

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 5	IOPC/MAR11/5/2	
	Original: ENGLISH	4 March 2011	
	1992 Fund Assembly	92AES15	●
	1992 Fund Executive Committee	92EC51	
	Supplementary Fund Assembly	SAES4	●
	1971 Fund Administrative Council	71AC26	●
1992 Fund Working Group	92WG6/2		

PROPOSED NEW TEMPLATE FOR DIRECTOR'S CONTRACT

Note by the Chairman of the 1992 Fund Assembly

Summary:	<p>In the light of the absence of the Director of the IOPC Funds for medical reasons, the subject of the terms of the Director's contract was raised by some Member States at the October 2010 sessions of the governing bodies, in particular if the Director was for reasons of health incapacitated for further service.</p> <p>At those sessions, the 1992 Fund Administrative Council requested the Head of Finance and Administration Department to form a small consultation group consisting of the Chairmen of the governing bodies, the Chairman of the Audit Body and its External Expert and a representative of the International Maritime Organization (IMO), to review current practices in intergovernmental organisations and to ensure that any future contract with the Director of the IOPC Funds was consistent with contemporary business and management practices.</p> <p>In accordance with this request, a consultation group was formed and met in December 2010 and March 2011 to discuss possible modifications to the contract to take into account concerns raised by some Member States.</p> <p>The proposed modifications are outlined in paragraphs 2.3.1-2.3.3 below. A template for the core provisions of a revised contract is at Annex II.</p>
Action to be taken:	<p><u>1992 Fund Assembly</u></p> <p>(a) to take note of the information contained in this document; and</p> <p>(b) to decide on the core provisions with respect to a new template for the Director's contract.</p> <p><u>Supplementary Fund Assembly and 1971 Fund Administrative Council</u></p> <p>To take note of the information contained in this document and endorse the decisions taken by the 1992 Fund Assembly.</p>

1 Introduction

- 1.1 In the light of the absence of the Director of the IOPC Funds for medical reasons, the subject of the terms of the Director's contract had been raised by some Member States at the October 2010 sessions of the governing bodies, in particular if the Director was for reasons of health incapacitated for further service.
- 1.2 The 1992 Fund Administrative Council had requested the Head of Finance and Administration Department to form a small consultation group consisting of the Chairmen of the governing bodies,

the Chairman of the Audit Body and its External Expert and a representative of IMO, which would review current practices in intergovernmental organisations and to ensure that any future contract with the Director of the IOPC Funds was consistent with contemporary business and management practices.

- 1.3 In accordance with the Council's request, the Head of Finance and Administration Department convened a meeting in December 2010 which was attended by the Chairmen of the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Audit Body, the External Expert on the Audit Body and the Assistant Secretary-General/Director, Administrative Division of IMO. The Chairmen of the Supplementary Fund Assembly and the 1992 Fund Executive Committee were unable to attend this meeting but had provided their comments on a draft proposal.
- 1.4 In order to comply with the Council's request that any future contract with the Director of the IOPC Funds be consistent with contemporary business and management practices, the consultation group noted that the Head of Finance and Administration had reviewed the contracts of Heads of five other London-based intergovernmental organisations^{<1>} which had been kind enough to share their information with the IOPC Funds on a confidential basis. In the view of the Head of Finance and Administration, these Organisations were the most appropriate organisations to use as comparators given that they too followed the United Nations common system with respect to salaries, allowances, grants and the condition of entitlement and they shared the same status vis-à-vis the Host Government. He did not see any merit in attempting to make a comparison with external public sector/private sector contracts where conditions of employment were very different (eg payment of bonuses, etc.). This view was shared by the group.
- 1.5 A second meeting of the consultation group took place in March 2011 and was attended by the Chairmen of the 1992 Fund Assembly, the 1971 Fund Administrative Council, the Supplementary Fund Assembly and the External Expert on the Audit Body. The Chairmen of the 1992 Fund Executive Committee and the Audit Body and the Assistant Secretary-General/Director, Administrative Division of IMO were unable to attend this meeting but had provided their comments on a revised draft template.

