



International Oil Pollution
Compensation Funds

Agenda Item 1	IOPC/NOV20/1/3/1	
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1992 Fund Assembly	92A25	●
1992 Fund Executive Committee	92EC74	●
Supplementary Fund Assembly	SA17	●

TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS

FACILITATING REMOTE SESSIONS

Note by the Secretariat

Summary:

As explained in document IOPC/NOV20/1/3, the closure of the International Maritime Organization (IMO) building as a result of the COVID-19 pandemic prevents physical sessions of the governing bodies from convening, therefore, certain Rules of Procedure that presuppose in-person meetings would need to be suspended to allow for the December 2020 regular sessions of the governing bodies to take place. This document draws attention to certain key rules and provides proposals for the temporary suspension or amendment of a few of those rules.

The Director and members of the Secretariat have attended IMO virtual meetings and having monitored the outcomes of these discussions, the Director is in a position to propose amendments to IOPC Funds procedures that will facilitate remote sessions, which are as closely as possible aligned to those organised by IMO.

The specific Rules of Procedure considered for temporary suspension or amendment to facilitate remote sessions are:

- Rule 3 on the location of the meeting (paragraph 2.1)
- Rule 27/23^{<1>} on the adoption of the Record of Decisions (paragraph 2.2)

Other specific Rules of Procedure to be considered to facilitate remote sessions are:

- Rule 9/8^{<2>} on the timing of the submission of credentials (paragraph 3.1)
- Rule 32/28^{<3>} on voting (paragraph 3.2)
- Rule 33^{<4>} on the definition of 'Members present' and 'Members present and voting' (paragraph 3.3)

<1> The equivalent rules are provided in Rule 27 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 23 of the Rules of Procedure of the 1992 Fund Executive Committee.

<2> The equivalent rules are provided in Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee.

<3> The equivalent rules are provided in Rule 32 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 28 of the Rules of Procedure of the 1992 Fund Executive Committee.

<4> There is no equivalent rule in the Rules of Procedure of the 1992 Fund Executive Committee.

The Director's considerations are set out in section 4. In the interest of expediting the discussions on procedural matters at the opening of the sessions and to ensure sufficient time is available to cover essential substantive items during the meeting, the Director would like to invite Member States to carefully consider the proposals set out in this document in advance of the meeting and either confirm support for the proposed temporary suspension or amendments to the relevant rules or make alternative suggestions by Friday, 23 October 2020.

The Director will publish the feedback received in document IOPC/NOV20/1/3/3 and taking the feedback into account, will submit revised proposals. The governing bodies will be invited to make decisions on those items when the sessions open on Wednesday, 2 December 2020. A detailed list of the decisions required is set out in section 5.

Action to be taken: 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly

- (a) Note the Director's request that Member States carefully consider the proposals set out in sections 2 and 3 of this document in advance of the meeting;
- (b) provide feedback and either confirm support for the proposed temporary suspension or amendment to the relevant rules or make alternative suggestions by Friday, 23 October 2020;
- (c) note that feedback received from Member States will be published in a separate document (IOPC/NOV20/1/3/3); and
- (d) note that at the opening of the sessions, in light of the feedback received from Member States in document IOPC/NOV20/1/3/3, the governing bodies will have to decide whether to temporarily suspend or amend the Rules of Procedure in respect of the December 2020 meeting of the governing bodies as set out in section 5.

1 Introduction

- 1.1 As explained in document IOPC/NOV20/1/3, the closure of the IMO building as a result of the COVID-19 pandemic prevents full, physical sessions of the governing bodies from convening, therefore, certain Rules of Procedure would need to be suspended to allow for the December 2020 regular sessions of the governing bodies to take place. This document draws attention to certain key rules relating to the location of the meeting, submission of credentials, decision making and adoption of the Record of Decisions, and provides proposals for the temporary suspension or amendment of a few of those rules.
- 1.2 Since Article 19.1 of the 1992 Fund Convention and Article 16.2 of the Supplementary Fund Protocol provide that regular sessions of the governing bodies shall take place once every calendar year, suspending or amending the Rules of Procedure to enable the sessions to take place remotely would be in accordance with Rule 56^{<5>} of the Rules of Procedure of the 1992 Fund Assembly. Rule 56, which is headed 'Overriding Authority of the 1992 Fund Convention', provides that 'In the event of any conflict between any provision of these Rules and any provision of the 1992 Fund Convention, that Convention shall prevail.'
- 1.3 The Director and members of the Secretariat have attended IMO virtual meetings and have closely followed the discussions relating to the holding of remote sessions and the resulting procedural practices which have been adopted by the various IMO bodies. In particular, the Secretariat has followed discussions of the

