



International Oil Pollution
Compensation Funds

Agenda Item 1	IOPC/MAR21/1/3	
Date	4 March 2021	
Original	English	
1992 Fund Assembly	92AES24	●
1992 Fund Executive Committee	92EC75	●
Supplementary Fund Assembly	SAES8	●

TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS

FACILITATING REMOTE SESSIONS

Note by the Secretariat

Summary:

The March 2021 sessions of the governing bodies will be convened remotely due to the ongoing COVID-19 pandemic. Certain Rules of Procedure that presuppose in-person meetings would need to be suspended to allow for the March 2021 sessions to take place remotely. This document draws attention to certain key rules and provides proposals for the temporary suspension or amendment of a few of those rules.

The proposals in this document are the same as those approved by the governing bodies at their first remote meeting in December 2020. Furthermore, these proposals are closely aligned to those implemented by the International Maritime Organization (IMO) as contained in MSC-LEG-MEPC-TCC-FAL.1/Circ.1 on Interim guidance to facilitate remote sessions during the COVID-19 pandemic adopted by the IMO Council and Extraordinary Session of All Committees (ALCOM).

The specific Rules of Procedure considered for temporary suspension or amendment to facilitate remote sessions are:

- Rule 3 on the location of the meeting (paragraph 2.1); and
- Rule 27/23^{<1>} on the adoption of the Record of Decisions (paragraph 2.2).

Other specific Rules of Procedure to be considered to facilitate remote sessions are:

- Rule 9/8^{<2>} on the timing of the submission of credentials (paragraph 3.1);
- Rule 32/28^{<3>} on voting (paragraph 3.2) ; and

<1> The equivalent rules are provided in Rule 27 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 23 of the Rules of Procedure of the 1992 Fund Executive Committee.

<2> The equivalent rules are provided in Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee.

<3> The equivalent rules are provided in Rule 32 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 28 of the Rules of Procedure of the 1992 Fund Executive Committee.

- Rule 33^{<4>} on the definition of ‘Members present’ and ‘Members present and voting’ (paragraph 3.3).

The governing bodies will be invited to decide on these items when the sessions open on Monday, 29 March 2021. A detailed list of the decisions required is set out in section 5.

Action to be taken: 1992 Fund Assembly and Supplementary Fund Assembly

Note that at the opening of the sessions, the governing bodies will have to decide whether to temporarily suspend or amend the Rules of Procedure in respect of their March 2021 sessions as set out in section 5.

1992 Fund Executive Committee

Information to be noted.

1 Introduction

- 1.1 The March 2021 sessions of the governing bodies will be convened remotely due to the ongoing COVID-19 pandemic, therefore, certain Rules of Procedure that presuppose in-person meetings would need to be suspended to allow for the remote sessions to take place. This document draws attention to certain key rules relating to the location of the meeting, submission of credentials, decision making and adoption of the Record of Decisions and provides proposals for the temporary suspension or amendment of a few of those rules.
- 1.2 The proposals in this document are the same as those approved by the governing bodies at their first remote meeting in December 2020 (document IOPC/NOV20/11/2, paragraphs 1.4.9 to 1.4.11). Furthermore, these proposals are closely aligned to those implemented by the International Maritime Organization (IMO) as contained in MSC-LEG-MEPC-TCC-FAL.1/Circ.1 on Interim guidance to facilitate remote sessions during the COVID-19 pandemic (IMO Guidance Circular) adopted by the IMO Council and Extraordinary Session of All Committees (ALCOM)(C/ES.32/D, annex 3 and ALCOM/ES/5/1, Annex 1).
- 1.3 The full sets of the Rules of Procedure for each of the governing bodies can be found via the About Us section of the IOPC Funds website: iopcfunds.org/about-us/structure/rules-and-regulations.
- 1.4 Any decision taken in respect of the Rules of Procedure at these sessions is not intended to set a precedent for the methods of work of the IOPC Funds, but to facilitate remote sessions in these exceptional circumstances under the prevailing COVID-19 pandemic. The rules proposed for suspension, part suspension, or amendment are only in the interest of facilitating remote sessions in respect of the 24th extraordinary session of the 1992 Fund Assembly, the 75th session of the 1992 Fund Executive Committee, and the 8th extraordinary session of the Supplementary Fund Assembly.
- 1.5 The governing bodies will be invited to make decisions in respect of the Rules of Procedure as described in this document when the sessions open on Monday, 29 March 2021. A detailed list of the decisions required is set out in section 5.

^{<4>} The equivalent rule is provided in Rule 33 of the Rules of Procedure of the Supplementary Fund Assembly and there is no equivalent rule in the Rules of Procedure of the 1992 Fund Executive Committee.