2 Considerations of the consultation group

2.1 Background

- 2.1.1 From the outset, the group noted that the outcome of its deliberations would not affect the current Director's contract in any way. In addition, any modification to any future contract with the Director would not affect the contracts of other staff members of the IOPC Funds. The group further noted that the Director's contract was not a public document and only the main elements (eg financial provisions) were ever discussed by Member States in private sessions, pursuant to Rule 12 of the Assembly's Rules of Procedure, and then conveyed to the Assembly by its Chairman. The group also noted that contracts between the Director and the 1992 Fund are signed by the Chairman of the 1992 Fund Assembly. The Director of the 1992 Fund is also *ex officio* Director of the 1971 Fund and the Supplementary Fund, as set out in the contract.
- 2.1.2 The group noted that the 1992 Fund Staff Regulations and Staff Rules embodied the fundamental conditions of service and the basic rights, duties and obligations of the Director and members of the Secretariat of the 1992 Fund and that this was expressly mentioned in the Director's contract.
- 2.1.3 The group also noted that the 1992 Fund salaries, allowances, and grants and the condition of entitlement, for all members of the Secretariat, except as may be otherwise provided by the Staff Regulations and Staff Rules, conform whenever appropriate to the United Nations common system as applied by IMO.

<1> International Coffee Organization, International Grains Council, International Maritime Organization, International Mobile Satellite Organization, International Sugar Organization.

2.2 Findings

The group noted the following key findings from a study of the above-mentioned contracts:

- In all cases the Head of the Organisation's contract had the following elements:
 - preamble setting out period of appointment and in accordance with the Organisation's Regulation/Convention;
 - the duration;
 - the salary level;
 - the amount of representation allowance; the conditions of service and basic rights duties and obligations in accordance with the respective Organisation's Staff Regulations and Staff Rules which are either supplemented or amended by the governing bodies of the Organisation;
 - the notice period;
 - the privileges and immunities under the Headquarters Agreement with the host government/other agreements;
 - the oath and non acceptance of gifts and instructions; and
 - the arbitration body (International Court of Justice) in case of disputes.
- Additional provisions included in some but not all of the contracts included:
 - provision in lieu of pension;
 - termination of contract by the governing body and compensation entitlement; and
 - provisions specific to the incumbent.

2.3 Proposed additions to the Director's contract

- 2.3.1 The group noted that Staff Regulations 21 and 22 covered the termination by the Director of the appointment of a staff member before the expiry date of his or her appointment although Staff Regulation 21 was silent as to whether it included termination of the Director's contract. The group also noted, however, that Staff Regulation 2 (Scope and Purpose) embodied the conditions of service, rights, duties and obligations of both the Director and other members of the Secretariat of the 1992 Fund and, as mentioned above, this is expressly stated in the Director's contract. The relevant Staff Regulations and Staff Rule are at Annex I.
- 2.3.2 Notwithstanding Staff Regulation 2, the consultation group was of the view that it would be appropriate to include provisions in the Director's contract to address the issue of incapacity for further service for medical reasons and compensation arrangements. In this regard, the group was of the opinion that, in the event of resignation by the Director or termination by the 1992 Fund Assembly for health reasons, the Director should be entitled to compensation equivalent to twelve months of the net base salary plus the application of the post adjustment multiplier in force at the time of separation, subject to a report from a medical practitioner appointed by the 1992 Fund confirming the incapacity of the Director for further service.
- 2.3.3 The consultation group also noted that there was no explicit provision in the Director's contract with respect to the diplomatic privileges and immunities under the Headquarters Agreement with the host government and that, in its view, it would be appropriate to include a new paragraph in this regard.
- 2.3.4 A revised template setting out the core provisions for the Director's contract is at Annex II.

3 Action to be taken

1992 Fund Assembly, Supplementary Fund Assembly and 1971 Fund Administrative Council

- 3.1 The 1992 Fund Assembly is invited:
- (a) to take note of the information contained in this document; and

(b) to decide on the core provisions with respect to a new template for the Director's contract.

- 3.2 The Supplementary Fund Assembly and the 1971 Fund Administrative Council are invited to take note of the information contained in this document and endorse the decisions taken by the 1992 Fund Assembly.

* * *

ANNEX I

Relevant Staff Regulations of the International Oil Pollution Compensation Fund established under the 1992 Fund Convention

Regulation 2

Scope and Purpose

The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the Director and other members of the Secretariat of the 1992 Fund. They represent the broad principles of human resources policy for the staffing and administration of the Secretariat.

