 年責任公約於本公約第 3 條規定之適用範圍內對污染損害所實際付出之賠償金額不得超過 2,030,000 記帳單位。
  - 除第 (c) 項另有規定外，對於特殊、不可避免及不可抗力性質之自然現象所致之污染損害，本基金依本條應付之賠償總額不得超過 2,030,000 記帳單位。
  - 如於本公約 3 個締約國領土內之人所接收有關攤款油類總量於前一曆年度等於或超過 600 百萬噸，則不論發生何種事故，亦不論何時發生事故，第 (a) 及第 (b) 項所述之最高賠償金額應為 300,740,000 記帳單位。
  - 於計算本基金依本條應付之最高賠