



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

<b>Agenda item: 6</b>	IOPC/OCT11/6/4	
Original: ENGLISH	4 August 2011	
1992 Fund Assembly	<b>92A16</b>	•
1992 Fund Executive Committee	<b>92EC53</b>	
Supplementary Fund Assembly	<b>SA7</b>	•
1971 Fund Administrative Council	<b>71AC27</b>	•

## REVIEW OF THE NOMINATION PROCESS FOR THE JOINT AUDIT BODY

### Note by the Audit Body

<b>Summary:</b>	The elections of Audit Body members in 2008 and in 2011 resulted in less than the full complement of nominations being received from Member States as a result of the first invitation. This resulted in time being allocated by the governing bodies for discussion of the issue and by the Secretariat in following up to seek further nominations. This document provides the governing bodies with a possible improvement to the nomination process to overcome this problem, should it recur in the future.
<b>Action to be taken:</b>	<p><u>1992 Fund Assembly:</u></p> <p>(a) to take note of the information contained in this document; and</p> <p>(b) to give such instructions in respect of matters dealt with in this document as it may deem appropriate.</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 the decisions taken by the 1992 Fund Assembly.</p>

### **1 Introduction**

- 1.1 In both 2008 and 2011 (election years for successive Audit Bodies), Member States did not provide sufficient nominations to fill the six positions in response to the first invitation for nominations.
- 1.2 This resulted, in both of those years, in the need for the Secretariat (with the approval of the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly) to seek further nominations.
- 1.3 This issue is discussed in this document and a possible solution is proposed for consideration.

### **2 The role and functions of the Audit Body**

- 2.1 It is relevant to revisit the original debates during which Member States discussed and agreed how the Audit Body should be set up. Full relevant extracts are set out in Annex I to this document.
- 2.2 It is clear from those extracts that the governing bodies gave careful consideration to the Audit Body's composition and mandate and that those nominated for membership of the Audit Body were intended to be genuinely independent and selected so as to bring a balanced combination of experience and expertise and a wide geographic perspective. The issue of the size of the Audit Body was also considered carefully by Member States and the suggestion of a smaller-sized Audit Body was not supported.

- 2.3 In the period since its establishment, the mandate of the Audit Body has been changed on several occasions to encompass further matters that the governing bodies have decided. The most significant of these was to manage and conduct the regular selection of an External Auditor.
- 2.4 It is also of significance that the governing bodies have, during the period of the current Audit Body elected in 2008, started to refer matters of significant concern to the Organisations to the Audit Body for review, advice and the development and submission of possible solutions.
- 2.5 Clearly, the mandate of the Audit Body covers a broad range of areas for which a suitable cross-section of skills is required. In carrying out its mandate, the Audit Body has also sought to gain a better understanding of the role and evolution of audit committees and the use of best practices. In a document presented at the October 2010 sessions of the governing bodies, the Audit Body outlined the mix of skills it believed was required of Audit Body members.
- 2.6 The annual report of the Chairman of the Audit Body describes the activities of the Audit Body in relation to its mandate. In October 2011, the Audit Body Chairman will also report on the performance of the Audit Body over its latest three-year term and on a self-assessment process undertaken this year. Ultimately these reports point to the size, structure and composition of the Audit Body as key determinants of its effectiveness in carrying out its mandate.

### **3 Discussion**

- 3.1 The shortfall in sufficient nominations from Member States to fill the vacancies for Audit Body elections in 2008 and 2011 has caused an additional administrative workload. In addition there must be a concern that unless those places are filled there could be some serious doubts concerning the ability of the Audit Body to deliver on the increasing expectation and requirement that the Audit Body undertake specific work referred to it by the governing bodies from time to time, as well as meeting its mandate in full.
- 3.2 To alleviate any concerns the governing bodies might have in this regard, and notwithstanding that the current Composition and Mandate of the joint Audit Body does provide one option to address a shortfall in nominations (cf paragraph 3 of Annex II to this document), the Audit Body suggests some minor changes to the existing procedures to help the Funds more flexibly to achieve the appointment of a suitably-balanced Audit Body and thereby avoiding the 'double handling' that is needed when nominations fall short and the Secretariat and Member States then need to address a second circular on the subject (with potentially similar results) or by extending the terms of current members following further nominations by one or more Member States.
- 3.3 It is also important to note that the simple expedient of reducing the size of the Audit Body or limiting the number of its meetings would not in itself address the lack of nominations that might occur in the future.

