



## CREDENTIALS FOR 1992 FUND MEETINGS

### Note by the Director

|                            |   |
|----------------------------|---|
| <b>Summary:</b>            | As instructed by the Assembly, the Director has reviewed the relevant Rules of Procedure and the guidelines given in Circular 92FUND/Circ.49, in consultation with those States which had served on the first and second Credentials Committees, in order to clarify certain aspects of both the content of credentials and the procedure for their submission. |
| <b>Action to be taken:</b> | To consider the Director's proposals for amendments to the Rules of Procedure and the Circular.   |

### 1 Introduction

- 1.1 The submission of credentials is governed by Rule 9 of the 1992 Fund Assembly's Rules of Procedure, which reads:

'Each Member shall transmit to the Director<sup>(a)</sup> the credentials<sup>(b)(c)(d)</sup> of its representative, together with the names of any alternates or other members of its delegation<sup>(e)(f)</sup> not later than the opening day of the Assembly. The credentials shall be issued by the Head of State or by the Head of Government or by the Minister for Foreign Affairs or by an appropriate authority as determined by the Government<sup>(g)</sup> and communicated to the Director.'

- 1.2 In this regard, the Rules of Procedure for the 1992 Fund Executive Committee are *mutatis mutandis* the same as those for the Assembly.
- 1.3 In addition, the Director has issued a Circular, 92FUND/Circ.49, giving detailed guidance in respect of the form and content of credentials, which was endorsed by the 1992 Fund Assembly at its March 2005 session. The Circular is at Annex I. Those points in the Circular which amplify Rule 9 of the Rules of Procedure are set out below:

- (a) The credentials should be addressed to the Director of the IOPC Funds (not, as has sometimes been the case in the past, to the Secretary-General of IMO)...
- (b) ...in the form of an original signed letter.
- (c) The credentials should be issued in one of the official languages of the IOPC Funds (English, French or Spanish) or, if in any other language, be accompanied by a certified translation into one of these languages.

- (d) The credentials should clearly indicate the meeting or meetings to which they pertain.
- (e) The credentials should state that they give the person or persons mentioned therein as representative(s) or alternate(s) the right to take part in the meeting(s) and vote.
- (f) At least one person must be nominated as representative. Alternate(s) may also be nominated. Persons who are only adviser(s) are not entitled to exercise the right to vote.
- (g) If the credentials are issued by such an authority, the text should make it clear who has given the authority to issue credentials.

## **2 Previous consideration of credentials by the Credentials Committee**

- 2.1 At its 29th session held in June 2005, the Executive Committee established a Credentials Committee composed as follows:

Australia (Mr. John Gillies)  
Germany (Mr. Volker Schöfisch)  
Republic of Korea (Professor Lee-Sik Chai)

- 2.2 At its 10th session, held in October 2005, the Assembly established a Credentials Committee composed as follows:

Algeria (Mr. Mohamed-Said Semane)  
Australia (Mr. John Gillies)  
Republic of Korea (Professor Lee-Sik Chai)  
Sweden (Mr. Daniel Kjellgren)  
Uruguay (Captain Carlos Ormaechea)

- 2.3 At its 10th session the Assembly noted that the Credentials Committee had identified some inconsistencies during the examination of credentials. It was also noted that the Credentials Committee had therefore strongly urged States to use the two templates presented in circular 92FUND/Circ.49 when preparing credentials in order to ensure compliance with the existing requirements of the 1992 Fund Assembly. It was further noted that the Committee had also proposed that the Director should review the relevant Rules of Procedure and the guidelines given in circular 92FUND/Circ.49, in consultation with those States who had served on the first and second Credentials Committees, in order to clarify certain aspects of both the content of credentials and the procedure for submission, and report to the next session of the Assembly. The Assembly endorsed the position taken by the Credentials Committee and instructed the Director to report to the Assembly as proposed by the Credentials Committee (document 92FUND/A.10/37, paragraphs 3.5 and 3.6).

