ASSEMBLY - 32ND SESSION

ADMINISTRATIVE COMMISSION

Agenda Item No. 38.6: Amendment of the Financial Regulations

AMENDMENT OF THE ICAO FINANCIAL REGULATIONS

SUMMARY

This paper explains the amendments the Council has made to Financial Regulations 4.4 and 5.6 and requests the Assembly to confirm them.

The paper also recommends the Assembly to amend Financial Regulation 5.2.

REFERENCES

Doc 7515/9, *The ICAO Financial Regulations*
Doc 9666, *Programme Budget of the Organization 1996-1997-1998*
Doc 9662, *Assembly Resolutions in Force (as of 4 October 1995)*
A31-WP/100

1. INTRODUCTION

1.1 ICAO Financial Regulation 14.1 states: "Any of the provisions of the present Regulations, with the exception of Regulation 5.2, may be suspended or amended by the Council, which shall report thereon to the next session of the Assembly. No such suspension or amendment which, under the provisions of the Convention, deals with matters which are within the jurisdiction of the Assembly, shall remain in effect beyond the next session of the Assembly unless confirmed by the Assembly."

1.2 In accordance with Article 14.1, the Council is seeking confirmation of its amendments to Financial Regulations 4.4 and 5.6 (see **Appendix A**), and is recommending amendment of Financial Regulation 5.2 (see **Appendix B**).

(9 pages)

2. SUNSET RULE - FINANCIAL REGULATION 4.4

2.1 The Secretary-General of the United Nations while submitting his report: *A Programme for Reform,* recommended to the General Assembly that each initiative that involves new organization structure and/or major commitment of funds be subjected to specific time limits, by which it would be reviewed and renewed only by explicit action of the Assembly.

2.2 The ICAO Council, on a recommendation by the Special Working Group on Decision-Making Processes set up following the Assembly Resolution (A31-2) on increasing the effectiveness of ICAO, decided that the sunset rule as outlined by the Secretary-General of the United Nations should be incorporated in the budgetary process of ICAO. ICAO Financial Regulations 4.1 to 4.11 set out the procedure for preparing the budget, its scrutiny by the Finance Committee and its endorsement by the Council to the Assembly. The Council amended Regulation 4.4 as shown in Appendix A to require that each programme element in the programme budget should, as far as practicable, show a target date of completion for the task or tasks contained in it.

3. YEAR-END CARRY-OVER OF APPROPRIATIONS - FINANCIAL REGULATION 5.6

3.1 The Council has a standing instruction to the Secretary General to act prudently so as to ensure the income and expenditure of the Organization will remain in balance. This instruction reflects a conservative financial policy, carrying the implication that the Organization should spend within the actual means currently available to it and not create deficits by spending the full approved appropriation without regard to the flow of income. However, in some situations, the combination of this instruction with the requirement of Financial Regulation 5.6 can unnecessarily impede execution of the work programme.

3.2 When payments of large contributions are delayed until after the end of a given financial year, there will be a low income level in the given year and a relatively high income level in the following year. In the given year when large contributions are not paid, the Secretary General may well have to cut back expenditure to avoid an imbalance between income and expenditure. In that case, the work programme approved for the given year would probably not be completed.

3.3 In the subsequent year when delayed payments are received, although extra cash is thus available which could cover expenditure in excess of appropriations, Regulation 5.6 requires the level of expenditure to be kept within the total authorized appropriation for the year. As a result, the unspent appropriation from the previous year cannot be used to "catch up" on the previous year's uncompleted work programme. The delayed payment usually becomes part of the cash surplus. States may then reasonably question why the work programme they approved for the triennium has not been completed and a sizable amount of the approved budget provision has been made available for return to Contracting States.

3.4 To remedy this situation, the Council decided to amend Financial Regulation 5.6 to allow appropriations to be carried over from one year to the next within a triennium (Appendix A). The Regulation now permits the Secretary General to carry over in respect of any Major Programme up to 10 per cent of the total annual provision; the Council has power to approve carry-overs in excess of that percentage.

3.5 This revision will improve the ability of the Organization to manage the budget between Assembly Sessions and achieve a higher work programme delivery while coping with payment practices of States which, despite their best efforts, do not always correspond to the requirements of the programme.