2 Temporary suspension or amendment to Rules of Procedure to facilitate remote sessions

2.1 Proposal for temporary suspension of Rule 3 on the location of the meeting

2.1.1 Rule 3 of the Rules of Procedure of the 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly reads as follows:

The Assembly [Executive Committee] shall hold its sessions in London (United Kingdom) unless it decides otherwise on any particular occasion. If between sessions, the Director, with the Chair's approval, or any Member proposes that the next session be held elsewhere, an affirmative decision to that effect may be taken by a majority of Members giving their approval in writing (including by telefax or electronic mail) to the Director. Such majority approval should be communicated to Members at least forty-five days before the commencement of that session.

2.1.2 The current physical gathering and social-distancing conditions set out by the host Government of the United Kingdom, does not allow all Member States to send full delegations to London. In addition, access to the IMO headquarters building remains limited, and the meeting programme has been scheduled for remote meetings (IMO Circular letter No.4220/Add.5 and PROG/129).

2.1.3 Taking into account the IMO Guidance Circular, at the opening of the December 2020 sessions, the governing bodies agreed to temporarily suspend Rule 3 of the Rules of Procedure to allow for the sessions to be held remotely (document IOPC/NOV20/11/2, paragraphs 0.3, 0.6, 0.8 and 1.4.9 (ii)).

2.1.4 Under these circumstances, it is proposed that the requirement for the governing bodies to hold sessions in London is suspended. Further to this, it is also recommended that the requirement for a majority of Member States to approve in writing a proposal for sessions to be held elsewhere is also suspended to eliminate an excessive administrative burden on Member States and the Secretariat.

2.1.5 The governing bodies are invited to decide whether to temporarily suspend Rule 3 of the Rules of Procedure in relation to the location of the meeting to allow for remote sessions to be held in respect of the March 2021 meeting.

2.2 Proposal relating to Rule 27/23^{<5>} on the preparation of the Record of Decisions

2.2.1 Rule 27 of the Rules of Procedure of the 1992 Fund Assembly and Supplementary Fund Assembly, and Rule 23 of the 1992 Fund Executive Committee reads as follows:

The Secretariat shall prepare a Record of Decisions of each session of the Assembly [Executive Committee].

2.2.2 In line with Rule 27/23, the Secretariat will prepare a draft Record of Decisions reflecting the decisions made during the remote sessions and in accordance with established practice, the draft Record of Decisions will be considered by the governing bodies on the last day of the virtual meeting.

2.2.3 Being mindful that technical failures and connectivity issues could occur at any time during the virtual meeting, including during the adoption of the Record of Decisions, it is proposed that the sessions remain open for an additional five working days for delegations to consider the draft Record of Decisions and comment by correspondence.

^{<5>} The equivalent rules are provided in Rule 27 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 23 of the Rules of Procedure of the 1992 Fund Executive Committee.

- 2.2.4 It is also proposed that comments received during this correspondence period should not reopen the discussion on matters that had been agreed during the virtual meeting and should rather be of an editorial nature to correct a statement made by their own delegation or address whether the draft Record of Decisions accurately reflects the decisions taken. In this way, it is further proposed that after the conclusion of the five-day correspondence period, the Secretariat, in consultation with the Chairs, would publish a document containing comments received, with an accompanying explanation on how they had been addressed. The Secretariat would then circulate the final Record of Decisions, after the publication of this document.
- 2.2.5 In December 2020, the governing bodies approved this proposal, and sessions remained open for an additional five working days from the publication of the draft Record of Decisions for Member States to comment on that document by correspondence (document IOPC/NOV20/11/2, paragraph 1.4.9 (ii)). After the conclusion of the five-day correspondence period, the Secretariat published a document to confirm that no comments had been received during the correspondence period (document IOPC/NOV20/11/1). The Secretariat then circulated the final Record of Decisions, after the publication of this document (document IOPC/NOV20/11/2). A similar process was implemented by IMO as contained in the IMO Guidance Circular.
- 2.2.6 The governing bodies are invited to decide whether to have an additional five working day period to comment on the draft Record of the Decisions by correspondence.

3 Consideration of other Rules of Procedure to facilitate remote sessions

3.1 Information to be noted regarding Rule 9/8^{<6>} on credentials

- 3.1.1 Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and Supplementary Fund Assembly, and Rule 8 of the 1992 Fund Executive Committee reads as follows:

Each Member shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than the opening day of the Assembly [Executive Committee].

