



International Oil Pollution
Compensation Funds

Agenda Item 7	IOPC/NOV21/7/2/1	
Date	7 October 2021	
Original	English	
1992 Fund Assembly	92A26	●
1992 Fund Executive Committee	92EC77	
Supplementary Fund Assembly	SA18	●

APPOINTMENT OF THE DIRECTOR

PROCEDURES

Note by the Chair of the 1992 Fund Assembly

Summary:

The post of Director will become vacant on 31 December 2021 on the expiry of the current Director's term of office. The 1992 Fund Assembly will therefore be invited, at its 26th session in November 2021, to appoint a new Director who will, *ex officio*, also be Director of the Supplementary Fund.

The 1992 Fund Assembly decided in March 2021 that in the event that it is possible to hold an in-person meeting in full at that time, the appointment of the Director should take place in person, in accordance with established practice.

At its July 2021 session, the 1992 Fund Administrative Council decided that since the November 2021 meeting was likely to be held remotely, the ballot procedure for the appointment of the Director should take place in person, by appointment. This decision was taken in light of the information available at the time and the restrictions in place in respect of international travel and social distancing measures.

However, since that meeting and the lifting of restrictions within the United Kingdom, the IMO Secretariat has informed the Director that delegations will now be permitted in the main conference hall, which would enable the ballot procedure to take place in person, by roll call, within the main hall, in accordance with established practice. Therefore, even though the meeting will continue remotely using the KUDO platform as in previous meetings, the voting itself will take place in person by roll call in a separate private meeting as decided in March 2021.

This document sets out the details of the ballot and other procedures to be followed for the appointment of the new Director.

Action to be taken:

1992 Fund Assembly

- (a) Take note of the information provided in this document;
- (b) elect two scrutineers;
- (c) decide whether the three candidates for the post of Director should be invited to make presentations prior to the election;
- (d) decide whether a question-and-answer session with the candidates will be held;
- (e) decide on the proposed timetable for the election procedure; and

- (f) decide the extent to which the procedures should take place during private meetings and determine who should be allowed to attend such sessions.

Supplementary Fund Assembly

- (a) Take note of the information contained in this document; and
- (b) note the decisions taken by the 1992 Fund Assembly in respect of the various aspects of the procedures to be followed.

1 Introduction

- 1.1 This document deals with the procedures for the appointment of the new Director.
- 1.2 Nominations of candidates for the position of Director were invited from 1992 Fund Member States in circular IOPC/2021/Circ.3. By the closing date for the receipt of candidatures by the IOPC Funds' Secretariat, i.e. 30 June 2021, the following nominations had been received (listed alphabetically by Member State):
- Mrs Liliana Monsalve nominated by Colombia
Mr Thomas Liebert nominated by France
Mr Gaute Sivertsen nominated by Norway
- 1.3 The candidatures of Mrs Monsalve, Mr Liebert and Mr Sivertsen have been circulated in document IOPC/NOV21/7/2.
- 1.4 The relevant provisions of the 1992 Fund Convention and the 1992 Fund Assembly's Rules of Procedure are reproduced in Annexes I and II, respectively.

2 Ballot procedure

Background

- 2.1 Under Rule 54 of the 1992 Fund Assembly's Rules of Procedure, for the appointment of the Director, the Assembly shall vote by secret ballot in a private meeting.
- 2.2 The 1992 Fund Assembly decided in March 2021 that in the event that it is possible to hold an in-person meeting in full in November 2021, the appointment of the Director should take place in person, by secret ballot in accordance with established practice (document IOPC/MAR21/9/2, paragraph 7.3.36).
- 2.3 However, since at the time of both the March and July 2021 meetings it was noted that the November 2021 meeting may be held partly or fully remotely, depending on the progression of the COVID-19 pandemic, the governing bodies considered a number of alternative options for ballot procedures. It was noted that since the IMO building had reopened to visitors, it could be possible to organise a vote in person, by appointment. This was considered to be the closest to the established practice of the 1992 Fund Assembly and the option that would most easily satisfy the requirements for security and secrecy of the vote. With this in mind, the 1992 Fund Administrative Council in July 2021 decided that in the event that the November 2021 meeting were to be held partly or fully remotely, the ballot procedure for the appointment of the Director should take place in person, by appointment (document IOPC/JUL21/9/2, paragraph 7.1.20).
- 2.4 Since the July 2021 meeting and the lifting of restrictions within the United Kingdom, the IMO Secretariat has informed the Director that delegations will now be permitted in the main conference hall, which would

