



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

Agenda item: 7	IOPC/OCT11/7/1/3		
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1992 Fund Assembly	92A16	●	
1992 Fund Executive Committee	92EC53		
Supplementary Fund Assembly	SA7	●	
1971 Fund Administrative Council	71AC27	●	

## CONTINGENCY ARRANGEMENTS FOR THE DIRECTOR AND SENIOR SECRETARIAT PERSONNEL

### Note by the Audit Body

<b>Summary:</b>	<p>At its October 2010 session, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, instructed the Audit Body to consider succession planning within the Secretariat and to formulate recommendations for consideration by the 1992 Fund Assembly at a future regular session.</p> <p>This report from the Audit Body results from that instruction.</p>
<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 consider the recommendations contained in paragraphs 8.1-8.3 of this document and to give the Director any instructions 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 report and of any decisions taken by the 1992 Fund Assembly.</p>

### 1 Introduction

- 1.1 At the October 2010 sessions of the governing bodies, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, approved the proposal<sup><1></sup> of the Chairman of the 1992 Fund Assembly with regard to arrangements to facilitate the administration of the IOPC Funds until such time as the Director resumed his duties. These arrangements resulted from the unexpected nature of the health problems faced by the Director last autumn resulting in his temporary incapacity. The circumstances that had arisen caused Member States to question the adequacy of arrangements within the Secretariat to cover such situations in future, and succession planning arrangements generally. At the same time, the 1992 Fund Administrative Council instructed<sup><2></sup> the Audit Body to consider succession planning within the Secretariat and to formulate recommendations for consideration by the 1992 Fund Assembly at a future regular session. This report from the Audit Body results from that instruction.

<1> Document IOPC/OCT10/7/1/1

<2> Paragraph 7.2.7 of document IOPC/OCT10/11/1 (Record of Decisions) reads: 'The 1992 Fund Administrative Council agreed that the current situation had highlighted the need for succession planning within the Secretariat and instructed the Audit Body to consider this matter and formulate recommendations for consideration by the 1992 Fund Assembly at a future regular session. It was highlighted nevertheless that the ultimate responsibility for staff matters within the Secretariat lay with the Director.'



- 1.2 The Audit Body has considered the necessary contingency arrangements to ensure that at any given time, Member States, the members of the Secretariat and other stakeholders know who acts as the Funds' legal representative and Chief Administrative Officer. This becomes essential in any circumstances where the Director is unexpectedly unavailable. The position of Director is an elected one and the Director in post is not responsible for selecting, or deciding on, his successor. The Audit Body has therefore concentrated on the contingency arrangements which will ensure that the function of Director can be continued effectively, whatever happens.
- 1.3 However the Audit Body has reviewed both contingency and succession planning arrangements for the remaining senior members of the Secretariat and has kept in mind that, coincidentally, the circumstances in autumn 2010 occurred at a time when a number of changes in senior personnel had been taking place in the Secretariat. The Audit Body has also had regard to the likelihood that the HNS Convention will come into effect at some time in the future and hence that contingency arrangements must be designed which accommodate that change.
- 1.4 An important conclusion of the Audit Body's work is that it does not appear that there was a lack of suitable mechanisms available to provide cover for the unexpected circumstances which occurred in the autumn of 2010. There was however no process in place to ensure that at least one of these mechanisms was activated. Hence the Audit Body's recommendations do not represent entirely new thinking, although there are some new elements within them intended to improve the existing arrangements and to ensure that there can be no repetition of the uncertainties with regard to appropriate lines of authority that existed in 2010.