Regulation 21

- (a) The Director may, giving his or her reasons therefore, terminate the appointment of a staff member before the expiry date of the appointment in any of the following circumstances, namely:
- (i) if the needs of the Funds require abolition of the post or reduction in staff;
 - (ii) if the services of the staff member prove unsatisfactory;
 - (iii) if the staff member is for reasons of health incapacitated for further service;
 - (iv) if the conduct of the staff member does not meet the high standards of integrity and behaviour required under these Regulations or is otherwise unsatisfactory;
 - (v) if facts anterior to the appointment of the staff member and relevant to his or her suitability come to light, which, if they had been known at the time of his or her appointment, should under the standards provided in these Regulations have precluded his or her appointment.
- (b) If a prima facie case for terminating an appointment under this Regulation has been established, the Director may suspend the staff member concerned from duty, with or without pay, during investigation, the suspension being without prejudice to the rights of the individual.

Regulation 22

The terms and conditions governing termination under Regulation 21, including provisions for the payment of termination indemnity, shall be specified in the Staff Rules.

**Relevant Staff Rule of the
International Oil Pollution Compensation Fund
established under the 1992 Fund Convention**

Section VI

SEPARATION

RULE VI.1

Termination indemnity

- (a) Staff members with contracts for a term exceeding six months whose contracts are terminated under Staff Regulation 21 shall be paid an indemnity in accordance with the following schedule, except as provided in sub-paragraph (b)

Completed years of service with the 1971 Fund and 1992 Fund	Months of separation payments, where applicable ⁽¹⁾ or Months of net pensionable remuneration (including language allowances) where applicable ⁽²⁾
Up to 5 years	One week for each month of uncompleted service subject to a minimum of six weeks and a maximum of three months indemnity pay
Less than 6 years	3 months
Less than 7 years	5 months
Less than 8 years	7 months
Less than 9 years	9 months
Less than 10 years	9 ½ months
Less than 11 years	10 months
Less than 12 years	10 ½ months
Less than 13 years	11 months
Less than 14 years	11 ½ months
14 years or more	12 months

⁽¹⁾ Separation payments for staff in the Professional and higher categories shall be determined by the net base salary scale shown in Annex A plus the application of the post adjustment multiplier in force at the time of separation.

⁽²⁾ For staff in the General service category.

- (b) No indemnity shall be paid to a staff member who is summarily dismissed. A staff member whose contract is terminated for unsatisfactory services or who for disciplinary reasons is dismissed for misconduct other than by summary dismissal may be paid, at the discretion of the Director, an indemnity not exceeding one half of the indemnity provided under paragraph (a) above.
- (c) Length of service shall be deemed to comprise the total period of a staff member's full time continuous service with the Fund, regardless of types of appointment. Continuity of such service shall not be considered as broken by periods of special leave without pay or on partial pay but full months of any such periods exceeding one calendar month shall not be credited as service for indemnity purposes; periods of less than one calendar month shall not affect the ordinary rates of accrual.

- (d) Termination indemnity shall not be paid to any staff member who, upon separation, will receive compensation for permanent disability under Rule VIII.3.

* * *

ANNEX II

Proposed template

Contract between
the International Oil Pollution Compensation Fund 1992
and
[XXX]

Having regard to Article 16 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention),

Noting that the Assembly of the International Oil Pollution Compensation Fund 1992 (1992 Fund) elected, at its [xxx] session held in [Date], [XXX] as the next Director of the 1992 Fund from [Date],

Noting also that in accordance with the 1992 Fund Resolution N°9, adopted by the 1992 Fund Assembly at its 9th session in October 2004, the Director should be appointed for an initial term of five years,

Recalling that the Assembly of the International Oil Pollution Compensation Fund 1971 (1971 Fund) had decided that the Director of the 1992 Fund should *ex officio* also be Director of the 1971 Fund,

Recalling further that the Assembly of the International Oil Pollution Compensation Supplementary Fund (Supplementary Fund) had decided that the Director of the 1992 Fund shall *ex officio* be Director of the International Oil Pollution Compensation Supplementary Fund also,