## **3 Review by the Director**

- 3.1 The Director has undertaken the review referred to in paragraph 2.3 above, in consultation with the representatives of those States who had served on the Credentials Committees referred to in paragraphs 2.1 and 2.2 above.
- 3.2 The issues which have been encountered to date during the operation of the Credentials Committee are set out in the table at Annex II, which lists the relevant part of the Rule of Procedure or the Circular, the issue that has arisen as a consequence, the decision taken by the

Credentials Committee as regards the issue and the amendment proposed to Rule 9 of the Rules of Procedure or the Circular in order to clarify how such issues should be addressed in the future.

- 3.3 By far the most frequently encountered issue relates to the submission of credentials by an authority other than the Head of State, the Head of Government or the Minister for Foreign Affairs. The Rules of Procedure state that the credentials can be issued 'by an appropriate authority as determined by the Government and communicated to the Director'. The Circular states that 'If the credentials are issued by such an authority, the text should make it clear who has given the authority to issue credentials'. However, a significant number of credentials were issued by such an authority but without any statement communicating to the Director that this authority was so authorised by the Government. The Director would like to draw the attention of States to the possibility that some States may find it more convenient for the Government, ie the Head of State or the Head of Government or the Minister for Foreign Affairs, to communicate separately to the Director that a particular authority is authorised to issue credentials for meetings of the IOPC Funds.
- 3.4 As regards credentials submitted in the form of telefaxes or Notes Verbales, ie not in the form of an original signed letter, the Director is aware that normal policy within the United Nations system is for such credentials to be accepted provisionally, provided that an original signed letter is submitted after the meeting. However, as regards secret ballots, such as those for elections, it is not possible to adjust the result afterwards if no such letter is received. At the June 2005 Executive Committee session, the Credentials Committee therefore accepted faxed credentials provisionally but noted that for elections no provisional acceptance of faxed credentials would be possible and that only an original signed letters would be acceptable (document 92FUND/EXC.29/2/1, paragraphs 1.8 and 1.9). At the October 2005 sessions, the Credentials Committee did not accept faxed credentials, because elections were to be held. Notes Verbales were not accepted by either Credentials Committee. The Director recognises that telefaxes are frequently used nowadays for commercial transactions. He also recognises that a Note Verbale is an official communication on behalf of a Government. It is, in his view, important that States are not unnecessarily deprived of their right to participate in meetings and, when necessary, vote. The Assembly is therefore invited to consider whether credentials submitted in the form of a telefax or a Note Verbale should be accepted for 1992 Fund meetings.
- 3.5 Although no credentials have so far been received in the form of e-mails, the Director is of the view that it would not be appropriate for credentials to be submitted in this form because of the potential difficulties involved in authenticating the source of an e-mail.
- 3.6 As regards the question of whether the credentials should state that they give the person or persons stated therein as representative(s) or alternate(s), the right to take part in the meeting(s) and vote, as at present stated in the Circular, the Credentials Committee accepted credentials which did not contain such a statement, provided that such rights were clearly implied by the wording used. The Assembly is therefore invited to consider whether to endorse the approach taken by the Credentials Committee and, if so, to consider the Director's proposal to revise the text of the Circular as set out in the Annex.

#### **4 Credentials Committee for the governing bodies of the 1971 Fund and the Supplementary Fund**

The Director remains of the view that a Committee should not be set up to examine credentials and notifications for the governing bodies of the Supplementary Fund and the 1971 Fund at this stage. However, he may revert to this issue in respect of these Organisations at a later date when

further experience has been gained from the operation of the 1992 Fund's Credentials Committee (document 92FUND/ES.9/22, paragraph 5.5).

**5      Action to be taken by the Assembly**

The Assembly is invited:

- (a) to consider the Director's proposals for changes to the Rules of Procedure and the Circular;  
and
- (b) to strongly urge States to use the two templates presented in the Circular when preparing credentials in order to ensure compliance with the Assembly's requirements.