^{<5>} The equivalent rules are provided in Rule 55 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 52 of the Rules of Procedure of the 1992 Fund Executive Committee.

32nd extraordinary session of the IMO Council and the simultaneous extraordinary sessions of the Maritime Safety Committee, the Legal Committee, the Marine Environment Protection Committee, the Technical Cooperation Committee and the Facilitation Committee (referred to as ALCOM/ES) and has noted documents C/ES.32/D, Annex 3, and ALCOM/ES/5/1, Annex 1, which contain Interim guidance to facilitate remote sessions during the COVID-19 pandemic (IMO Interim Guidance).

- 1.4 In the interests of standardising remote procedures and using platforms and processes that may already be familiar to the IOPC Funds' delegates, the proposals for the suspension of certain rules of procedure contained in this document are as closely aligned as possible to those implemented by IMO.
- 1.5 The full sets of the Rules of Procedure for each of the governing bodies can be found via the About Us section of the IOPC Funds website: iopcfunds.org/about-us/structure/rules-and-regulations.
- 1.6 Any decision taken in respect of the Rules of Procedure at these sessions is not intended to set a precedent for the methods of work of the IOPC Funds, but to facilitate remote sessions in these exceptional circumstances under the prevailing COVID-19 pandemic. The rules proposed for suspension, part suspension or amendment are only in the interest of facilitating remote sessions in respect of the 25th session of the 1992 Fund Assembly, the 74th session of the 1992 Fund Executive Committee, and the 17th session of the Supplementary Fund Assembly, in order to fulfil the Conventions.
- 1.7 In the interest of expediting the discussions on procedural matters at the opening of the sessions and to ensure sufficient time is available to cover essential substantive items during the meeting, the Director would like to invite Member States to carefully consider the proposals set out in this document in advance of the meeting and either confirm support for the proposed temporary suspension or amendments to the relevant rules or make alternative suggestions by Friday, 23 October 2020 via email to the Secretariat or, if preferred, in the form of a meeting document, to be submitted to: conference@iopcfunds.org. The Director will publish the feedback received in document IOPC/NOV2020/1/3/3 and taking the feedback into account, will submit revised proposals.
- 1.8 The governing bodies will be invited to make decisions in respect of the Rules of Procedure as described in this document when the sessions open on Wednesday, 2 December 2020. A detailed list of the decisions required is set out in section 5.

2 Temporary suspension or amendment to Rules of Procedure to facilitate remote sessions

2.1 Proposal for temporary suspension of Rule 3 on the location of the meeting

- 2.1.1 Rule 3 of the Rules of Procedure of the 1992 Fund Assembly, 1992 Fund Executive Committee and Supplementary Fund Assembly reads as follows:

The Assembly [Executive Committee] shall hold its sessions in London (United Kingdom) unless it decides otherwise on any particular occasion. If between sessions, the Director, with the Chair's approval, or any Member proposes that the next session be held elsewhere, an affirmative decision to that effect may be taken by a majority of Members giving their approval in writing (including by telefax or electronic mail) to the Director. Such majority approval should be communicated to Members at least forty-five days before the commencement of that session.

- 2.1.2 The current physical gathering and social-distancing conditions set out by the host Government of the United Kingdom, does not currently allow all Member States to send full delegations to London. In addition, the new IMO meeting schedule was constructed on the assumption that the IMO headquarters would not be available for full, physical meetings for the remainder of 2020 (circular IOPC/2020/Circ.12 and IMO circular letter No.4213/Add.6).