### **4 The Audit Body's proposal**

- 4.1 The Audit Body's proposal recognises the primary importance of Member States retaining the right to nominate the members of the Audit Body. The proposed change would only come into effect if Member States did not then nominate sufficient individuals to allow the membership of the Audit Body to be complete or effective. The proposal, which would remove the need for issuing further requests to all Member States, should nominations fall short of the vacancies to be filled, is as follows:
- I. **As at present**, in the January of the year in which an election of Audit Body members is due to be conducted at the 1992 Fund Assembly session in October, the Secretariat will send a Circular to all 1992 Fund Member States seeking nominations for the six positions, stating that those nominations are to be submitted by a specific date in that year (usually by the end of March or early in April).

- II. **As at present**, should sufficient nominations be received to fill the vacancies, an election would be conducted at the October sessions of the governing bodies to select and appoint new members.
- III. Should sufficient nominations not be received to fill the vacancies, the 1992 Fund Assembly authorises the Chairperson of the Audit Body, in consultation with the Chairperson of the 1992 Fund Assembly and the Director of the IOPC Funds, to identify and propose for consideration by the 1992 Fund Assembly at the next available session, a person or persons who would bring to the Audit Body the specific skills, experience and attributes that would contribute to having a well-balanced and adequate membership. This authorisation does not require that any or all of the vacancies be filled if the Chairperson of the Audit Body considers that the overriding requirements of experience, expertise and geographical spread have been met by the existing nominations and that the Audit Body can deliver its mandate and the work identified in its work programme and obligations without its full complement of members.

#### 4.2 Benefits of the proposal

- 4.2.1 This approach would ensure that the Audit Body's vacancies would be filled effectively on each occasion, hopefully by Member States making sufficient nominations. However, if sufficient nominations were not received, it would remove the need for Member States to reconsider the issue having regard to the fact that they have already considered the matter and decided (or not) to make a nomination. It would also remove the need for the Secretariat to develop, circulate and manage a second round of communications.
- 4.2.2 The proposal would also provide the opportunity to focus on some desirable outcomes should nominations by Member States fall short in some years. One example of such an outcome is that it would provide the Chairperson of the Audit Body with the opportunity to analyse the skill and experience mix of current members and nominees and, if considered necessary, propose for any vacancies, persons who would help the Audit Body achieve the broad-based balance of expertise and experience that was intended when the Audit Body was created.
- 4.2.3 By ensuring that the resulting additional nomination(s) are supported by the Chairperson of the Audit Body, the Chairperson of the 1992 Fund and the Director of the IOPC Funds, the selection would reflect wider consideration and transparency of the selection process. If accepted, this proposal would ensure that the Audit Body continues to have high-quality personnel appointed to its ranks for as long as the governing bodies decide to retain the Audit Body as a significant focus of its governance and risk management review mechanisms.
- 4.2.4 Should this proposal of the Audit Body meet with the approval of the 1992 Fund Assembly, it will be necessary for the Mandate to be modified slightly to acknowledge the possibility that from time to time the Audit Body might comprise less than seven members. It is suggested that the text could simply be amended by the insertion in two places of three words in the current first sentence of paragraph 2 of the Mandate (the additional words shown in italics in the following proposed text):

'The Audit Body shall be composed of *not more than* seven members elected by the 1992 Fund Assembly: *not more than* six named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations ('external expert') with expertise and experience in financial and audit matters, nominated by the Chairperson of the 1992 Fund Assembly.'

**5 Action to be taken**

1992 Fund Assembly

5.1 The 1992 Fund Assembly is invited:

- (a) to take note of the proposal contained in this document; and
- (b) to consider the Audit Body's proposals and decide as appropriate.