4. USE OF EXCESS MISCELLANEOUS INCOME - FINANCIAL REGULATION 5.2

4.1 At its last ordinary Session (A31), the Assembly approved, on a three year trial basis, an amendment to Regulation 5.2 c) enabling the Organization to use any excess of actual miscellaneous income over budgeted miscellaneous income to finance expenses directly related to the source which had generated the excess. The amended version of the Regulation is quoted below:

> "5.2 The Council may, in respect of a given financial year, approve appropriations in excess of the budget voted by the Assembly as follows:
>
> a) [unchanged]...;
>
> b) [unchanged]...;
>
> c) irrespective of a) and b) above, up to the amount by which, for one or more financial years not yet submitted to the Assembly, actual miscellaneous income exceeds the amount of miscellaneous income taken into account by the Assembly in approving the appropriations for that year or those years to finance expenses directly related to the sources of such additional miscellaneous income.
>
> The above appropriations may be met, to the extent necessary, by advances from the Working Capital Fund when approved pursuant to a) or b) above. They shall be met from the surplus when approved pursuant to c) above."

4.2 Assembly Resolution A31-19 requires the Council to report on its experience with the trial to the next ordinary session of the Assembly.

4.3 Experience

4.3.1 In 1995 and 1996, the Organization found itself with an excess of miscellaneous income deriving from the sale of publications, totalling U.S.$ 522 767. From this amount, the Council approved the following expenditure. During its 150th Session, it approved the appropriation of U.S.$ 59 000 for a Distribution and Sales System replacement. During its 152nd Session, it approved an increase in appropriations of U.S.$ 291 000 to cover two Major Programmes: Air Navigation, for the preparation and production of the Safety Oversight Manual and related material; and Administrative Support, for the translation into five languages of the Safety Oversight Manual and related material; and translation into Chinese of saleable publications. During its 153rd Session, the Council approved an increase in appropriations by U.S.$ 134 000 to provide additional support to the Safety Oversight Programme.

4.3.2 In 1997, excess miscellaneous income came from two sources. Sales of publications produced U.S.$ 624 729 above the budgeted income. Rental of indoor parking space produced an additional U.S.$ 34 000. From the publications excess, the Council approved a U.S.$ 94 000 addition to the 1998 appropriations for the Major Programme Air Navigation, and one of U.S.$ 50 000 for the Major Programme Administrative Support to fund automation projects. From the parking income, the Council approved a proposal to use U.S.$ 22 000 to cover the administrative costs of garage operations, which had not been provided for in the 1996-98 programme budget.

4.4 Evaluation and Proposal

4.4.1 Having considered the cases for use of the excess income for 1995, 1996 and 1997 which had been put to it by the Secretary General and found them a useful means of addressing important needs of the Organization, the Council reached two conclusions. First, it decided to recommend to the Assembly that, subject to certain limitations, the application of excess miscellaneous income be extended to allow expenditure on activities other than those which had generated the income; secondly, it determined that there should be a set of guidelines to ensure consistency in preparing cases for consideration. Those guidelines, approved by the Council during its 154th Session, are at **Appendix C.** They cover the application of both the current Regulation 5.2 c) and its recommended extension as described in the next paragraph.

4.4.2 The three year trial application of the amended Regulation 5.2 c) limited expenditure to areas directly related to those which had generated the excess income. This was partly to provide an incentive to those areas to seek more income and partly to contain within some boundaries what was recognised as a trial operation. Experience has shown that this limitation reduces the scope for serving the best interests of the Organization and the States which comprise it, and, given the organisational rather than personal nature of the incentive, it seems likely to be just as motivating if it applies to a wider sphere of ICAO work. Nevertheless, since the work programme itself is decided by the Contracting States and financed by the programme budget, it is clear that extra spending from unbudgeted income should remain a minor aspect of financing, and should be directed towards appropriate purposes.

4.4.3 The Council is therefore of the view that where excess miscellaneous income is to be applied to activities other than those directly related to the generation of the income, this should be limited to new and unforseen projects that are related to aviation safety and/or that would enhance the efficient delivery of ICAO programmes. To achieve this result, the Council recommends that the Assembly should replace the existing text of Regulation 5.2 c) by the text shown against that regulation in Appendix B.