enable the ballot procedure to take place in person, by roll call, within the main hall, in accordance with established practice. Therefore, even though the meeting will continue remotely using the KUDO platform as in previous remote meetings, the voting itself will take place in person, by roll call in a separate private meeting as decided in March 2021. Anyone planning to travel to London in order to participate in the vote will need to respect all rules related to travel and visas in place in the United Kingdom at the time. Such information can be found on the UK Government website www.gov.uk.

- 2.5 It is of course possible that the situation with the COVID-19 pandemic could worsen in the United Kingdom once again and restrictions could be put back in place. In preparation for such a scenario, a contingency plan is in place and the Secretariat would issue a document with the necessary details if required.

Established practice

- 2.6 Taking into account the decisions taken in March and July 2021, the November 2021 meeting will be held remotely, however, the ballot procedure for the appointment of the Director will take place in person. All procedures for the appointment will, to the extent possible, follow established practice as employed during the appointment of previous Directors in 2006, 2011 and 2016, namely:

- (a) Voting concerning the appointment of the Director shall be by secret ballot.
- (b) Before holding each ballot, each Member State present shall receive a list of the names of all candidates standing in that ballot in alphabetical order.
- (c) In each ballot each delegation of the Member States present shall indicate the candidate it supports by ticking the relevant box. If a list indicates support for more than one candidate, the vote is invalid.
- (d) A candidate who obtains two-thirds of the votes of the Member States present at the meeting at the time of the vote shall be declared appointed as Director.
- (e) If, in any ballot in which more than two candidates participate, no candidate is appointed in accordance with paragraph (d), a number of successive ballots shall be held in accordance with the following rules:
 - (i) The candidate who receives the least number of votes in the previous ballot, including the first ballot, shall not be included in the list of candidates for the subsequent ballot.
 - (ii) If a candidate obtains two-thirds of the votes of the Member States present at the meeting at the time of the vote, he/she shall be declared appointed as Director.
 - (iii) The ballots will continue until a candidate is appointed under subparagraph (ii) above.
- (f) If, in any ballot in which more than two candidates participate, two or more candidates receive the same number of votes so that the candidate to be excluded from the next ballot cannot be determined, an intermediate ballot shall first be held among those candidates to determine which of them should not be included in the next ballot. The candidate who in the intermediate ballot receives the least number of votes shall be excluded from the next ballot. If in an intermediate ballot there is a tie between any of the candidates, the Chair shall draw lots between them and the last one to be drawn shall be excluded from the next ballot.

3 Election of scrutineers

- 3.1 Under Rule 38 of the 1992 Fund Assembly's Rules of Procedure, the Assembly shall, on the proposal of the Chair, appoint two scrutineers from Member States present at the meeting, who shall scrutinise the votes cast.
- 3.2 The Chair draws the attention of 1992 Fund Member States to the fact that **any delegations whose credentials are not submitted in time for review by the Credentials Committee or are not in order will**

not be entitled to participate in the election of the Director of the IOPC Funds. The recommended deadline for submission of credentials is Friday, 15 October.

- 3.3 In July 2021, the Administrative Council agreed that any State without official representation in London at the time of the election could accredit to their delegation a trusted agent (such as a member of a London law firm or other agency), not accredited to another delegation, for the purpose of casting their ballots. In such cases, this person must be included in the credentials. Furthermore, it is also requested that, where known, the credentials letter specifies the member of the delegation assigned to vote in the election.
- 3.4 A second person may be indicated as a substitute should the need arise. Alternatively, for flexibility, the State may indicate that all members of the delegation are accredited to vote in the election. If no member or members are specified, however, it will be understood that all members are indeed accredited to vote.
- 3.5 The Credentials Committee will issue an interim report to the 1992 Fund Assembly prior to the ballot, confirming which 1992 Fund Member States are eligible to vote.

