



International Oil Pollution
Compensation Funds

Agenda Item 1	IOPC/NOV20/1/3/2	
Date	13 October 2020	
Original	English	
1992 Fund Assembly	92A25	●
1992 Fund Executive Committee	92EC74	
Supplementary Fund Assembly	SA17	●

TEMPORARY SUSPENSION OF RULES OF PROCEDURE IN CONNECTION WITH REMOTE SESSIONS

VOTING

Note by the Secretariat

Summary:

The 1992 Fund Assembly will be invited at its December 2020 session to elect six members of the joint Audit Body (document IOPC/NOV20/6/1). Given that it will not be possible to organise a physical voting process for the election at that session, the Assembly will be invited to consider a new ballot procedure.

As described in documents IOPC/NOV20/1/3 and IOPC/NOV20/1/3/1, the governing bodies of the International Maritime Organization (IMO) have taken a number of decisions relating to procedural matters in connection with the holding of remote sessions, and the IOPC Funds Secretariat has closely followed IMO discussions and its decisions in that regard. In particular, the Secretariat has followed the discussions of ALCOM/ES^{<1>} and has noted the Interim Guidance adopted at that meeting. However, in the absence of any planned election, the IMO governing bodies were not required to take any decision in respect of voting or ballot procedures. The 1992 Fund Assembly must therefore find a pragmatic solution to enable the election of the Audit Body to proceed within a remote session.

Document IOPC/NOV20/6/1/1 invites the 1992 Fund Assembly to consider three possible options for conducting the ballot procedure on this occasion, namely by using an online voting system, voting by email or voting by correspondence. The relevant Rules of Procedure of the 1992 Fund Assembly are Rules 32–40. Depending on the voting option selected by the Assembly, the temporary suspension of either Rule 37 or Rule 38 will be required to enable the election of the joint Audit Body to take place.

This document details the relevant Rules of Procedure and sets out the Director's considerations, taking into account the proposals in document IOPC/NOV20/6/1/1.

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 provide feedback on the information provided in this document in advance of the meeting by Friday, 23 October 2020. The Director will publish the feedback received in document IOPC/NOV20/1/3/3.

^{<1>} ALCOM/ES refers to 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 of the IMO.

Action to be taken: 1992 Fund Assembly

- (a) Note the information provided in this document, taking into account the information provided in document IOPC/NOV20/6/1/1 regarding the ballot procedures for the election of members of the joint Audit Body;
- (b) provide any feedback by Friday, 23 October 2020; and
- (c) note that feedback received from Member States will be published in a separate document (IOPC/NOV20/1/3/3).

Supplementary Fund Assembly

Information to be noted.

1 Introduction

- 1.1 As explained in document IOPC/NOV20/1/3, the partial closure of the IMO building as a result of the COVID-19 pandemic prevents full, physical sessions of the IOPC Funds' governing bodies from convening. Document IOPC/NOV20/1/3/1 sets out the Rules of Procedure that presuppose in-person meetings and which would need to be suspended to allow for the December 2020 regular sessions of the governing bodies to be held remotely.
- 1.2 The 1992 Fund Assembly will be invited at its December 2020 session to elect six members of the joint Audit Body (document IOPC/NOV20/6/1). Given that it will not be possible to organise a physical voting process for the election at that session, the Assembly will be invited to consider a new ballot procedure in document IOPC/NOV20/6/1/1.
- 1.3 As described in documents IOPC/NOV20/1/3 and IOPC/NOV20/1/3/1, the governing bodies of the International Maritime Organization (IMO) have taken a number of decisions relating to procedural matters in connection with the holding of remote sessions, and the IOPC Funds Secretariat has closely followed IMO discussions and its decisions in that regard. In particular, the Secretariat has followed the discussions of ALCOM/ES^{<1>} and has noted the Interim Guidance adopted at that meeting. However, in the absence of any planned election, the IMO governing bodies were not required to take any decision in respect of voting or ballot procedures and the Interim Guidance adopted by ALCOM/ES does not include such procedures. The 1992 Fund Assembly must therefore find a pragmatic solution to enable the election of the Audit Body to proceed within a remote session.
- 1.4 Document IOPC/NOV20/6/1/1 invites the 1992 Fund Assembly to consider three possible options for conducting the ballot procedure on this occasion, namely by using an online voting system, voting by email or voting by correspondence.
- 1.5 This document details the relevant Rules of Procedure governing voting and sets out the Director's considerations, taking into account the proposals in document IOPC/NOV20/6/1/1.

2 Relevant Rules of Procedure

- 2.1 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. The relevant Rules of Procedure of the 1992 Fund Assembly governing voting are Rules 32–40.