\* \* \*



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS**

92FUND/Circ.49  
71FUND/Circ.86  
SUPPFUND/Circ.3  
6 June 2005

## **Credentials and notification for IOPC Funds Meetings**

The situation as regards both the requirements for and the form and content of credentials and notifications is considerably more complicated for meetings of the International Oil Pollution Compensation Funds (IOPC Funds)<sup><1></sup> than for other similar organisations, such as the International Maritime Organization (IMO), as a result of the practice of holding meetings of several IOPC Funds' bodies during the same week. Whilst organisations are only required to submit notifications, most States will have to submit a combination of credentials and notifications depending on their status with respect to the bodies meeting during a particular week, as set out in the following table:

|   | <b>Credentials</b>                           | <b>Notifications</b>  |
|---|--|---|
| <b>1992 Fund Assembly</b>               | 1992 Fund Member States                      | States and organisations with observer status   |
| <b>1992 Fund Executive Committee</b>    | Members of the 1992 Fund Executive Committee | Other 1992 Fund Member States,<br>Other States and organisations with observer status |
| <b>1992 Fund Working Groups</b>         |  | 1992 Fund Member States,<br>States and organisations with observer status             |
| <b>Supplementary Fund Assembly</b>      | Supplementary Fund Member States             | Other 1992 Fund Member States,<br>Other States and organisations with observer status |
| <b>1971 Fund Administrative Council</b> |  | Former 1971 Fund Member States,<br>States and organisations with observer status      |

In October 2005, the 1992 Fund Assembly will elect the next Director as well as members of the Audit Body. According to Rules 37 and 54 of the Rules of Procedure of the Assembly, these elections will be held by secret ballot.

It is therefore essential that all credentials are in order before the ballots are carried out. A delegation whose credentials are not in order at the time of the ballot will not be eligible to vote.

This circular gives detailed guidance in respect of the form and content of credentials and notifications, which was endorsed by the 1992 Fund Assembly at its March 2005 session. The texts of model credentials contained in the Annex were also endorsed by the 1992 Fund Assembly, which noted that the model credentials were intended solely to assist Governments in the preparation of the instruments and that they were not intended, in any way, to replace the form of instruments required by laws or practices of individual States (document 92FUND/A/ES.9/28, paragraphs 24.2 and 24.3).

<sup><1></sup> ie the International Oil Pollution Compensation Fund 1971 (1971 Fund),  
the International Oil Pollution Compensation Fund 1992 (1992 Fund) and  
the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

At its March 2005 session, the 1992 Fund Assembly decided that a Credentials Committee should be established at each session of the Assembly to examine the credentials of 1992 Fund Member States for sessions of the Assembly and, when the Executive Committee is held in conjunction with a session of the Assembly, also for that Committee. The Assembly also decided that, should the Executive Committee hold sessions that were not in conjunction with an Assembly session, the Executive Committee should establish its own Credentials Committee.

The first such Credentials Committee will be appointed at the beginning of the 29th session of the 1992 Fund Executive Committee on 27 June 2005 (Rules 10 and 11 of the Rules of Procedure of the Assembly and Rule (iv) of the Rules of Procedure of the Executive Committee).

### **Form and content of credentials and notifications**

#### **Formal requirement as regards credentials**

As provided in Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and of the Rules of Procedure of the Supplementary Fund Assembly, the credentials shall be issued:

(a) by the Head of State or by the Head of Government or by the Minister of Foreign Affairs,

or

(b) by an appropriate authority as determined by the Government and communicated to the Director. If the credentials are issued by such an authority, the text should make it clear who has given the authority to issue credentials.

The credentials should be addressed to the Director of the IOPC Funds (not, as has sometimes been the case in the past, to the Secretary-General of IMO) in the form of an original signed letter.

The credentials should be issued in one of the official languages of the IOPC Funds (English, French or Spanish) or, if in any other language, be accompanied by a certified translation into one of these languages.