5. ACTION BY THE ASSEMBLY

5.1 The Assembly is invited to note the guidelines as mentioned in Appendix C, to confirm the amendments to Financial Regulations 4.4 and 5.6 as indicated in Appendix A and amend Financial Regulation 5.2, as set out in Appendix B, by adopting the draft Resolution at **Appendix D**.

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APPENDIX A

Present text of the Financial Regulations	Amended text for confirmation
Article IV **The Budget** 4.4 The Secretary General's Programme Budget comprising the work programme and budget estimates shall be divided into Major Programmes, Programmes and Sub-programmes.	**Article IV** **The Budget** 4.4 The Secretary General's Programme Budget comprising the work programme and budget estimates shall be divided into Major Programmes, Programmes, ~~and~~ Sub-programmes and programme elements with priority shown against each programme element. Each programme element in the Programme Budget shall, as far as practicable, contain the target date of completion of the task or tasks.
Article V **Appropriations** 5.6 The balance of unobligated appropriations shall be cancelled. However, as regards meetings only, the Secretary General up to $100 000 per appropriation for each Major Programme and, above this amount, the Council, irrespective of its authority under Regulation 5.10 to effect transfers between Major Programmes, may determine that any unobligated balance of appropriations in any financial year during the period between normal triennial sessions of the Assembly be carried over to the following year. The total of obligated and carried over appropriations shall not exceed the Total Authorized Appropriation plus amounts carried over from the previous year. Any balance of unobligated appropriations which may then result at the end of the financial year in which the Assembly is held shall be cancelled.	**Article V** **Appropriations** 5.6 ~~The balance of unobligated appropriations shall be cancelled. However, as regards meetings only,~~ The Secretary General up to ~~$100 000~~ 10 per cent per appropriation for each Major Programme and, above this ~~amount~~ percentage, the Council, irrespective of its authority under Regulation 5.10 to effect transfers between Major Programmes, may determine that any unobligated balance of appropriations in any financial year during the period between normal triennial sessions of the Assembly be carried over to the following year. The total of obligated and carried over appropriations shall not exceed the Total Authorized Appropriation plus amounts carried over from the previous year. Any balance of unobligated appropriations ~~which may then result at the end of the financial year in which the Assembly is held~~ shall be cancelled.

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APPENDIX B

Present text of the Financial Regulations	Proposed amendment
Article V **Appropriations** 5.2 . . . c) irrespective of a) and b) above, up to the amount by which, for one or more financial years not yet submitted to the Assembly, actual miscellaneous income exceeds the amount of miscellaneous income taken into account by the Assembly in approving the appropriations for that year or those years to finance expenses directly related to the sources of such additional miscellaneous income.	**Article V** **Appropriations** 5.2 . . . c) irrespective of a) and b) above, up to the amount by which, for one or more financial years not yet submitted to the Assembly, actual miscellaneous income exceeds the amount of miscellaneous income taken into account by the Assembly in approving the appropriations for that year or those years to finance: ~~expenses directly related to the sources of such additional miscellaneous income.~~ i) expenditure directly related to the source of such additional miscellaneous income; and ii) expenditure on new and unforeseen projects related to aviation safety, and/or to the enhancement of the efficient delivery of ICAO programmes.

APPENDIX C

GUIDELINES: USE OF MISCELLANEOUS INCOME EXCEEDING BUDGETED AMOUNT

1) The total audited miscellaneous income must exceed the total estimated income indicated in the budget.

2) There must be sufficient cash surplus available to cover the proposed increase in appropriations.

3) Use of excess miscellaneous income must be in a manner which will not give rise to recurring expenditure by the Organization involving the regular programme budget.

4) Before an activity or a project is proposed for funding from excess miscellaneous income, it must be established that:

   i) in the case of activities which are directly related to the sources of additional income, the audited income from a particular source like sales of publications, rental of premises, etc., has exceeded the estimates shown in the budget; and

   ii) in the case of new and unforeseen projects, such projects must be related to aviation safety and/or to the enhancement of the efficient delivery of ICAO programmes.

5) Proper identification of use of miscellaneous income must be made in the accounts to ensure that it is possible to audit the funds that are applied to specific tasks for the proposed supplementary appropriation.