Supplementary Fund Assembly and 1971 Fund Administrative Council

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

\* \* \*

## ANNEX I

### **The role and functions of the Audit Body**

Relevant extracts in relation to the establishment of the Audit Body taken respectively from the Records of Decisions of the 6th session of the 1992 Fund Assembly held in October 2001 and the 6th Extraordinary Session of the 1992 Fund held in April 2002:

#### **6th session of the 1992 Fund Assembly held in October 2001 (document 92FUND/A.6/28)**

##### **'12 Audit procedures**

- 12.1 It was recalled that at its 2nd extraordinary session, held in June 1996, the 1971 Fund Assembly had considered a proposal by the Chairman that the 1971 Fund should establish an Audit Committee in order to strengthen the involvement of Member States in the monitoring of the operations of the Organisations and to increase the transparency of the latter (document 71FUND/A/ES.2/21/1). It was further recalled that a number of delegations had questioned the need for an Audit Committee and that no decision had been taken on this issue.
- 12.2 The Assembly noted that in February 2001 the External Auditor, the Auditor and Comptroller General of the United Kingdom, had raised again the issue of the establishment of a special body to deal with audit matters, as set out in document 92FUND/A.6/10.
- 12.3 It was noted that under the Director's proposal, the Audit Body would be composed of five members, namely a Chairman with knowledge and interest in management and financial matters, three persons elected from delegations of Member States and one outside member with expertise in financial matters.
- 12.4 During the discussions, it was suggested that the number of members of the audit body proposed by the Director was too low, and a figure of seven rather than five was mentioned.
- 12.5 The Assembly took the view that, since the IOPC Funds held significant assets and made compensation payments totalling high amounts, they should ensure maximum transparency in their operations. It was also considered that such a body would enable Member States to have a broader involvement in Fund matters. Subject to the agreement of the 1971 Administrative Council, it was decided therefore to create a joint Audit Body for the 1992 Fund and the 1971 Fund.
- 12.6 Some delegations considered that the members of the Audit Body should reflect the geographical distribution of Member States. Other delegations suggested appointing members on a rotation basis for a term of four years non-renewable.
- 12.7 Some delegations suggested that it could be left to governments to appoint the member for their State, whilst others considered that members should be appointed in their personal capacity according to their expertise.
- 12.8 It was emphasised that the Audit Body should not control or duplicate the External Auditor's work and should not affect the independence of the External Auditor. It was also suggested that the members of the Audit Body should be independent and should not take instructions from their Governments. The point was made that the Audit Body should not impinge on the Director's general authority as regards the operation of the IOPC Funds. It was also suggested that the Audit Body's role should not be restricted to purely financial matters but should cover also the efficiency of the Secretariat.
- 12.9 The question arose as to whether expenses incurred by the Audit Body members would be paid by the Funds. Several delegations stated that the Funds should not pay travel expenses and that it should be for Governments to cover such expenses. Other delegations considered that unless the Funds paid these expenses, this would restrict the membership.

- 12.10 The Assembly decided to postpone to its next session consideration of the composition and mandate of the Audit Body.
- 12.11 It was agreed that the Executive Committee should hold a preliminary discussion of this issue, provided that any decision would be taken by the Assembly.'