- 3.1.2 Rule 9/8 will still apply to remote sessions, however, it should be noted that only those delegates who have registered and submitted credentials (if required) will be sent a link and joining instructions to the virtual meeting. With this in mind, the Secretariat, in accordance with Rule 9/8, will do all it can to facilitate participation of delegations who register and submit credentials up to the opening day of the sessions. However, late submissions may lead to delays in providing links to access the KUDO platform in time for the opening of the sessions. In the interests of facilitating the joining process and the smooth running of the sessions in general, delegates are strongly encouraged to submit their credentials electronically and in advance.
- 3.1.3 Taking into account the IMO Guidance Circular, at their December 2020 sessions, the governing bodies noted that delegations were encouraged to submit credentials electronically and in advance of the opening of the sessions (document IOPC/NOV20/11/2, paragraph 1.4.10 (i)).
- 3.1.4 Therefore, for practical reasons, on this exceptional occasion, delegations are requested to submit credentials as early as possible and preferably no later than Friday, 12 March 2021. Credentials can be submitted via the online registration system or by email (circular IOPC/2021/Circ.2).

^{<6>} The equivalent rules are provided in Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee.

3.2 Consideration of Rule 32/28^{<7>} on voting

3.2.1 Rule 32 of the Rules of Procedure of the 1992 Fund Assembly reads as follows:

Subject to Article 33 of the 1992 Fund Convention, decisions of the Assembly and of its subsidiary bodies shall be made, elections shall be determined, and reports, resolutions and recommendations shall be adopted, by a majority of the Members present and voting.

3.2.2 The established practice of the IOPC Funds' governing bodies is that decisions on the election of the Chairs, reports, resolutions and recommendations are in fact adopted by consensus among the Members present at a meeting. In the spirit of retaining the usual, established practice of in-person meetings, the governing bodies may wish to continue to adopt decisions by consensus during the remote sessions.

3.2.3 To ensure all views expressed are taken into account, if at any point during the virtual meeting a delegation loses connectivity, and in particular, during a time the governing bodies are called upon to make a decision, that delegation should contact the Secretariat urgently either by phone or email. In this way, the Secretariat can inform the Chairs, who can then take action as they deem appropriate and necessary.

3.2.4 In December 2020, the governing bodies decided to continue to adopt decisions by consensus during the remote sessions and that if the need for a vote should arise, an alternative voting procedure would need to be adopted (document IOPC/NOV20/11/2, paragraph 1.4.9 (iii)). Similar provisions are outlined in the IMO Guidance Circular.

3.2.5 As the election of the Director is being planned for the November 2021 sessions of the governing bodies, document IOPC/MAR21/7/3 invites the 1992 Fund Assembly to consider options for voting under these exceptional circumstances.

3.2.6 The governing bodies are invited to note the established practice for taking decisions and that in the event that the need for a vote should arise, an alternative voting procedure would need to be adopted.

3.3 Consideration of Rule 33^{<8>} on the definition of 'Members present' and 'Members present and voting'

3.3.1 Rule 33 of the Rules of Procedure of the 1992 Fund Assembly, and Supplementary Fund Assembly reads:

Each Member shall have one vote. For the purposes of these Rules and in accordance with Article 32 of the 1992 Fund Convention:

- (a) the phrase "Members present" means Members present at the meeting at the time of the vote;
- (b) the phrase "Members present and voting" means Members present and casting an affirmative or negative vote. Members who abstain from voting or who cast an invalid vote shall be considered as not voting.

^{<7>} The equivalent rules are provided in Rule 32 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 28 of the Rules of Procedure of the 1992 Fund Executive Committee.

^{<8>} The equivalent rule is provided in Rule 33 of the Rules of Procedure of the Supplementary Fund Assembly and there is no equivalent rule in the Rules of Procedure of the 1992 Fund Executive Committee.

- 3.3.2 Rules 32/28^{<7>}, 34/30^{<9>} and 43/39^{<10>} of the governing bodies, imply that Members are physically present at a meeting. However, since this is unlikely to be possible for a virtual meeting, a meeting by correspondence, or both, the governing bodies may, in the context of remote sessions, wish to interpret 'Members present' as defined in Rule 33(a), as Members registered for the sessions using the online registration system, and listed as a participant in the remote sessions, using the virtual meeting platform.
- 3.3.3 Taking into account that Rule 33(b) defines 'Members present and voting' as Members voting by casting an affirmative or negative vote, it is proposed that the governing bodies should continue to follow established practice of taking decisions by consensus wherever possible, as set out in paragraphs 3.2.2 and 3.2.3 above.
- 3.3.4 In December 2020, the governing bodies noted that for the purposes of the remote meeting, 'present' as defined in Rule 33(a) shall be interpreted as: being registered for the sessions using the online registration system and being listed as a participant in the remote sessions using the virtual meeting platform (document IOPC/NOV20/11/2, paragraph 1.4.10 (ii)). Similar provisions are set out in the IMO Guidance Circular.
- 3.3.5 Therefore, the governing bodies are invited to decide whether, for the purposes of the March 2021 meeting, 'present' shall be interpreted as being registered for the sessions using the online registration system and listed as a participant in the remote sessions using the virtual meeting platform, for the purposes of Rules 32/28, 34/30 and 43/39.