6) Authorization to use the excess must be obtained from the Council, under Article 5.2 c) of the Financial Regulations.

Definitions:

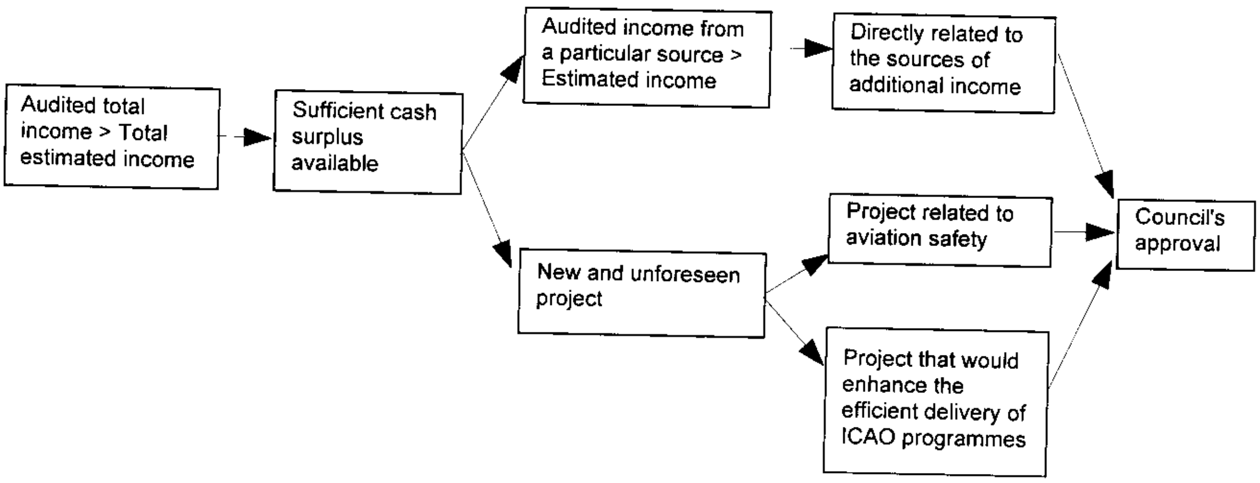
a) *directly related to sources of additional income* means activities or projects which are inextricably linked with the process which ultimately yielded excess miscellaneous income. Justification must be set out establishing a nexus between the activity or project and the process;

b) *new and unforeseen projects* means activities or projects which have not been identified as a task or tasks in the Technical Work Programme or mentioned in the programme elements of the Programme Budget of a given triennium; and

i) *projects related to enhancement of the efficient delivery of ICAO programmes* means activities such as office automation in the Organization as a whole, or in specific bureaux, having a clear nexus with a specific programme, sub-programme or programme element.

Note: The flowchart shown in Figure 1 below reflects how proposals will be examined against the guidelines before they reach the Council.

Figure 1


Audited total income > Total estimated income
Sufficient cash surplus available
Audited income from a particular source > Estimated income
Directly related to the sources of additional income
New and unforeseen project
Project related to aviation safety
Project that would enhance the efficient delivery of ICAO programmes
Council's approval

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APPENDIX D

DRAFT RESOLUTION FOR ADOPTION BY THE 32ND SESSION OF THE ASSEMBLY

Resolution .../...

Amendment of the Financial Regulations

Whereas the Council has noted the need, as far as practicable, to establish a target date for completing each programme element and task in the budgetary process;

Whereas the Council has noted the difficulties in executing the full work programme which stem from restrictions contained in the Financial Regulations on the use of funds; and

Whereas the Council has recommended the Assembly to extend the use of excess miscellaneous income so that it can be applied to new and unforeseen projects related to aviation safety and /or to enhancement of the efficient delivery of ICAO programmes;

The Assembly:

1. *Resolves* that the amendments to the Financial Regulations 4.4 and 5.6, effective 1 May 1998 and 25 June 1998 respectively, and set out in Appendix A of Assembly working paper A32-WP/62, AD/12 dated 13 August 1998, are confirmed; and

2. *Further resolves* to amend Financial Regulation 5.2 c) as proposed in Appendix B of Assembly working paper A32-WP/62, AD/12 dated 13 August 1998, effective ....

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