## **2 The Deputy Director role**

- 2.1 Following the decisions taken by the governing bodies at their April 1998 sessions on the structure of the Secretariat, a Management Team consisting of the Director and the Heads of Department was established and introduced working practices designed to allow delegation of responsibilities where possible.
- 2.2 In October 2001, the governing bodies of the Funds decided to instruct the Director to appoint one of the then staff members as Deputy Director. At that time there was concern that the absence of delegated powers made the Funds extremely vulnerable if the Director should be unable to discharge his responsibilities for some reason. The attributes and experience that were called for<sup><3></sup> in that 2001 decision showed that Member States wanted not just an alternate who could act for the Director when he was away, but someone of sufficient ability to provide ongoing support for the Director at a very senior level, such that the Secretariat would not be one-person dependant. The job description of the Deputy Director prepared by the Director for the first appointee, and reported to the governing bodies in April 2002, states explicitly that the 'Deputy Director will act on the Director's behalf ... when the Director is on mission, on leave or otherwise unable to act.'
- 2.3 When the Deputy Director later submitted his resignation to the Director in August 2007, no successor was appointed because the Director took the view that continuity of the Organisations no longer required that this position be filled in the immediate term given the established role of the Management Team and hence the underlying motivation for the 2001 decision was no longer applicable. However, if a Deputy Director had been appointed (with a similar job description), the individual who should act on behalf of the Director last autumn would have been determined.
- 2.4 **Recommendations:** The Audit Body recommends that the governing bodies should reaffirm their earlier decision that the post of Deputy Director is a permanent one, and hence that an ongoing obligation to appoint such an individual is intended to exist, and that contingency planning to ensure that there is clarity at all times as to who acts as the Funds' legal representative and Chief Administrative Officer should reflect that ongoing obligation. The Audit Body also recommends that this reaffirming decision should make it clear that the individual appointed as Deputy Director shall

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The 1992 Assembly called for the Deputy Director to have the following 'qualifications' - 'wide experience in the core activities of the Funds, particularly in claims handling, wide experience in oil pollution matters; management skills and expertise complementary to that of the Director'.

be empowered to act on the Director's behalf when the Director is on mission, on leave or otherwise unable to act, rather than leaving this important matter to be dealt with only in the job description whose wording is matter for the Director alone.

- 2.5 The Audit Body noted that in 2002 the first Deputy Director, who had been Head of the Claims Department, vacated that role to take on his new appointment along with the role of Technical Adviser. However the Secretariat is a small body overall and responsibilities are clearly defined so as to operate effectively without deliberate duplication. Whilst the responsibilities of Deputy Director are significant, it is not obvious that it is a full time role. Hence the Audit Body has given careful thought as to whether, and if so how, the role should best be combined with another senior role within the Secretariat. Given the 2001 and 2002 history, it is likely that the person who is appointed Deputy Director would also be the Head of the Claims Department although that decision is one for the Director alone to make.
- 2.6 **Recommendation:** The Audit Body therefore recommends that the role of Deputy Director should be combined with that of another senior role within the Secretariat, which it anticipates will normally be that of the Head of the Claims Department, although this is a matter for the Director to decide.
- 2.7 The Audit Body has also kept in mind the possible entry into force of the HNS Fund, the need for the related administrative implications to be given close management attention within the Secretariat and for these new activities to be well communicated, not only to the States having ratified the HNS Protocol, but also those who are actively considering ratifying it. Whilst it has long been expected that the role of Director of the IOPC Funds will be extended to embrace overall responsibility for the HNS Fund too, the need for strong management leadership for the many aspects of establishing administrative arrangements and communications will impose significantly greater additional demands than could be met by any Director alone when the existing responsibilities are taken into account. That could make the appointment of a Deputy Director for HNS matters a sensible and necessary decision.
- 2.8 The new Headquarters Agreement between the 1992 Fund and the UK Government makes explicit provision for the possibility to have two Deputy Directors in future, and it is self evident that one of those might be mainly responsible for oil pollution matters and one for HNS matters.
- 2.9 **Recommendation:** If there were to be two Deputy Directors, then it is clear that one would be the more senior and the Audit Body recommends that there be clarity about which was the designated individual empowered to act on the Director's behalf when the Director is on mission, on leave or otherwise unable to act. In the short term that individual is likely to be the Deputy Director with oil pollution responsibilities who would be the most senior and experienced. In the longer term it could well be that a Deputy Director with responsibility for HNS matters would be the senior and most experienced individual. As the appointment(s) fall to the Director, that is a judgement that can be made at that time.
- 2.10 If the Audit Body's recommendations on these matters are accepted, the Deputy Director would also have responsibilities as Head of a Department, and the Audit Body would expect the salary level to be higher than that for the Head of Department role alone. It is not the Audit Body's responsibility to determine remuneration levels, but we have considered the issue in order to assist the Governing Bodies. At present all Heads of Department are designated at United Nations salary level P5/D1. The Audit Body assumes that a Deputy Director with responsibility for HNS matters would carry an initial salary level of D1 or D2. (The previous Deputy Director was designated at United Nations salary level D2.) The Director is designated at Under Secretary General (USG) level +10%. The grading between D2 and USG level is Assistant Secretary General (ASG).
- 2.11 **Recommendation:** Given that the responsibilities for the Deputy Director appointed in 2002 clearly envisaged the individual regularly acting as the Director's alternate, and leading strategic, policy and long term planning issues for the Director, and that such a role appears to remain of real importance for the ongoing governance of the Funds as well as for the contingency issues being considered in this document, the Audit Body recommends that whilst the previous level of D2 should be kept in mind, the ASG grading should also be considered for this appointment.