- 2.1.3 The IMO Council and ALCOM/ES decided to waive the requirement for the sessions to be held at the IMO headquarters, as required under rule 3 of their respective rules of procedure (document ALCOM/ES/5/1, paragraph 2.4.1 and document C/ES.32/D, paragraph 2.2.2).
- 2.1.4 Under these circumstances, the holding of remote sessions is unavoidable and therefore, it is proposed that the requirement for the governing bodies to hold sessions in London is suspended, to allow for full or partial remote sessions. Further to this, it is also recommended that the requirement for a majority of Member States to approve in writing a proposal for sessions to be held elsewhere, is also suspended to eliminate an excessive administrative burden on Member States and the Secretariat.
- 2.1.5 The governing bodies are invited to decide whether to temporarily suspend Rule 3 of the Rules of Procedure in relation to the location of the meeting to allow for remote sessions to be held.
- 2.2 Proposal relating to Rule 27/23^{<6>} on the preparation of the Record of Decisions
- 2.2.1 Rule 27 of the Rules of Procedure of the 1992 Fund Assembly and Supplementary Fund Assembly, and Rule 23 of the 1992 Fund Executive Committee reads as follows:
- The Secretariat shall prepare a Record of Decisions of each session of the Assembly [Executive Committee].
- 2.2.2 In relation to the adoption of the draft reports of IMO Committees, ALCOM/ES approved a process whereby, following the consideration of a committee's draft report on the final day of a virtual meeting, the session would remain open for a further five working days, to allow for comments by correspondence on the report. It was agreed that comments received during this correspondence period should not reopen the discussion on matters that had been agreed during the virtual meeting (document ALCOM/ES/5/1, paragraph 3.9.2). After the correspondence period, the IMO Secretariat, in consultation with the Chair, will publish a document containing the comments received with an explanation of how they have been addressed. After this document is published, the final report would be prepared (ALCOM/ES/5/1, Annex 1 (IMO Interim Guidance), paragraph 21).
- 2.2.3 In line with Rule 27/23, the Secretariat will prepare a draft Record of Decisions reflecting the decisions made during the remote sessions and in accordance with established practice, the draft Record of Decisions will be considered by the governing bodies on the last day of the virtual meeting.
- 2.2.4 Being mindful that technical failures and connectivity issues could occur at any time during the virtual meeting, including during the adoption of the Record of Decisions, it is proposed that the sessions remain open for an additional five working days, until Friday, 11 December, for delegations to consider the draft Record of Decisions and comment by correspondence.
- 2.2.5 It is proposed that comments received during this five-day period should aim to address whether the draft Record of Decisions accurately reflects the decisions taken during the remote sessions and avoid the reopening of discussions. The Chairs of the governing bodies, supported by the Secretariat, would facilitate resolution of any comments received. After the conclusion of the five-day correspondence period, the Secretariat, in consultation with the Chairs, would publish a document containing the comments received, with an accompanying explanation on how they have been addressed. The Secretariat would then circulate the final Record of Decisions, after the publication of this document.
- 2.2.6 The governing bodies are invited to decide whether to have an additional five working day period to comment on the draft Record of the Decisions by correspondence.

<6> The equivalent rules are provided in Rule 27 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 23 of the Rules of Procedure of the 1992 Fund Executive Committee.

3 Consideration of other Rules of Procedure to facilitate remote sessions

3.1 Information to be noted regarding Rule 9/8^{<7>} on credentials

3.1.1 Rule 9 of the Rules of Procedure of the 1992 Fund Assembly and Supplementary Fund Assembly, and Rule 8 of the 1992 Fund Executive Committee reads as follows:

Each Member shall transmit to the Director the credentials of its representative, together with the names of any alternates or other members of its delegation not later than the opening day of the Assembly [Executive Committee].

3.1.2 The IMO Interim Guidance adopted by ALCOM/ES sets out that the existing rules of procedure regarding credentials should apply to remote sessions and that provisional acceptance of electronic copies of credentials should be permitted, with originals to follow (ALCOM/ES/5/1, paragraph 2.5.1, and Annex 1 (IMO Interim Guidance), paragraph 15).