4 Structure of the meeting and timing of ballots

Structure of the meeting

- 4.1 The invitation, provisional agenda and timetable for the meeting have been issued in circular IOPC/2021/Circ.7. Since the publication of that document, the working hours of the meeting have been revised to accommodate the proposed ballot procedure, and the meeting will now be divided into plenary sessions and private meetings as follows:

	Monday, 1 November	Tuesday, 2 November	Wednesday, 3 November	Thursday, 4 November	Friday, 5 November	
Plenary session online via KUDO	11 am – 12.30 pm	11 am – 12.30 pm	11 am – 12.30 pm	11 am – 12.30 pm	Private meeting online via KUDO	11 am – 11.15 am
						11.15 am – 12.30 pm
	<i>Break</i>	<i>Break</i>	<i>Break</i>	<i>Break</i>	<i>Break</i>	
	12.45 pm – 2 pm		12.45 pm – 2 pm	12.45 pm – 2 pm	12.45 pm – 2pm	
Private meeting online via KUDO		12.45 pm – 2 pm	<i>Break</i>	<i>Break</i>		
		<i>Break</i>				
Private meeting for secret ballot in person, in the main hall.*		2.30 pm – 3.30 pm	2.30 pm – 3.30pm (if required)	2.30 pm – 3.30pm (if required)		

*Also available to view online via KUDO for 1992 Fund Member States only.

- 4.2 1992 Fund Member States are invited to send up to two representatives from their accredited delegation to attend the private meetings listed below to vote by secret ballot for the purpose of the appointment of the next Director. The private meetings will take place in the main conference hall at the IMO building at 4 Albert Embankment, London SE1 7SR, at the times indicated.
- 4.3 In addition, representatives of Member States will be issued a link to attend the private meeting remotely. However, it will not be possible to vote online.
- 4.4 Member States eligible to vote will be invited to do so by a roll call which shall be taken in the alphabetical order of the names of the Members in English. Only those delegates registered via the Online Meeting Registration System and with valid credentials will be allowed to cast a ballot. Once the roll call is complete and all eligible Member States have cast their vote, the scrutineers will scrutinise the votes cast and inform the Chair of the 1992 Fund Assembly of the result of the ballot. The Chair will in turn inform the candidates of the result and Heads of delegation of the 1992 Fund Member States present at the meeting will receive an email containing the outcome of the ballot, which will also be announced in the plenary session the following day.

Timing of ballots

- 4.5 If none of the three candidates were to obtain a two-thirds majority in the first ballot, one or more further ballots would be required.
- 4.6 At previous elections, where multiple ballots were required, a certain interval was provided between consecutive ballots so as to allow delegations time for consultations. The Chair of the 1992 Fund Assembly proposes that, to the extent possible, the same procedure should be followed in November 2021.
- 4.7 In order to give the Credentials Committee the possibility to examine the credentials submitted by delegations and report to the 1992 Fund Assembly as well as to provide a certain interval between consecutive ballots, the following timetable is proposed:

First ballot	Tuesday, 2 November, 2.30 pm
Second ballot (if required)	Wednesday, 3 November, 2.30 pm
Third ballot (if required)	Thursday, 4 November, 2.30 pm

Discussion of contract of the Director-Elect and oath

- 4.8 A private meeting will take place on Friday, 5 November at 11 am to discuss document IOPC/NOV21/7/2/2 relating to the contract of the Director-Elect. This will be followed by a plenary session, during which the Director-Elect will be invited to make an oath or declaration before the governing bodies in accordance with Staff Regulation 5 (see document IOPC/NOV21/7/2/3).