### 3 **Existing contingency arrangements - Director and Deputy Director**

- 3.1 The Audit Body considers that the appointment of a Deputy Director (or even two, if that becomes applicable) does not, in itself, address all foreseeable contingencies. A formal administrative procedure within the Internal Regulations already exists which allows the Director to make arrangements for continuity in the event of his absence, and/or the absence of the Deputy Director<sup><4></sup>. The Audit Body understands that this Internal Regulation 12 procedure has been used in the past when the Director wished to appoint someone to act on his behalf during a short period of planned absence.
- 3.2 However the Internal Regulation 12 procedure only works if it has been activated before a situation arises where the Director (and/or Deputy Director) is unable to act by reason of absence, disability or vacancy in office.
- 3.3 **Recommendations:** The Audit Body recommends some changes to the Internal Regulation 12 procedure, as explained below, but also recommends that the resulting process should become obligatory, with suitable notification to those who would have to put it into effect, including the Secretariat and the Chairman of the 1992 Fund Assembly.

### 4 **Ensuring Internal Regulation 12 is effective**

- 4.1 Because the Audit Body recommends that the Internal Regulation 12 mechanism be used in future to provide cover, it has considered whether the range of individuals specified under it (Deputy Director, Legal Counsel or Head of the Claims Department) is wide enough. Since it is conceivable that there could be circumstances in which the Deputy Director/Head of the Claims Department might not be able to undertake the role, it is clear that Internal Regulation 12 should provide some genuine alternatives so that there is a good chance that all foreseeable circumstances can be accommodated. Where the next senior person who would normally be appointed as Acting Director has only very recently been appointed to their position (especially if from outside the Secretariat), it will not have been possible for that person to gain a comprehensive grasp of the whole operations of the IOPC Funds. In such circumstances and, especially if there are similarly competent and more experienced senior employees already in place within the Secretariat, it is not practically realistic to expect the person filling that role to have an automatic responsibility to carry the significant burden of Acting Director, yet the existing Internal Regulation 12 only allows for that possibility.
- 4.2 **Recommendations:** The Audit Body therefore recommends that the list of possible alternates should be extended to include all members of the Management Team, and that the Director should be required to specify the seniority in which this list should apply. The Audit Body also recommends that Internal Regulation 12 should contain specific guidance as to what should happen in the (hopefully unlikely) event that none of those specified were able to take up that responsibility and/or that the Director had failed to specify seniority as required. Suggested wording for the recommended revision to Internal Regulation 12 is attached at Annex I to this document.
- 4.3 As indicated earlier, the Audit Body recommends that the Director of the IOPC Funds should be required to have a signed, authorised and current Administrative Instruction in place at all times, and that a copy of that Administrative Instruction should be held by the Director's Personal Assistant (PA) and by the Chairman of the 1992 Fund Assembly.