Rules 32–33 on general decision making

- 2.2 Rule 32 states that decisions are taken by a majority of the Members present and voting. Rule 33 covers the definition of ‘Members present and voting’. Since these Rules relate to the general decision-making process at meetings and since the IMO Interim Guidance as adopted by ALCOM/ES covers corresponding Rules, these Rules, together with other general procedural matters relating to the facilitation of remote sessions, are considered in document IOPC/NOV20/1/3/1, which proposes that the IOPC Funds adopt a similar approach to IMO.

Rules 34–36 on voting by roll call and the holding of a second vote

- 2.3 Rules 34, 35 and 36 relate to the option to carry out a vote by roll call, the requirement to list each Member participating in the roll call in the Record of Decisions of the meeting and the possibility of holding a second vote if required. None of these Rules are affected by the election taking place during a remote session, and they would not require temporary suspension or amendment in the event that the 1992 Fund Assembly were to adopt any of the voting options listed in paragraph 1.4 above.

Rule 37 – Elections to be decided by secret ballot

- 2.4 Rule 37 of the Rules of Procedure of the 1992 Fund Assembly reads as follows:

Elections shall be decided by secret ballot unless the Assembly decides otherwise.

- 2.5 Section 3 of document IOPC/NOV20/6/1/1 describes how the Assembly could carry out the election of the members of the Audit Body through a vote by email. Section 4 of that document describes a possible vote by correspondence. That document also explains that under either of those voting procedures the origin of each ballot paper would be known to at least one member of the Secretariat and the secrecy of the ballot could not, therefore, be guaranteed.
- 2.6 In the event that the 1992 Fund Assembly were to decide to carry out the vote by email or correspondence, it would not be possible to carry out the vote by secret ballot in accordance with Rule 37 and that Rule would therefore need to be temporarily suspended to enable the election to take place.

Rule 38 – Appointment of scrutineers

- 2.7 Rule 38 of the Rules of Procedure of the 1992 Fund Assembly reads as follows:

In a secret ballot two scrutineers shall, on the proposal of the Chair, be appointed by the Assembly from the Members present and shall proceed to scrutinize the votes cast. All invalid votes cast shall be reported to the Assembly.

- 2.8 Section 2 of document IOPC/NOV20/6/1/1 describes how the Assembly could carry out the election of the members of the Audit Body by using an online voting system. It also explains that while using an online system would enable the election to be carried out by secret ballot in accordance with Rule 37, it would not be possible to appoint two scrutineers from the Members present in accordance with Rule 38. The votes would instead be scrutinised by the independent third party providing the online service.
- 2.9 In the event that the 1992 Fund Assembly were to decide to carry out the election by using an online voting system, Rule 38 would need to be temporarily suspended to enable the election to take place.

Rules 39 and 40 relating to finalising the results of a vote

- 2.10 Rules 39 and 40 relate to the procedures for finalising the results of a vote when no candidate achieves a majority. Rule 39 sets out the procedure for when there is only one candidate, and Rule 40 sets out the procedure for when there is more than one candidate. Neither of these Rules are affected by the election

taking place during this remote session, and they would not require temporary suspension or amendment in the event that the 1992 Fund Assembly were to adopt any of the voting options listed in paragraph 1.4 above.

3 Director's considerations

- 3.1 The Director notes that despite the fact that the December 2020 sessions will be held remotely, the election of the members of the joint Audit Body must take place. He also notes that the IMO bodies, including ALCOM/ES, have not taken a decision with regard to elections during remote sessions. The 1992 Fund Assembly must therefore find a pragmatic solution to enable the election of the Audit Body to proceed within a remote session.
- 3.2 The Director notes that any of the three options presented in document IOPC/NOV20/6/1/1 will require the 1992 Fund Assembly to temporarily suspend either Rule 37, as set out in paragraphs 2.4–2.6 above, or Rule 38 as set out in paragraphs 2.7–2.9 above.
- 3.3 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 provide feedback on the information provided in this document in advance of the meeting by Friday, 23 October 2020.
- 3.4 The Director will publish the feedback received in document IOPC/NOV20/1/3/3.

4 Action to be taken

4.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) note the information provided in this document, taking into account the information provided in document IOPC/NOV20/6/1/1 regarding the ballot procedures for the election of members of the joint Audit Body;
- (b) provide any feedback by Friday, 23 October 2020; and
- (c) note that feedback received from Member States will be published in a separate document (IOPC/NOV20/1/3/3).

4.2 Supplementary Fund Assembly

The Supplementary Fund Assembly is invited to take note of the information contained in this document.
