



WORKING CAPITAL

Note by the Director

Summary:	The Director proposes that the working capital should be increased from £20 million to £25 million.
Action to be taken:	Decide the level of the working capital.

1 Introduction

- 1.1 The 1992 Fund's Financial Regulations provide that a working capital shall be maintained at such a level as the Assembly may decide from time to time (Financial Regulation 7.1(b)).
- 1.2 Under Financial Regulation 7.1(c), the 1992 Fund shall have a General Fund which shall be used:
 - (i) for the satisfaction of claims of the kind referred to in Article 12.1(i)(b) of the 1992 Fund Convention including the first four million SDR of claims in respect of any one incident where the aggregate amount of all claims exceeds four million SDR;
 - (ii) to make provisional payments pursuant to Internal Regulation 7.9;
 - (iii) to meet the costs and expenses of the administration of the 1992 Fund and any other expenditure which may be authorised by the Assembly or, where appropriate, by a subsidiary body established by the Assembly in accordance with Article 18.9 of the 1992 Fund Convention;
 - (iv) to make loans to a Major Claims Fund for the satisfaction of claims of the kind referred to in Article 12.1(i)(c) of the 1992 Fund Convention, above the first four million SDR in respect of any one incident, to the extent that sufficient money is not available in that Major Claims Fund.
- 1.3 Separate Major Claims Funds shall be established in respect of each larger incident, ie each incident where the aggregate amount of the payments by the 1992 Fund exceeds 4 million SDR (approximately £3.2 million). Such a Major Claims Fund shall be used for the payment of claims arising from the relevant incident, provided that the first 4 million SDR in respect of each incident is to be paid from the General Fund (Financial Regulation 7.2(a) and (d)).

- 1.4 If the working capital were to fall below an amount reasonably required to meet the administrative expenses and anticipated claims as required under Financial Regulations 7.1 (c), annual contributions should be raised to restore the working capital to the level fixed by the Assembly.

2 Decisions in recent years regarding the working capital

The Assembly has taken the following decisions in respect of the working capital:

Assembly session	Working capital changed		Document	Paragraph
	From:	To:		
1 st extraordinary (1996)		£7 million	92FUND/A/ES.1/22	18
2 nd (1997)	£7 million	£9 million	92FUND/A.2/29	26
3 rd (1998)	£9 million	£12 million	92FUND/A.3/27	24
4 th (1999)	£12 million	£15 million	92FUND/A.4/32	28
5 th (2000)	£15 million	£18 million	92FUND/A.5/28	27
6 th (2001)	£18 million	£20 million	92FUND/A.6/28	25

3 Director's analysis

- 3.1 Under Internal Regulation 7.4, the Director may make final settlement of any claim for compensation without the prior approval of the Assembly if he estimates that the total cost to the 1992 Fund of satisfying all such claims arising out of the relevant incident is not likely to exceed 2.5 million SDR (approximately £2.0 million). The Director may in any case make final settlement of claims from individuals and small businesses up to an aggregate amount of 666 667 SDR (approximately £540 000) in respect of each incident. The Assembly may authorise the Director to settle claims beyond this limit in respect of a particular incident (Internal Regulation 7.5). Once an incident has occurred the Executive Committee normally authorises the Director to settle all claims arising from that incident, to the extent that they do not give rise to issues of principle not previously considered by the Funds' governing bodies.
- 3.2 At the time of the 9th session of the Assembly, 86 States will be Members of the 1992 Fund and a further four States will be Members by August 2005. It is expected that in the next few years a number of other States will join the 1992 Fund. The larger the number of Member States, the greater the risk that the 1992 Fund will be called upon to pay compensation for oil pollution incidents.
- 3.3 The Director considers that the prompt payment of compensation is of crucial importance. The 1992 Fund should, in the Director's view, hold sufficient liquid funds to enable it to pay claims without having to wait for the next payment of contributions. In addition, the Director considers that the working capital should be sufficiently large so that bank loans are not required for the prompt payment of settled claims, at least not in normal circumstances.