#### **Substantive content of credentials**

The credentials should indicate clearly the meeting or meetings to which they pertain. This could be done in several ways, for example:

The 10th session of the 1992 Fund Assembly, the 1st extraordinary session of the Supplementary Fund Assembly and the 30th session of the 1992 Fund Executive Committee, held from 17-21 October 2005

or

The meetings held by the bodies of the International Oil Pollution Compensation Funds during the week of 17-21 October 2005.

The credentials should state that they give the person or persons mentioned therein as representative(s) or alternate(s) the right to take part in the meeting(s) and vote.

At least one person must be nominated as representative. Alternate(s) may also be nominated. Persons who are only adviser(s) are not entitled to exercise the right to vote.

It is important that any changes in the composition of a delegation after the issue of the original or additional credentials (for example by the inclusion of further persons) are certified in the form of new or additional credentials, since otherwise any persons not mentioned in the credentials would not be entitled to vote.

### Notifications

Notifications should indicate the meeting(s) to which they pertain and the person(s) who will represent the State or Organisation in question. As regards States, it should be signed by a Government or Embassy/High Commission official and be printed on official paper, as appropriate.

Notifications should be addressed to the Director of the IOPC Funds and should be issued in one of the official languages of the IOPC Funds (English, French or Spanish) or, if in any other language, be accompanied by a certified translation into one of these languages.

Formal credentials would be acceptable even if only notifications are required.

\* \* \*

ANNEX

MODEL LETTER OF CREDENTIALS

Alternative 1

To be signed by the Head of State, Head of Government or Minister for Foreign Affairs

Sir,

I have the honour to inform you that I have appointed:

.....  
(full name(s) and title(s))

as Representative(s) of ..... to the.....with full  
(name of State) (meetings and dates to be identified)  
authority to take part in the meeting(s), to transact all such matters as may appertain to the work of this (these)  
meeting(s) and to vote with the other Representatives in accordance with the agreed procedures.

I have also the honour to designate

.....  
(full name(s) and title(s) of Alternate(s))

as Alternate Representative(s) and

.....  
(full name(s) and title(s) of Adviser(s))

as Adviser(s) to compose the remainder of the delegation of .....  
(name of State)

Please accept, Sir, the assurance of my highest consideration.

.....  
(signature)

.....  
(full name and title)

The Director  
International Oil Pollution Compensation Funds  
Portland House  
Stag Place  
London SW1E 5PN



## MODEL LETTER OF CREDENTIALS

### Alternative 2

To be signed by a person authorized by the Head of State, Head of Government  
or Minister for Foreign Affairs to issue credentials.

Sir,

I have the honour to inform you that I have been authorized

by ..... of .....  
(full name and title) (name of State)

to issue credentials in respect of the Representative(s) of my Government to the .....  
(meetings and dates to be identified)  
and to designate the other members of the delegation of .....to the meeting(s).  
(name of State)

Acting upon this authority, I have the honour to inform you that

.....  
(full name(s) and title(s))

has (have) been appointed as the Representative(s) of ..... to the meeting(s) and is (are)  
(name of State)

fully authorized to take part in the meeting(s), to transact all such matters as may appertain to the work of this (these)  
meeting(s) and to vote with the other Representatives in accordance with agreed procedures.

I have also the honour to designate

.....  
(full name(s) and title(s) of Alternate(s))

as Alternate Representative(s) and

.....  
(full name(s) and title(s) of Adviser(s))

as Adviser(s) to compose the remainder of the delegation of .....  
(name of State)

Please accept, Sir, the assurance of my highest consideration.