**6th Extraordinary Session of the 1992 Fund held in April 2002 (document 92FUND/A/ES.6/10)**

**'4 Audit procedures**

- 4.1 It was recalled that, at its 6th session in October 2001, the Assembly had decided to establish a joint Audit Body for the 1992 Fund and the 1971 Fund (document 92FUND.A.6/28, paragraph 12.5). The Assembly further recalled that it had decided to postpone the consideration of the composition and mandate of the Audit Body to a later session.
- 4.2 After the Assembly had considered the information set out in document 92FUND/A/ES.6/3, the Chairman submitted a document with a revised proposal for the composition and mandate of the IOPC Funds' Audit Body (document 92FUND/A/ES.6/WP.1).
- 4.3 The Assembly accepted the proposal on the composition and mandate of the Audit Body with some amendments as set out in the Annex.
- 4.4 The Greek delegation stated that it could not agree to members of the Audit Body serving for six years and considered that four years should be the maximum.
- 4.5 The Assembly emphasised that the Audit Body should neither duplicate nor control the work of the External Auditor who should continue to carry out his work with total independence. It was also emphasised that the Audit Body should be advisory and that it should not duplicate the work of the Secretariat or engage in the day-to-day management of the Organisations.
- 4.6 The Assembly decided that the Audit Body should adopt its own Rules of Procedure and that the Chairman of the Audit Body should, in conjunction with his first report to the Assembly, submit the Rules of Procedure for endorsement by the Assembly.
- 4.7 The Assembly also decided that it should be made clear at the time of election which three members of the first Audit Body to be elected should hold office for three years only.
- 4.8 The Assembly further decided that the costs of travel and subsistence of the members of the Audit Body would be paid on the basis of the 1992 Fund Staff Rules.
- 4.9 It was agreed that paragraph 4 of the 'Composition and Mandate of the IOPC Funds' Audit Body' as set out in the Annex made it sufficiently clear that Member States should not give instructions to the Members of the Body.
- 4.10 It was noted that the 1971 Fund Administrative Council, acting on behalf of the 1971 Fund Assembly, had taken decisions corresponding to those set out in paragraphs 4.3 to 4.9 above (document 71FUND/AC.7/A/ES.9/14, paragraphs 5.3 to 5.9).'

\* \* \*

## ANNEX II

### **COMPOSITION AND MANDATE OF THE JOINT AUDIT BODY OF THE 1992 FUND, THE 1971 FUND AND THE SUPPLEMENTARY FUND**

(As decided by the governing bodies in October 2002 and revised in March 2005 to take into account the entry into force of the Supplementary Fund Protocol and further updated in October 2008)

#### COMPOSITION

- 1 The members of the Audit Body shall perform their functions independently and in the interest of the Organisations as a whole and shall not receive any instructions from anyone, including their Governments.
- 2 The Audit Body shall be composed of seven members elected by the 1992 Fund Assembly: six named individuals nominated by 1992 Fund Member States and one named individual not related to the Organisations ('external expert') with expertise and experience in financial and audit matters, nominated by the Chairperson of the 1992 Fund Assembly. Nominations, accompanied by the curriculum vitae of the candidate, should be submitted to the Director in response to a call for nominations made by the Director. The Chairperson of the 1992 Fund Assembly will, in consultation with the Chairpersons of the 1971 Fund Administrative Council and of the Supplementary Fund Assembly, propose the name of one of the elected members of the Audit Body for consideration and approval by the governing bodies as Chairperson of the Audit Body.
- 3 Members of the Audit Body shall hold office for three years, once renewable. Should nominations for election to the Audit Body not be sufficient to fill vacancies at an election, existing members of the Audit Body having served two terms will be eligible for a once-only re-election, provided they are re-nominated by one or more 1992 Fund Member States. The external expert shall hold office for three years, twice renewable.
- 4 Travel and subsistence expenses of the members of the Audit Body shall be paid by the Organisations. The Assembly of the 1992 Fund will, from time to time, decide on the quantum of the honorarium paid to the six elected members and the fee paid to the external expert. The timing and method of payment will be agreed between the Audit Body and the Director.

#### MANDATE

- 5 The Audit Body shall:
  - (a) review the adequacy and effectiveness of the Organisations' management and financial systems, financial reporting, internal controls, operational procedures, risk management and related matters;
  - (b) promote the understanding and effectiveness of the audit function within the Organisations, and provide a forum to discuss matters referred to in (a) above and matters raised by the external audit;
  - (c) discuss with the External Auditor the nature and scope of each forthcoming audit and provide input to the development of the strategic audit plan;
  - (d) review the Organisations' Financial Statements and reports;
  - (e) consider all relevant reports by the External Auditor, including reports on the Organisations' Financial Statements, and make appropriate recommendations to the Funds' governing bodies;
  - (f) manage the process for the selection of the External Auditor; and

- (g) undertake any other tasks or activities as requested by the Funds' governing bodies.
- 6 The Chairman of the Audit Body shall report on its work to each regular session of the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly.
- 7 Every three years the functioning of the Audit Body and its mandate shall be reviewed by the 1992 Fund Assembly, the 1971 Fund Administrative Council and the Supplementary Fund Assembly on the basis of an evaluation report from the Chairman of the Audit Body.
-