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Internal Regulation 12 reads as follows: **Delegation of Authority in the absence of the Director:** The Director may authorise the Deputy Director, the Legal Counsel or the Head of the Claims Department to act on his or her behalf in the fulfilment of the functions set out in Article 29 of the 1992 Fund Convention, and to be the legal representative of the 1992 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of authority of the above mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.

## **5 Existing contingency arrangements - senior Secretariat staff**

- 5.1 The Director has already established a system designed to provide cover within the Secretariat in the event of unexpected absences.
- 5.2 Under existing procedures, all Heads of Department have designated individuals who would act in their stead in the event that the Head of Department was incapacitated or unable to act through absence or other cause. Indeed Deputy Heads and Section Heads have job descriptions setting out their areas of responsibility and authority so there is no doubt about their standing or authority in such an event. Thus, procedures already exist intended to address contingencies affecting the senior staff of the Secretariat, and the Audit Body makes no further recommendation on this matter at this time.

## **6 Succession planning - senior Secretariat staff**

- 6.1 Succession planning for all senior roles within the Secretariat is an important responsibility for any Director. Succession planning is also considered already as part of the regular Performance Management Review (PMR) process for all Secretariat staff. Further, the human resources risk register identifies age profiles for senior staff and so identifies foreseeable retirements.
- 6.2 Consideration of succession in relation to all posts within the Secretariat may not be practicable; that is a matter for which the Director would be expected to delegate primary authority to Heads of Departments, whilst monitoring periodically their assessment.
- 6.3 It is vital that succession planning for Heads of Department is sufficiently independent that no one individual gains power of patronage over their own position. This issue is well understood by the senior members of the Secretariat, and it is also clearly understood and accepted that authority and responsibility for succession planning for Heads of Department lies with the Director alone, and for the next level down that the Director is fully involved.
- 6.4 At present, the results of the PMRs are discussed by the Director/Management Team and inform thinking about succession planning, along with data about expected retirements, departures etc. There is encouragement to Heads of Department (and Deputy Heads where those roles exist) to place less senior staff into 'understudy roles', for their own professional development. These processes combine to inform thinking about succession.
- 6.5 However, the key objective of succession planning is not to identify specific individuals as successors for all roles. It is to ensure that when a vacancy arises the organisation concerned is not left vulnerable with regard to succession, but has at least one viable choice. If such a choice does not appear to exist and the organisation would be vulnerable, succession planning should identify that vulnerability in good time so that action can be taken to address the issue.
- 6.6 The Audit Body considers that there is no generally-accepted standard for the way succession planning should be carried out. Nor, for obvious reasons, is it normal practice for successors to be aware that they have been selected as likely successors until the time for appointment arises. So although intellectual rigour is needed in the process, if it becomes too formalised there is a risk that subsequent changes in the nature of the work and responsibilities of a post, or in the abilities or experience of individuals identified as likely successors, may not easily be accommodated by that process.

## **7 Involvement of others outside the Secretariat**

- 7.1 Once a Director is appointed, he or she has overall responsibility for, and authority over, the Secretariat, subject to being formally answerable to Member States via the governing bodies and, in recent years, subject to the monitoring oversight of the Audit Body. The Chairmen of the governing bodies do not have a monitoring oversight role over the Director/Secretariat. However, in practice, difficult issues are likely to be raised with, in the first instance, the Chairman of the 1992 Fund Assembly. The Chairman of the 1992 Fund Assembly is, therefore, not responsible for the way the Secretariat operates although if he has concerns they will certainly be discussed between him and the

Director. It follows that succession planning for all key Secretariat posts other than that of the Director's own will normally be a matter for the Director.

7.2 However, the Audit Body considers it desirable that the Director's view of succession planning options for those key posts should be understood by someone else and that in gaining that understanding (which will relate to the nature of skills needed as well as to the individuals concerned) there should be discussion and challenge so that the plans reflect a wider perspective.

7.3 **Recommendation:** The Audit Body therefore recommends that the Chairman of the 1992 Fund Assembly and Chairmen of all of the other Funds' governing bodies (including in due course the HNS Fund Assembly) should be aware of those plans.