4 Director's considerations

- 4.1 The Director recalls that, due to the COVID-19 pandemic, the regular sessions of the governing bodies were held remotely in December 2020 and certain rules of procedure that presupposed in-person meetings needed to be temporarily suspended and amended to facilitate the running of those remote sessions.
- 4.2 The Director also recalls that, in the interests of standardising remote procedures and using platforms and processes that may already be familiar to the IOPC Funds' delegates, the proposals for the suspension of certain rules of procedure were as closely aligned as possible to those implemented by IMO. Furthermore, in order to safeguard full and equal participation of all Member States and the legitimacy of the decisions taken, every effort was made for remote sessions to retain established practices of in-person meetings to the extent that was reasonably possible (document IOPC/NOV20/1/3/1).
- 4.3 All proposals contained in document IOPC/NOV20/1/3/1 to temporarily suspend or amend certain Rules of Procedure were approved by the governing bodies at the opening of the sessions and their first remote meeting ran very smoothly. The Director trusts that the December 2020 meeting can be used as a model for remote sessions going forward and, therefore, the proposals to temporarily suspend or amend certain Rules of Procedure in relation to the March 2021 meeting are the same as those approved by the governing bodies in December 2020.
- 4.4 The Director notes that the election of the Director is being planned for the November 2021 sessions of the governing bodies. In view of the ongoing uncertainty as to whether an in-person meeting can

^{<9>} The equivalent rules are provided in Rule 34 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 30 of the Rules of Procedure of the 1992 Fund Executive Committee.

^{<10>} The equivalent rules are provided in Rule 43 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 39 of the Rules of Procedure of the 1992 Fund Executive Committee.

be convened, document IOPC/MAR21/7/3 invites the 1992 Fund Assembly to consider voting options for the election of the Director under these exceptional circumstances.

- 4.5 The Director's priority is to ensure that a successful meeting takes place in accordance with the Conventions and that the governing bodies are able to take the decisions required to ensure that the organisations can continue to function properly in 2021.

5 Decisions required

- 5.1 A summary of the decisions that the governing bodies will be invited to make at the opening of the sessions with regard to the following Rules of Procedure is listed below.

5.2 Rule 3 on the location of the meeting

Decide whether to suspend Rule 3 of the Rules of Procedure in relation to the location of the meeting to allow for remote sessions to be held, as set out in paragraph 2.1.

5.3 Rule 9/8^{<6>} on the timing of the submission of credentials

Note that, while Rule 9/8 provides that delegations can register and submit credentials up to the opening day of the sessions (if required), for practical reasons, on this exceptional occasion, delegations are requested to submit credentials via the online registration system or by email as early as possible and preferably no later than Friday, 12 March 2021, as set out in paragraph 3.1.

5.4 Rule 27/23^{<5>} on the adoption of the Record of Decisions

Note that in line with Rule 27/23, the Secretariat will prepare a draft Record of Decisions, and in accordance with established practice, the draft Record of Decisions will be presented for adoption by the governing bodies on the last day of the virtual meeting. Decide whether sessions should remain open for an additional five working day period for delegations to comment on the draft Record of the Decisions by correspondence, as set out in paragraph 2.2.

5.5 Rule 32/28^{<7>} on voting

Noting that the established practice of the governing bodies for taking decisions on election of the Chairs, reports, resolutions and recommendations are adopted by consensus among the Members present at a meeting, the governing bodies are invited to consider whether to continue to adopt decisions by consensus during the remote sessions and that in the event that the need for a vote should arise, an alternative voting procedure would need to be adopted, as set out in paragraph 3.2.

5.6 Rule 33(a)^{<8>} on the definition of 'Members present'

Taking into account that Rules 32/28^{<7>}, 34/30^{<9>} and 43/39^{<10>} imply that Members are physically present at a meeting, decide whether, for the purposes of the March 2021 meeting, 'present' as defined in Rule 33(a) shall be interpreted as being registered for the sessions using the online registration system and listed as a participant in the remote sessions using the virtual meeting platform, as set out in paragraph 3.3.

5.7 Rule 33(b)^{<8>} on the definition of 'Members present and voting'

Taking into account that Rule 33(b) defines 'Members present and voting' as Members voting by casting an affirmative or negative vote, note the proposal in paragraphs 3.2.2 and 3.2.4 that the governing bodies should continue to follow the established practice of taking decisions by consensus

wherever possible and note that in the event that the need for a vote should arise, an alternative voting procedure would need to be adopted, as set out in paragraph 3.3.

6 Action to be taken

6.1 1992 Fund Assembly and the Supplementary Fund Assembly

The 1992 Fund Assembly and the Supplementary Fund Assembly are invited to note that at the opening of the sessions, the governing bodies will have to decide whether to temporarily suspend or amend the Rules of Procedure in respect of their March 2021 meeting as set out in section 5.

6.2 1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to note the decisions made by the 1992 Fund Assembly.