Recognising therefore that [XXX] will, in addition to holding the post of Director of the 1992 Fund, hold the post of Director of the 1971 Fund and the post of Director of the Supplementary Fund (the three Organisations hereinafter referred to as the IOPC Funds),

Recognising that, in the event that the 1992 Fund Assembly were to decide, at the request of the Assembly of the International Hazardous and Noxious Substances Fund (HNS Fund), the Secretariat of the 1992 Fund should act also as Secretariat of the HNS Fund, the Director of the 1992 Fund should be also Director of the HNS Fund,

The [Assembly/Administrative Council] of the 1992 Fund has determined the terms and conditions of [XXX]'s contract as follows:

- 1 The appointment shall be for the period until [xx Date].
- 2 The fundamental conditions of service and the basic rights, duties and obligations of the Director are embodied in the Staff Regulations and Rules of the 1992 Fund as supplemented or amended by the 1992 Fund Assembly or by this contract.
- 3 The Director shall receive a salary equivalent to that of an Under Secretary-General (USG) in the United Nations salary scale increased by 10%, all subject to post adjustment and contributions to the Provident Fund. If eligible, he/she will receive the allowances available to staff members generally, together with an annual representation allowance of [£xxx] per annum.
- 4 The Director shall pledge himself by an oath that he/she will exercise, in all loyalty, discretion and conscience, as an international civil servant and the chief administrative officer of the IOPC Funds, the functions and duties assigned to him/her by the provisions of the 1992 and 1971 Fund Conventions and the Supplementary Fund Protocol and the Staff Regulations of the 1992 Fund; that he/she will discharge those functions and regulate his/her conduct with the interests of the IOPC Funds only in view and will not seek or accept instructions in regard to

the performance of his/her duties from any government, authority or body external to the IOPC Funds.

5 During the term of the appointment, the Director shall enjoy the diplomatic privileges and immunities granted to the Director by the Headquarters Agreement entered into by the Organisations with the Host Government.

6 During the term of his appointment, the Director shall not accept any honour, decoration, favour or remuneration from any source external to the IOPC Funds unless approved by the respective governing bodies. With respect to any gift offered by any such source, the Director shall be guided by the 1992 Fund's policy which applies to all staff.

7 Resignation by the Director:

(a) The Director's contract may be terminated by the Director's official resignation submitted in writing to the Chairman of the Assembly of the 1992 Fund, in which case the Director shall cease his/her functions three months after the date of communicating his/her resignation to the Chairman. If there is no Chairman of the Assembly, or if the Chairman cannot be contacted, the resignation will take effect three months after the Director has communicated his/her resignation to the Member States of the IOPC Funds. If required, the Director will, immediately after having communicated his/her resignation as set out above, convene an extraordinary session of the Assembly of the 1992 Fund to appoint a successor.

(b) If the Director shall resign for medical reasons, he/she shall be entitled to compensation equivalent to twelve months of the net base salary plus the application of the post adjustment multiplier in force at the time of separation, subject to a report from a medical practitioner appointed by the 1992 Fund confirming the incapacity of the Director for further service on medical grounds. Staff Rule VI.1(d) will not apply to the Director.

8 Termination of the Director's contract by the 1992 Fund Assembly

(a) The Director's contract may be terminated by the 1992 Fund Assembly in accordance with the provisions of Staff Regulations 21 and 22.

(b) However, in the event of termination of the appointment by the 1992 Fund Assembly in accordance with Regulation 21(a)(iii) (ie for reasons of health incapacitated for further service), the Director shall be entitled to compensation equivalent to twelve months of the net base salary plus the application of the post adjustment multiplier in force at the time of separation, subject to a report from a medical practitioner appointed by the 1992 Fund confirming the incapacity of the Director for further service on medical grounds. Staff Rule VI.1(d) will not apply to the Director.

9 Any disputes or differences in interpretation of this contract which cannot be settled by amicable agreement between the parties shall be submitted to an arbitrator appointed by the International Court of Justice. The arbitrator's decision shall be final.

10 This contract shall enter into force on the date of its signature by the parties.

Done in London, this date [xxx], in duplicate, one copy for __[XXX]__ and the other to be kept in the archives of the International Oil Pollution Compensation Fund 1992.

For the International Oil
Pollution Compensation Fund 1992

Chairman of the Assembly