3.1.3 In line with the IMO Interim Guidance, Rule 9/8 will still apply to remote sessions, however, it should be noted that only those delegates who have registered and submitted credentials (if required) will be sent a link and joining instructions to the virtual meeting. With this in mind, the Secretariat, in accordance with Rule 9/8, will do all it can to facilitate participation of delegations who register and submit credentials up to the opening day of the sessions. However, late submissions may lead to delays in providing links to access the KUDO platform in time for the opening of the sessions. In the interests of facilitating the joining process and the smooth running of the sessions in general, delegates are strongly encouraged to submit their credentials in advance.

3.1.4 Therefore, for practical reasons, on this exceptional occasion, the Director kindly requests that Member States submit credentials as early as possible and preferably no later than Friday, 20 November 2020. Credentials can be submitted via the online registration system or by email (circular IOPC/2020/Circ.13).

3.2 Consideration of Rule 32/28^{<8>} on voting

3.2.1 Rule 32 of the Rules of Procedure of the 1992 Fund Assembly reads as follows:

Subject to Article 33 of the 1992 Fund Convention, decisions of the Assembly and of its subsidiary bodies shall be made, elections shall be determined, and reports, resolutions and recommendations shall be adopted, by a majority of the Members present and voting.

3.2.2 In respect of the decision-making process, paragraph 19 of the IMO Interim Guidance as adopted by ALCOM/ES states that 'every effort should be made to take decisions in a remote session by consensus'. The ALCOM/ES report also refers to the IMO spirit of cooperation and emphasises that the preferred approach for reaching decisions was by consensus (document ALCOM/ES/5/1, paragraph 3.9.1). In addition, paragraph 20 of the IMO Interim Guidance as adopted by ALCOM/ES, states that: 'Should a need for voting arise, the Secretariat should be requested to submit options to facilitate remote voting for consideration.'

3.2.3 The established practice of the IOPC Funds' governing bodies is that decisions on the election of the Chairs, reports, resolutions and recommendations are in fact adopted by consensus among the Members present

<7> The equivalent rules are provided in Rule 9 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 8 of the Rules of Procedure of the 1992 Fund Executive Committee.

<8> The equivalent rules are provided in Rule 32 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 28 of the Rules of Procedure of the 1992 Fund Executive Committee.

at a meeting. In the spirit of retaining the usual, established practice of in-person meetings, the governing bodies may wish to continue to adopt decisions by consensus during the remote sessions.

- 3.2.4 To ensure all views expressed are taken into account, if at any point during the virtual meeting a delegation loses connectivity, and in particular, during a time the governing bodies are called upon to make a decision, that delegation should contact the Secretariat urgently either by phone or email. In this way, the Secretariat can inform the Chairs, who can then take action as they deem appropriate and necessary.
- 3.2.5 Thus far, there has not been a need for voting during the remote sessions of the IMO bodies. As item 6 of the provisional agenda includes the election of the members of the joint Audit Body, an election needs to be carried out at the December 2020 meeting of the IOPC Funds' governing bodies. Given that it will not be possible to organise a physical voting process for the election of the Audit Body, document IOPC/NOV20/6/1/1 invites the 1992 Fund Assembly to consider three possible options for conducting the ballot procedure on this occasion. As each option requires the temporary suspension of certain Rules of Procedure, the proposal for the suspension of these rules is contained in document IOPC/NOV20/1/3/2.
- 3.2.6 The governing bodies are invited to note the established practice for taking decisions and that in the event that the need for a vote should arise, an alternative voting procedure would need to be adopted (see document IOPC/NOV20/1/3/2).
- 3.3 Consideration of Rule 33^{<9>} on the definition of 'Members present' and 'Members present and voting'
- 3.3.1 Rule 33 of the Rules of Procedure of the 1992 Fund Assembly, and Supplementary Fund Assembly reads:
- Each Member shall have one vote. For the purposes of these Rules and in accordance with Article 32 of the 1992 Fund Convention:
- (a) the phrase "Members present" means Members present at the meeting at the time of the vote;
- (b) the phrase "Members present and voting" means Members present and casting an affirmative or negative vote. Members who abstain from voting or who cast an invalid vote shall be considered as not voting.
- 3.3.2 The ALCOM/ES decided to consider a Member 'present' for the purposes of rules 27, 28 and 34 (rules which imply that Members are physically present) if they had registered for the session using the IMO Online Meeting Registration System and were listed as a participant in the remote session, using the virtual meeting platform (document ALCOM/ES/5/1, paragraph 2.5.3).
- 3.3.3 Rules 32/28^{<8>}, 34/30^{<10>} and 43/39^{<11>} of the governing bodies, imply that Members are physically present at a meeting. However, since this is unlikely to be possible for a virtual meeting, a meeting by correspondence, or both, the governing bodies may, in the context of remote sessions, wish to interpret 'Members present' as defined in Rule 33(a), as Members registered for the sessions using the online registration system, and listed as a participant in the remote sessions, using the virtual meeting platform.
- 3.3.4 Taking into account that Rule 33(b) defines 'Members present and voting' as Members voting by casting an affirmative or negative vote, it is proposed that the governing bodies should continue to follow established practice of taking decisions by consensus wherever possible, as set out in paragraphs 3.2.3 and 3.2.4 above.