- 3.4 At its 1st session the Assembly introduced a deferred invoicing system. Under this system the Assembly fixes the total amount to be levied in annual contributions for a given calendar year. At the same time, the Assembly may decide that only a specific lower total amount should be invoiced for payment by 1 March in the following year, the remaining amount, or a part thereof to be invoiced later in the year if it should prove to be necessary (document 92FUND/A.1/34, paragraph 16.2). It was stressed by a number of delegations that the introduction of a deferred invoicing system should not be applied in such a way that the 1992 Fund would not have sufficient funds for the prompt payment of claims for compensation (document 92FUND/A.1/34, paragraph 16.4). The system nevertheless allows greater flexibility in the levying of contributions, particularly with regard to the level of the working capital.
- 3.5 There is a considerable element of uncertainty in the estimates that form the basis of the Assembly's decision to levy contributions. This is due partly to the comparatively long period between when the estimates are made (August) and when the Assembly's decision to levy contributions is taken (October) and the date when contributions are due (1 March of the following year). No further contributions would normally be levied for a further year. Although the Assembly decided at its 4th extraordinary session, held in April 2000, to make a supplementary levy of contributions in respect of a major incident which had occurred after the Assembly's decision in October 1999, the Director considers that such a supplementary levy should be avoided. If the 1992 Fund had a relatively large working capital, it would in some cases be possible to use the working capital in the form of a loan to a Major Claims Fund which may have to be established in respect of a new incident rather than making a supplementary levy.
- 3.6 In recent years there have been several incidents involving the IOPC Funds in which there was no P & I insurer which could make payments promptly to individual claimants and small businesses. This has been the case where the ship was carrying less than 2 000 tonnes of oil in bulk as cargo and therefore was not required to have insurance (eg the *Kyung Won* incident in the Republic of Korea in 2003) and in several incidents involving uninsured ships suspected of smuggling oil from Iraq. As a consequence of the wider definition of 'ship' in the 1992 Fund Convention, the 1992 Fund may be called upon to pay compensation in respect of incidents where it is not possible to identify the owner of the tanker which caused a spill and the 1992 Fund will be the only source of compensation as has already been the case (ie the spill which occurred in Bahrain in 2003). In such cases it will be imperative that the 1992 Fund is in a position to act promptly in order to mitigate undue financial hardship to victims.
- 3.7 Before the *Prestige* incident, in all incidents involving the 1971 and 1992 Funds, the shipowner's P&I insurer had been prepared to make compensation payments up to the limitation amount applicable to the ship in question, and then subrogate the right of the claimants thus paid against the limitation fund. This was the case in respect of the *Erika* incident, where the P&I Club made significant payments at an early stage. However, in the *Prestige* case the P&I Club was not prepared to make payments to claimants and instead deposited the limitation amount in court. The 1992 Fund had therefore to make payments to claimants from the outset. It is likely that the same situation will arise again in the future, and the Fund will then need sufficient money available so as to be able to pay compensation at a very early stage of the incident.
- 3.8 Compensation payments are made in local currency. When the Director makes a proposal to the Assembly to levy contributions to a Major Claim Fund, the amount which he estimates is required for compensation and fees and expenses is converted from the local currency of the State where the damage was caused into Pounds sterling on the basis of the rate of exchange at the time of the drafting of the relevant document to be submitted to the Assembly. A subsequent weakening of the Pound sterling vis-à-vis the local currency over the period that compensation payments are made could result in a shortfall in that Major Claims Fund, which would have to be covered by a loan from the General Fund. For example, the Director has estimated that some £132 million may be payable in respect of the *Erika* and *Prestige* incidents by 1 March 2006 (ie before the 2005 contributions are received - document 92FUND/A.9/25, paragraphs 2.2.5 and 2.3.5). Compensation in respect of both these incidents will be paid in Euros. A weakening of the Pound sterling by, say, 10% in relation to the Euro would result in a shortfall on these Major Claims Funds of some £13 million.

4 Director's proposal

The Director is aware of the importance of limiting the financial burden on contributors. However, in the light of the increase in the number of Member States and for the reasons set out above, the Director proposes that the working capital be increased from £20 million to 25 million.

5 Action to be taken by the Assembly

The Assembly is invited

- (a) to take note of the information contained in this document; and
 - (b) to consider the Director's proposal to increase the working capital of the 1992 Fund from £20 million to £25 million.
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