



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 7	IOPC/OCT11/7/1/4	
Original: ENGLISH	22 August 2011	
1992 Fund Assembly	92A16	•
1992 Fund Executive Committee	92EC53	
Supplementary Fund Assembly	SA7	•
1971 Fund Administrative Council	71AC27	•

PROPOSED REVISED TEMPLATE FOR DIRECTOR'S CONTRACT

Note by the Chairman of the 1992 Fund Assembly

Summary:	<p>At the July 2011 sessions of the governing bodies, the 1992 Fund Administrative Council decided to review, for the future, the governance provisions of the 1992 Fund that had a bearing on the renewal of the Director's initial appointment, most notably, 1992 Fund Assembly Resolution N^o9 and the new template for the Director's contract.</p> <p>A consultation group formed by the Head of the Finance and Administration Department, has reviewed the template for the Director's contract and is proposing modifications to the contract to address this matter.</p>
Action to be taken:	<p><u>1992 Fund Assembly</u></p> <p>(a) Take note of the information contained in this document; and</p> <p>(b) Decide whether to approve the proposed amendments to the template for the Director's contract.</p> <p><u>Supplementary Fund Assembly and 1971 Fund Administrative Council</u></p> <p>Take note of the decision taken by the 1992 Fund Assembly.</p>

1 Introduction

- 1.1 At the July 2011 sessions of the governing bodies, the 1992 Fund Administrative Council, acting on behalf of the 1992 Fund Assembly, held a meeting in private pursuant to Rule 12 of the 1992 Fund Assembly's Rules of Procedure to consider the agenda item 'Director of the IOPC Funds'. During the private meeting, only representatives of Member States of the 1992 Fund were present.
- 1.2 The Administrative Council noted the update provided by the Chairman of the 1992 Fund Assembly on the situation concerning the medical leave of the Director, Mr Willem Oosterveen, and the situation in the Secretariat (cf document IOPC/JUL11/4/1) and decided, in light of the extraordinary nature of the present situation to review, for the future, the governance provisions of the 1992 Fund that had a bearing on the present situation, most notably Resolution N^o9 and the new template for the Director's contract which had been approved by the governing bodies at their March 2011 sessions (cf document IOPC/JUL11/8/1, paragraph 4.1.6).
- 1.3 Since the July 2011 sessions of the governing bodies, the Chairman of the 1992 Fund Assembly has had discussions with a small consultation group consisting of the Chairmen of the IOPC Funds' governing bodies, the external expert on the Audit Body and the Head of the Finance and Administration Department to address the issue raised by the Administrative Council.

2 Considerations of the consultation group

- 2.1 The consultation group noted that while the template for the Director's contract contained a provision requiring the Director to give a notice of three months in case he/she wished to resign, it did not contain any mention of the length of time in advance of the end of his/her initial appointment that the Director should advise the 1992 Fund Assembly if he/she wished to seek a renewal of his/her initial appointment for an additional term.
- 2.2 The consultation group has considered the issue and is proposing the addition of a new clause in the preamble as well as the inclusion of a new provision (paragraph 6 of the revised template) in the template for the Director's contract to the effect that the Director shall communicate to the Chairman of the 1992 Fund Assembly in writing no less than three months before the end of his/her initial appointment whether or not he/she wishes to seek a renewal of the initial appointment for an additional term. A template for the core provisions of a revised contract is at Annex I to this document.
- 2.3 The consultation group would like to bring to the attention of the 1992 Fund Assembly that this new provision would only apply to the end of the first term of five years, and not the end of the second term of five years.
- 2.4 The consultation group is of the view that modifications, if any, to 1992 Fund Assembly Resolution N°9, which some Member States at the July 2011 session deemed desirable, would be best considered on the basis of specific proposals that Member States may wish to submit to this, or some future session, of the 1992 Fund Assembly. A copy of Resolution N°9 is at Annex II to this document.

3 Action to be taken

1992 Fund Assembly

- 3.1 The 1992 Fund Assembly is invited:
- (a) to take note of the information contained in this document; and
 - (b) to decide whether to approve the proposed amendments to the template for the Director's contract (highlighted in bold text in Annex I).

Supplementary Fund Assembly and 1971 Fund Administrative Council

- 3.2 The Supplementary Fund Assembly and the 1971 Fund Administrative Council are invited to take note of the decisions taken by the 1992 Fund Assembly.

ANNEX I

DRAFT

Revised template
Proposed new text in bold

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,

Noting further that this appointment may be renewed by the Assembly for one additional term of up to five years and that a further extension of the Director's term of office may be decided by the Assembly in view of exceptional circumstances,

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 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.
- 6 **The Director shall communicate to the Chairman of the 1992 Fund Assembly in writing no less than three months before the end of his/her initial appointment whether or not he/she wishes to seek a renewal of the appointment for an additional term.**
- 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 his/her net base salary plus the application of the post adjustment multiplier in force at the time of separation for the balance of his/her contract, but not to exceed 12 months, and 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 his/her net base salary plus the application of the post adjustment multiplier in force at the time of separation for the balance of his/her contract, but not to exceed 12 months, and 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

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ANNEX II

1992 Fund Resolution N°9 on the Appointment of the IOPC Funds' Director – Term of service (October 2004)

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND 1992 (1992 Fund),

RECALLING Article 18 of the 1992 Fund Convention,

NOTING that the Assembly has appointed Directors for five-year terms with provision for renewal for such further periods as may be determined by the Assembly.

CONSIDERING the desirability of establishing a more specific term of office for future Directors,

CONSIDERING ALSO the normal practice within the United Nations agencies and subsidiary bodies, and especially the International Maritime Organization precedents.

CONSIDERING FURTHER Section IV, Regulations 17 and 18, of the 1992 Fund's Staff Regulations,

DECIDES that:

- 1 Future IOPC Fund Directors shall be appointed for an initial term of five years.
- 2 The appointment may be renewed by the Assembly for one additional term of up to five years.
- 3 A further extension of the Director's term of office may be decided by the Assembly in view of exceptional circumstances.
- 4 This resolution shall be referenced by footnote to Rule 55 of the Rules of Procedure of the Assembly.