## **8 Summary of recommendations of the Audit Body**

8.1 With regard to the position of Deputy Director, the Audit Body recommends:

- (a) that the governing bodies should reaffirm that the post of Deputy Director is a permanent one, and hence that an ongoing obligation to appoint such an individual exists (paragraph 2.4 above);
- (b) that the individual so appointed shall be empowered to act on the Director's behalf when the Director is on mission, on leave or otherwise unable to act (paragraph 2.4 above);
- (c) that the role of Deputy Director should be combined with that of another senior role within the Secretariat. This is a matter for the Director to decide, but it is anticipated that the role will normally be combined with that of the Head of the Claims Department (paragraph 2.6 above);
- (d) that if, as a result of the entry into force of the HNS Convention at some future date, there are two Deputy Directors appointed, there must be clarity about which is the senior and hence the designated individual empowered to act on the Director's behalf when the Director is on mission, on leave or otherwise unable to act. That decision (with regard to seniority) would fall to the Director at the time (paragraph 2.9 above); and
- (e) that the (senior) Deputy Director should be remunerated either at Assistant Secretary General (ASG) level or at the previous level of D2 (paragraph 2.11 above).

8.2 With regard to other contingency arrangements, the Audit Body recommends:

- (a) that contingency planning shall be maintained in place to ensure that at all times there is clarity as to who acts as the Funds' legal representative and Chief Administrative Officer (paragraph 2.4 above);
- (b) that Internal Regulation 12 shall continue to be used in future to provide arrangements for cover when the Director and Deputy Director are not available (paragraph 3.3 above);
- (c) that Internal Regulation 12 be amended to extend the list of possible alternates to members of the Management Team and that the Director should be required to specify the seniority in which this list should apply (see Annex I) (paragraph 4.2 above);
- (d) that Internal Regulation 12 should contain specific guidance as to what should happen in the event that none of those specified were able to take up that responsibility and/or that the Director had failed to specify seniority as required (see Annex I) (paragraph 4.2 above); and
- (e) that the Director shall be required to have a signed, authorised and current Administrative Instruction in place at all times, and that a copy of that Administrative Instruction should be held by the Director's PA and by the Chairman of the 1992 Fund Assembly (paragraphs 3.3 and 4.3 above).

- 8.3 With regard to succession arrangements for senior staff of the Secretariat, the Audit Body recommends that the Chairman of the 1992 Fund Assembly and Chairmen of all the other Funds' governing bodies (including in due course the HNS Fund Assembly) should be aware of the Director's view of succession planning options for the senior posts within the Secretariat and that in gaining that understanding (which will relate to the nature of skills needed as well as to the individuals concerned) there should be discussion and challenge so that the plans reflect a wider perspective (paragraph 7.3 above).

**9 Action to be taken**

1992 Fund Assembly

- 9.1 The 1992 Fund Assembly is invited:

- (a) to take note of the information contained in this document; and
- (b) to consider the recommendations contained in paragraphs 8.1-8.3 of this document and give the Director any instructions as it may deem appropriate.