^{<9>} There is no equivalent rule in the Rules of Procedure of the 1992 Fund Executive Committee.

^{<10>} The equivalent rules are provided in Rule 34 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 30 of the Rules of Procedure of the 1992 Fund Executive Committee.

^{<11>} The equivalent rules are provided in Rule 43 of the Rules of Procedure of the Supplementary Fund Assembly and Rule 39 of the Rules of Procedure of the 1992 Fund Executive Committee.

- 3.3.5 The governing bodies are therefore invited to decide whether for the purposes of the December 2020 meeting 'present' shall be interpreted as being registered for the sessions using the online registration system, and listed as a participant in the remote sessions, using the virtual meeting platform, for the purposes of Rules 32/28, 34/30 and 43/39.

4 Director's considerations

- 4.1 Article 19.1 of the 1992 Fund Convention and Article 16.2 of the Supplementary Fund Protocol provide that regular sessions of the governing bodies shall take place once every calendar year. There is, however, a need to temporarily suspend or amend certain Rules of Procedure to enable the regular sessions to take place remotely. This would be in accordance with Rule 56^{<5>} of the 1992 Fund Assembly which provides that, in the event of any conflict, the Convention shall prevail over the Rules of Procedure.
- 4.2 The Director and members of the Secretariat have closely followed developments relating specifically to the holding of remote sessions and the resulting procedural practices which have been adopted by various IMO bodies. In the interests of standardising remote procedures and using platforms and processes that will already be familiar to the IOPC Funds' delegates, the proposals for the suspension of certain rules of procedure contained in this document are as closely aligned as possible to those implemented by IMO. The decisions made by ALCOM/ES along with the IMO Interim Guidance adopted by the IMO Council and ALCOM/ES have been used as references to guide the proposals contained in this document.
- 4.3 The Director is aware and shares the concerns expressed by Member States on the conduct of business during remote sessions, particularly on the openness and transparency on making decisions. In order to safeguard full and equal participation of all Member States, and legitimacy of decisions taken, every effort will be made for remote sessions to retain established practices of in-person meetings to the extent that is reasonably possible.
- 4.4 Unfortunately, extraordinary sessions to consider procedural matters arising from holding remote sessions cannot be convened due to the proximity of the meeting. However, in the interest of expediting the discussions, the Director has issued the proposals in advance and invites Member States to carefully consider this document and confirm support of these proposals or make alternative suggestions by Friday, 23 October 2020 via email to the Secretariat: conference@iopcfunds.org
- 4.5 In order for every delegation to be aware of the views of others and for the process to be transparent, the feedback received will be published in document IOPC/NOV20/1/3/3. Taking the feedback into account, revised proposals will be issued as appropriate. The governing bodies will be invited to make decisions on these proposals when the sessions open on Wednesday, 2 December 2020.
- 4.6 Results from this feedback will also be taken into consideration when preparing a practical information document on the conduct of business during remote sessions, which will also include guidance on KUDO, to be contained in document IOPC/NOV20/1/4.
- 4.7 The Director's priority is to ensure a successful meeting takes place in accordance with the Conventions and that the governing bodies are able to take the decisions required under the substantive items to ensure the organisations can continue to function properly in 2021, therefore, he encourages Member States to provide feedback on the temporary suspension and amendments on the Rules of Procedure as required to facilitate the remote sessions.