5 Presentations by candidates

- 5.1 At the time of the appointment of previous Directors, the 1992 Fund Assembly had invited candidates to make a short oral presentation of approximately 10 minutes' duration in support of their candidature. Each presentation was then followed by a question-and-answer session.
- 5.2 At the July 2021 meeting, many States encouraged the Secretariat to include in the timetable for the appointment of the Director sufficient time for 10-minute presentations by the candidates to be delivered in a private meeting. It was considered that these presentations would be useful and that, if for any reason they could not be accommodated within the regular session or could not be delivered in person, then a separate remote meeting could be organised for that purpose, and the candidates could deliver their presentations online.

- 5.3 The Assembly is invited to decide whether it wishes to invite the three candidates to make presentations prior to the election and whether the Assembly wishes to hold a question-and-answer session with each candidate immediately following their presentation.
- 5.4 The Chair considers that if presentations are to be made, these should be delivered sometime before the first ballot. He proposes that the presentations should be made at 12.45 pm (UTC) on Tuesday, 2 November (i.e. shortly before the first ballot).

6 Private meetings

- 6.1 Since the November 2021 meeting will be held remotely, in order to ensure that the privacy of the meeting is maintained, links providing access to any virtual private meeting will be circulated to 1992 Fund Member States only, and online attendance will be monitored closely.
- 6.2 The Chair draws the attention of the Assembly to the fact that, at the appointment of previous Directors, the private meeting(s) at which the 1992 Fund Member States had cast their vote by secret ballot, only 1992 Fund Member States had been present. The Chair proposes that the same practice should be adopted in November 2021, but suggests, however, that the current Director and one member of the Secretariat (the Executive Assistant to the Director) should also attend to monitor the online attendance and assist the Chair as required.
- 6.3 The Chair proposes that, if presentations were to be made by the candidates, the following procedures should be followed:
- the presentations (and any question-and-answer sessions) should also take place in a private meeting at which only the delegations of 1992 Fund Member States, the Director and Executive Assistant and members of the Audit Body would be present;
 - other members of the Secretariat would be excused from attending the meeting;
 - the presentation of each candidate (and any following question-and-answer session) should be held without the other candidates being present; and
 - the presentations by the candidates and the question-and-answer periods (if any) at the private meeting would not be recorded.

7 Action to be taken

7.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information provided in this document;
- (b) elect two scrutineers;
- (c) decide whether the three candidates for the post of Director should be invited to make presentations prior to the election;
- (d) decide whether a question-and-answer session with the candidates will be held;
- (e) decide on the proposed timetable for the election procedure; and

- (f) decide the extent to which the procedures should take place during private meetings and determine who should be allowed to attend such sessions.

7.2 Supplementary Fund Assembly

The Supplementary Fund Assembly is invited to:

- (a) take note of the information contained in this document; and
- (b) take note of the decisions taken by the 1992 Fund Assembly.

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ANNEX I

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1992

Voting

Article 32

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in Article 33, decisions of the Assembly shall be by a majority vote of the members present and voting;
- (c) decisions where a three-fourths or a two-thirds majority is required shall be by a three-fourths or two-thirds majority vote, as the case may be, of those present;
- (d) for the purpose of this Article the phrase “members present” means “members present at the meeting at the time of the vote”, and the phrase “members present and voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

Article 33

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under Article 13, paragraph 3, not to take or continue action against a contributor;
- (b) the appointment of the Director under Article 18, paragraph 4;
- (c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

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ANNEX II

RULES OF PROCEDURE FOR THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND ESTABLISHED UNDER THE 1992 FUND CONVENTION

Voting

Rule 32

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.

Rule 33

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.

Rule 37

Elections shall be decided by secret ballot unless the Assembly decides otherwise.

Rule 38

In a secret ballot two scrutineers shall, on the proposal of the Chair, be appointed by the Assembly from the Members present and shall proceed to scrutinize the votes cast. All invalid votes cast shall be reported to the Assembly.

Appointment of Director

Rule 54

For the appointment of the Director, the Assembly shall vote by secret ballot in a private meeting^{<1>}.

^{<1>} See 1992 Fund Resolution N°9 on the Appointment of the IOPC Funds’ Director – Term of service (as amended by the 1992 Fund Assembly at its 21st session held from 17–20 October 2016)