Supplementary Fund Assembly and 1971 Fund Administrative Council

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

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## ANNEX I

### Internal Regulation 12 - proposed and existing text:

<i>Existing text</i>	<i>Proposed text</i>
<p><b><i>Delegation of authority in the absence of the Director</i></b></p> <p>The Director may authorise the Deputy Director, the Legal Counsel or the Head of Claims Department to act on his or her behalf in the fulfilment of the functions set out in Article 29 of the 1992 Fund Convention, and to be the legal representative of the 1992 Fund. The conditions and extent of such delegation shall be laid down in Administrative Instructions issued by the Director. Delegation made in accordance with this Regulation overrides any limitation of the authority of the above-mentioned officers contained elsewhere in these Regulations or in the Financial Regulations.</p>	<p><b><i>Delegation of authority in the absence of the Director</i></b></p> <p>In the event of the absence (or inability to act) of the Director, the Deputy Director (or if there are more than one Deputy Directors, the senior Deputy Director) shall exercise the functions of the Director set out in Article 29 of the 1992 Fund Convention and be the legal representative of the 1992 Fund in addition to fulfilling the functions assigned to him or her by the Director.</p> <p>If neither the Director nor the Deputy Director (if there are more than one Deputy Directors, the senior Deputy Director) can exercise the function of the Director, set out in Article 29 of the 1992 Fund Convention and be the legal representative of the 1992 Fund, this shall be assumed by the individual so designated by the Director through Administrative Instructions, being the junior Deputy Director (if such post exists and is filled), or the Head of Claims Department, Legal Counsel, or the Head of Finance and Administration Department or the Head of External Relations and Conference Department.</p> <p>The Director shall issue such Administrative Instructions addressing that contingency, as soon as possible after appointment, and ensure that they (and any subsequent variation) are available within the Secretariat and communicated to the Chairman of the 1992 Fund Assembly.</p> <p>If no such Administrative Instructions have been issued by the Director, members of the Secretariat shall assume the responsibilities of the Director referred to in paragraph 1 of this Regulation in the following order: junior Deputy Director (if such post exists and is filled), Head of Claims Department, Legal Counsel, Head of Finance and Administration Department and Head of External Relations and Conference Department.</p> <p>If there is no one of the said senior members of the Secretariat available to assume the function of the Director, the Chairman of the 1992 Fund Assembly shall appoint a member of the Secretariat, other than those mentioned in the preceding paragraphs, to carry out this function until the next regular or extraordinary session of the Assembly or until any of the said senior members of the Secretariat has been able to resume his or her responsibilities.</p>

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## ANNEX II

There are 35 established posts in the IOPC Funds' Secretariat of which two posts, those of French and Spanish Translators, are not envisaged to be filled. Of the other 33 posts, 16 have responsibilities for specific areas whilst the remaining 17 are support roles. The small size of the organisation makes it impossible to have built-in duplication or cover for all eventualities. But the existence of those small numbers does not reduce the need for succession planning.

### **Director**

Mr. Willem Oosterveen

### **Director's Office**

Deputy Director (Vacant)

Ms. Akiko Yoshida, Legal Counsel

Mr. Matthew Sommerville, Technical Adviser/Claims Manager \*

Mrs. Jill Martinez, Personal Assistant to the Director

Ms. Astrid Richardson, Administrative Assistant

### **Claims Department**

Mr. José Maura, Head of Department/Acting Director

Ms. Chiara Della Mea, Claims Manager

Mr. Mark Homan, Claims Manager

Ms. Ana Cuesta, Claims Administrator

Mrs. Chrystelle Collier, Claims Administrator

Ms. Zuhail Georgiades, Claims Assistant

### **Finance and Administration Department**

Mr. Ranjit Pillai, Head of Department

Mr. Rob Owen, IT Manager

Mrs. Latha Srinivasan, Finance Manager

Ms. Miriam Blugh, HR Manager (part time 4/5)

Mr. Modesto Zotti, Office Manager

Mr. Stuart Colman, IT Administrator

Mrs. Elisabeth Galobardes, Finance Assistant (part time 2/5)

Mrs. Paloma Scolari de Oliveira, Finance Assistant

Ms. Kathleen McBride, Finance Assistant

Mr. Paul Davis, Administrative Assistant

Ms. Alexandra Hardman, Receptionist/Travel Assistant

### **External Relations and Conference Department**

Mr. Thomas Liebert, Head of Department

Ms. Katrin Park, External Relations Officer

Mrs. Victoria Turner, Information Officer

Translator (French) (vacant)

Translator (Spanish) (vacant)

External Relations and Conference Coordinator (vacant)

Mrs. Christine Galvin, External Relations Administrator

Mrs. Natalia Ormrod, Translation Administrator (Spanish)

Mrs. Françoise Ploux, Translation Administrator (French) (part time 3/5)

Translation Administrator (French) (vacant)

Translation Administration (Spanish) (vacant)

Ms. Ellen Leishman, Administrative Assistant

\* Combined role: reporting to the Director in his capacity as Technical Advisor and to the Head of Claims Department in his capacity as Claims Manager