.....  
(signature)

.....  
(full name and title)

The Director  
International Oil Pollution Compensation Funds  
Portland House  
Stag Place  
London SW1E 5PN

## ANNEX II

### Issues arising during the examination of credentials by the Credentials Committee

| <b>Rules of Procedure (RoP)/Circular</b>  | <b>Issue</b>  | <b>Committee's Decision /Recommendation</b>   | <b>Director's Proposed Action</b>  |
|---|---|---|--|
| RoP: "Each Member shall transmit to the Director..."<br>Circular: "The credentials should be addressed to the Director of the IOPC Funds..."  | Some credentials were addressed to the Secretary-General of IMO.<br><br>Or bore no address on the actual credentials. | The Credentials Committee accepted such credentials.  | Amend the Circular to state "...It would be appreciated if all credentials were addressed to the Director of the IOPC Funds... "   |
| Circular: "...in the form of an original, signed letter."   | Some credentials were submitted as telefaxes.   | At the June 2005 Executive Committee session, the Credentials Committee accepted such credentials provisionally but stated that for elections there would be no provisional acceptance of faxed credentials, original signed letters being required.<br>At the October 2005 sessions, the Credentials Committee did not accept such credentials, because elections were to be held. | Invite the Assembly to consider whether telefaxes should be accepted.  |
|   | Some credentials were submitted as Notes Verbales.  | The Credentials Committee did not accept such credentials.  | Invite the Assembly to consider whether Notes Verbales should be accepted.   |
| Circular: "The credentials should be issued in one of the official languages of the IOPC Funds (English, French or Spanish) or, if in any other language, be accompanied by a certified translation into one of these languages." | Some credentials were accompanied by a translation which had not been certified.                                      | The Credentials Committee accepted such credentials if, at the request of the relevant delegation, IMO's Translation Section had certified the translation.<br><br>nb only possible for translations from Arabic, Chinese or Russian.   | Add the following text to the Circular: "Certification of a translation from Arabic, Chinese or Russian into English, French or Spanish by IMO's Translation Section is acceptable." |

|   |  |  |  |
|---|--|--|--|
| Circular: "The credentials should state that they give the person or persons mentioned therein as representative(s) or alternate(s) the right to take part in the meeting(s) and vote." | Some credentials did not contain such a statement.   | The Credentials Committee accepted such credentials, provided that such rights were clearly implied by the wording used. | Amend the Circular to state "The credentials should <u>either</u> state that they give the person or persons mentioned therein as representative(s) or alternate(s) the right to take part in the meeting(s) and vote <u>or</u> such rights should be clearly implied by the wording used."  |
| RoP: "...not later than the opening day of the Assembly..."   | The majority of credentials were submitted later than this.  | The Credentials Committee accepted such credentials.   | Amend the RoP to state "preferably not later than the opening day of the Assembly..."  |
| RoP: "...an appropriate authority as determined by the Government and communicated to the Director."  | Some credentials did not communicate to the Director that the appropriate authority had been determined by the Government, ie that the person signing the credentials was authorised to do so. | The Credentials Committee did not accept such credentials.   | <p>a. Amend the RoP by adding a comma after "...an appropriate authority..." to make it clear that it is the authority and not the credentials which are to be communicated to the Director.</p> <p>and</p> <p>b. Replace the following text in the Circular: 'If the credentials are issued by such an authority, the text should make it clear who has given the authority to issue credentials' with</p> <p>"If the credentials are issued by such an authority, the text should state that the Head of State or the Head of Government or the Minister for Foreign Affairs has determined that that authority may issue credentials"</p> |

|  |   |  |   |
|--|---|--|---|
|  | Some credentials were authorised by an authority which the Government had previously communicated to the Director was authorised to issue credentials for future meetings of the IOPC Funds.                  | The Credentials Committee accepted such credentials on production of the original authorisation. | Add the following text to the Circular:<br>"Some States may find it more convenient for the Government, ie the Head of State or the Head of Government or the Minister for Foreign Affairs, to communicate separately to the Director that a particular authority is authorised to issue credentials for meetings of the IOPC Funds." |
|  | Some credentials were signed by an Ambassador or High Commissioner who stated that they were acting on the instructions of the Department or Ministry of Foreign Affairs, as opposed to the Minister himself. | The Credentials Committee did not accept such credentials.                                       | Add the following text to the Circular:<br>"It should be noted that only the Minister of Foreign Affairs, and not the Ministry or Department, can give such authorisation."   |