5 Decisions required

- 5.1 A summary of the decisions that the governing bodies will be invited to make at the opening of the sessions with regard to the following Rules of Procedure is listed below.

5.2 Rule 3 on the location of the meeting

Decide whether to suspend Rule 3 of the Rules of Procedure in relation to the location to the meeting to allow for remote sessions to be held, as set out in paragraph 2.1.

5.3 Rule 9/8^{<7>} on the timing of the submission of credentials

Note that, while Rule 9/8 provides that delegations can register and submit credentials up to the opening day of the sessions, for practical reasons, on this exceptional occasion, the Director has requested that Member States submit credentials via the online registration system or by email as early as possible and preferably no later than Friday, 20 November 2020, as set out in paragraph 3.1.

5.4 Rule 27/23^{<6>} on the adoption of the Record of Decisions

Note that in line with Rule 27/23, the Secretariat will prepare a draft Record of Decisions, and in accordance with established practice, that the draft Record of Decisions will be presented for adoption by the governing bodies on the last day of the virtual meeting; and decide whether sessions should remain open for an additional five working day period, until Friday, 11 December 2020, for delegations to comment on the draft Record of the Decisions by correspondence, as set out in paragraph 2.2.

5.5 Rule 32/28^{<8>} on voting

Noting that the established practice of the governing bodies for taking decisions on election of the Chairs, reports, resolutions and recommendations are adopted by consensus among the Members present at a meeting, the governing bodies are invited to consider whether to continue to adopt decisions by consensus during the remote sessions and that in the event that the need for a vote should arise, an alternative voting procedure would need to be adopted (see document IOPC/NOV20/1/3/2), as set out in paragraph 3.2.

5.6 Rule 33(a)^{<9>} on the definition of 'Members present'

Taking into account that Rules 32/28^{<8>}, 34/30^{<10>} and 43/39^{<11>} imply that Members are physically present at a meeting, decide whether for the purposes of the December 2020 meeting 'present' as defined in Rule 33(a) shall be interpreted as being registered for the sessions using the online registration system, and listed as a participant in the remote sessions, using the virtual meeting platform, as set out in paragraph 3.3.

5.7 Rule 33(b)^{<9>} on the definition of 'Members present and voting'

Taking into account that Rule 33(b) defines 'Members present and voting' as Members voting by casting an affirmative or negative vote, note the proposal in paragraphs 3.2.3 and 3.2.4 that the governing bodies should continue to follow the established practice of taking decisions by consensus wherever possible and note that in the event that the need for a vote should arise, an alternative voting procedure would need to be adopted (see document IOPC/NOV20/1/3/2), as set out in paragraph 3.3.

6 Action to be taken

1992 Fund Assembly, 1992 Fund Executive Committee and the Supplementary Fund Assembly

The 1992 Fund Assembly, 1992 Fund Executive Committee and the Supplementary Fund Assembly are invited to:

- (a) Note the Director's request that Member States carefully consider the proposals set out in sections 2 and 3 of this document in advance of the meeting;
- (b) provide feedback and either confirm support for the proposed temporary suspension or amendments to the relevant rules or make alternative suggestions by Friday, 23 October 2020;

- (c) note that feedback received from Member States will be published in a separate document (IOPC/NOV20/1/3/3); and
 - (d) note that at the opening of the sessions, in light of the feedback received from Member States in document IOPC/NOV20/1/3/3, the governing bodies will have to decide whether to temporarily suspend or amend the Rules of Procedure in respect of the December 2020 meeting of the governing bodies as set out in section 5.
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