

Director-General

Note by the Legal Counsel

1. The first special session of the Health Assembly has been convened by the Acting Director-General in accordance with Rule 2 of the Rules of Procedure of the World Health Assembly as requested by the Executive Board in resolution EB118.R2, paragraph 6. Such a request constituted one of the steps that the Board took at its 118th session to address the consequences of the death of the previous Director-General, Dr Lee Jong-wook, and to accelerate the procedure to elect the next Director-General.

PROCEDURAL ISSUES

2. The particular circumstances under which the special session has been convened, including the fact that it is held only one day after the adjournment of the 119th session of the Board at which a person is to be nominated for the post of Director-General, raises a number of procedural issues, the most significant of which are summarized below for the information of Member States.

3. As far as the agenda for the special session is concerned, the Acting Director-General has, at the request of the Executive Board, included in the provisional agenda only one item, entitled "Director-General", comprising two subitems, entitled respectively "Appointment" and "approval of contract". Pursuant to Rule 7 of the Rules of Procedure of the World Health Assembly, the provisional agenda for the special session shall include only those items proposed by the Board. No other items may be included.

4. Rule 26 of the Rules of Procedure provides that the President and five Vice-Presidents of the Health Assembly shall be elected "at each regular session" and that they shall hold office "until their successors are elected". Therefore, the officers elected at a previous regular session would remain in office with regard to special sessions convened before the opening of the next regular session. Consequently, the President and five Vice-Presidents elected by the Fifty-ninth World Health Assembly will preside over the special session, which also obviates the need to constitute and convene the Committee on Nominations.

5. Considering that the provisional agenda of the special session contains only one item, which will be taken up in plenary, that consequently Committees A and B will not meet, and that the session is extremely brief, it appears unnecessary to establish and convene the General Committee.

6. Since this is a separate session of the Health Assembly, the credentials submitted by Member States and Associate Members for the Fifty-ninth World Health Assembly are no longer valid and new credentials will have to be submitted in accordance with Rule 22 of the Rules of Procedure. In accordance with Rule 23, a Committee on Credentials will be appointed at the beginning of the session.

7. In view of the brevity of the session, the Committee on Credentials will hold only one meeting in the morning of 9 November. Member States and Associate Members are therefore strongly urged to deliver the formal credentials of their delegates or representatives, respectively (i.e. the original document issued by the Head of State, the Minister for Foreign Affairs, the Minister of Health, or any other appropriate authority as prescribed in Rule 22(b)), by 6 November 2006 and as indicated in the letter of convocation.

APPOINTMENT (Provisional agenda item 2.1)

8. Article 31 of the WHO Constitution provides that the Director-General shall be appointed by the Health Assembly on the nomination of the Board on such terms as the Health Assembly may determine. The Health Assembly will consider this agenda item in accordance with its Rules of Procedure, in particular Rules 108 to 112. The Health Assembly meets in private session to consider the Board's nomination, and traditionally has remained in private session when considering the terms of the contract for the appointment.

9. The Board will nominate a person for the post of Director-General at its 119th session to be held from 6 to 8 November, and will immediately submit such nomination to the Health Assembly for its consideration on 9 November. The Health Assembly will decide whether to accept that nomination by considering a draft resolution, which in its standard form from previous Health Assemblies would read as follows, with the exception of the name of the person nominated by the Board which will be announced by the President before the beginning of the secret ballot:

The World Health Assembly at its first special session,

On the nomination of the Executive Board,

APPOINTS as Director-General of the World Health Organization.

10. Rule 110 stipulates that the decision to accept the nomination must be made by secret ballot. The ballot will provide a "yes" and a "no" option. The nomination will be accepted if a two thirds majority of those Members present and voting vote "yes", i.e. in favour of the proposed resolution. The requirement of a two thirds majority for the appointment of the Director-General was introduced with the amendment to Rule 72 approved by resolution WHA57.8.

APPROVAL OF CONTRACT (Provisional agenda item 2.2)

11. The Health Assembly will consider the contract to be offered to the appointee.¹ The contract will be recommended by the Executive Board at its 119th session and the resolution containing its recommendation will be immediately submitted to the Health Assembly together with the text of the contract.

12. The content of the contract is expected to be largely the same as that of contracts submitted to the Health Assembly for previous Directors-General. A notable exception, however, will be the duration of the contract and its beginning and end dates. Although Rule 108 of the Rules of Procedure of the World Health Assembly establishes that the term of office of the Director-General shall be five years, application of this provision would lead to an impractical result under the exceptional circumstances governing the current process, since the term of office of the next Director-General would expire halfway between two regular sessions of the Health Assembly. Consequently, the Executive Board, in paragraph 7 of resolution EB118.R2, has recommended that the Health Assembly should suspend Rule 108 of its Rules of Procedure so that the term of office of the next Director-General may be set in such a way as to terminate shortly after closure of a Health Assembly. Moreover, whereas the contract of previous Directors-General has always started on 21 July, this will not be the case for the next Director-General.

13. For these reasons, the draft contract submitted by the Secretariat to the Executive Board at its 119th session² leaves blank both the date of beginning and the date of termination of the contract so that the Board may submit an appropriate recommendation to the Health Assembly. To facilitate a decision on the date of beginning of the contract, the Secretariat will request each person proposed for nomination to be prepared to indicate to the Board when he or she would be available to assume office if appointed.

14. After consideration of agenda items 2.1 and 2.2 in private session, the Health Assembly will reconvene in public session in order for the results of its private session to be announced for the record. The Director-General appointee will then be asked to take the oath of office, as provided for in Staff Regulations 1.10 and 1.11,³ and to sign the approved contract jointly with the President of the Health Assembly acting in the name of the Organization.

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¹ Document SSA1/2.

² Document EB119/2.

³ The oath of office contained in Staff Regulation 1.10 reads as follows: *I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion, and conscience the functions entrusted to me as an international civil servant of the World Health Organization, to discharge those functions and regulate my conduct with the interests of the World Health Organization only in view, and not to seek or accept instructions in regard to the performance of my duties from any government or other authority external to the Organization.* Staff Regulation 1.11 requires that the oath be made orally by the Director-General at a public meeting of the World Health Assembly.