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ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

Note by the Director

Summary:	The need for 2000 contributions to Major Claims Funds is examined.
Action to be taken:	Decide on the levy of 2000 contributions to Major Claims Funds.

1 Introduction

- 1.1 Article 12 of the 1992 Fund Convention provides that the Assembly shall determine the amount of contributions to be levied, if any. For this purpose the Assembly shall make an estimate in the form of a budget of the 1992 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.
- 1.2 The 1992 Fund's expenditure consists of:
- (a) costs and expenses of the administration of the 1992 Fund, and any deficit from preceding years;
 - (b) payments of claims up to 4 million SDR per incident (minor claims); and
 - (c) payments of claims to the extent that the aggregate amount of the payments in respect of any one incident is in excess of 4 million SDR (major claims).

- 1.3 Expenses mentioned in sub-paragraphs (a) and (b) of paragraph 1.2 above have to be met from the General Fund (Financial Regulation 7.1(c)) and expenses with respect to major claims as defined in sub-paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 7.2(d)).
- 1.4 As instructed by the Assembly at its 4th session (document 92FUND/A.4/32, paragraph 27.7), the Director has considered how a clearer presentation of the budget could be made. The assessment of contributions to the General Fund, in accordance with Article 12.2(a) of the 1992 Fund Convention, has therefore been incorporated in the draft budget and is dealt with in a separate document (92FUND/A.5/24). This document deals only with the assessment of contributions to Major Claims Funds.
- 1.5 As for the individual incidents, reference is made to the information contained in the Financial Statements (document 92FUND/A.5/9, Annex IV, Schedule II) and to the various documents relating to incidents submitted to the 9th session of the Executive Committee.
- 1.6 It should be noted that any estimate in this document of amounts to be paid by the 1992 Fund in compensation has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the 1992 Fund in respect of the claims.
- 1.7 It should be noted that - unless stated otherwise - information on the payments of compensation and miscellaneous expenses reflects the situation as at 30 June 2000^{<1>}. The Director considers that it might be necessary, in an addendum to this document, to modify some of the proposals set out below in the light of developments.

2 **Nakhodka Major Claims Fund**

2.1 Summary information

Background information for consideration of the *Nakhodka* Major Claims Fund is as follows:

Incident	<i>Nakhodka</i>
Date of incident	02/01/97
Maximum amount of compensation payable by 1992 Fund (ie 135 million SDR - 1971 limit: 60 million SDR)	£90 389 299
Maximum payable from General Fund (4 million SDR)	£3 382 620
Estimated General Fund balance 30/6/2000	£0
Total previously levied to Major Claims Fund	£50 000 000
Compensation paid to 30/6/2000	£25 893 972
Miscellaneous paid to 30/6/2000	£1 664 203
Possible total expenditure 1/7/2000 - 1/3/2002	£64 000 000

2.2 Analysis

- 2.2.1 A total of £50 million has been levied as contributions to the *Nakhodka* Major Claims Fund (including the £13 million referred to in paragraph 2.2.3 below). There was a surplus of £37.3 million on that Major Claims Fund as at 31 December 1999 (document 92FUND/A.5/9, Annex III, Statement III). The total payments by the 1992 Fund in respect of the *Nakhodka* incident reached the maximum amount payable from the General Fund (£3 382 620) during 1999.
- 2.2.2 It is not possible to determine at this stage the total amount of the established claims. However, the total amount of the claims submitted exceeds by far the amount available under the 1992 Fund

<1> In this document the conversion of currencies has been made on the basis of the rates of exchange applicable on 18 August 2000, unless indicated otherwise.

Convention. In the *Nakhodka* case, the total payable by the 1992 Fund is 135 million SDR (fixed at Yen 23 164 515 000 by the Assembly at its 2nd session, based on the rate of exchange as at 17 April 1997) less 60 million SDR payable under the 1969 Civil Liability Convention and the 1971 Fund Convention. The rate to be applied for the conversion of 60 million SDR into Yen has not yet been fixed^{<2>}. Using the rate applicable on 18 August 2000 for conversion of 60 million SDR would give the following figures:

135 million SDR	¥ 23 164 515 000
60 million SDR	¥8 520 273 468
Total payable by 1992 Fund	<u>¥14 644 241 532</u> (£90 389 299)

Since the 1992 Fund has already paid some ¥4 500 million in compensation, its remaining liability would be approximately ¥10 100 million (£62.3 million).

- 2.2.3 It is estimated that the balance on the *Nakhodka* Major Claims was approximately £15.3 million as at 30 June 2000. A further £13 million in contributions is due on 1 September 2000.
- 2.2.4 The Director takes the view that some £64 million, including fees and expenses, may be payable by the 1992 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 2.2.5 As set out in the Annex, it appears that an estimated £35.7 million would be required in respect of the *Nakhodka* Major Claims Fund. In this regard reference is made to section 4 below.

3 **Erika Major Claims Fund**

3.1 Summary information

Background information for consideration of the *Erika* Major Claims Fund is as follows:

Incident	<i>Erika</i>
Date of incident	12/12/99
Maximum amount of compensation payable by 1992 Fund (ie 135 million SDR - CLC limit)	£104 571 424
Maximum payable from General Fund (4 million SDR)	£3 380 680
Estimated General Fund balance 30/6/2000	£2 579 816
Total previously levied to Major Claims Fund	£40 000 000
Compensation paid to 30/6/2000	£0
Miscellaneous paid to 30/6/2000	£800 864
Possible total expenditure 1/7/2000 - 1/3/2002	£90 000 000

3.2 Analysis

- 3.2.1 It is estimated that the total payments by the 1992 Fund in respect of the *Erika* incident will reach the maximum amount payable from the General Fund (£3 380 680) during 2000 (cf document 92FUND/A.5/24, paragraph 2.1.2).
- 3.2.2 It is not possible to determine at this stage the total amount of the established claims. However, it is expected that the total amount of the claims submitted will exceed by far the amount available under the 1992 Fund Convention.

<2> The conversion should be made on the basis of the rate of exchange applicable on the date on which the shipowner constitutes the limitation fund. This fund has not yet been constituted.

- 3.2.3 A total of £40 million has been levied as contributions to the *Erika* Major Claims Fund, due on 1 September 2000.
- 3.2.4 The Director takes the view that some £90 million, including fees and expenses, may be payable by the 1992 Fund by 1 March 2002 (the date when any 2001 contributions would be receivable).
- 3.2.5 As set out in the Annex, it appears that an estimated £50.0 million would be required in respect of the *Erika* Major Claims Fund. In this regard reference is made to section 4 below.

4 Director's proposals

4.1 Sums required

- 4.1.1 The Director considers that contributions of £35.7 million will be required in 2001 to balance the *Nakhodka* Major Claims Fund and £50.0 million to balance the *Erika* Major Claims Fund (cf paragraphs 2.2.5 and 3.2.5).
- 4.1.2 The Director believes it is important that sufficient funds are available for the payment of claims arising out of the *Nakhodka* and *Erika* incidents. The sources of funds which can be considered for this purpose are the working capital, loans from balances on other Major Claims Funds and the levying of contributions. In the light of the position taken by the Assembly on previous occasions, the Director is of the view that the 1992 Fund should not take loans from banks and other financial institutions for this purpose.

4.2 The working capital

- 4.2.1 The Director has submitted a document to the Assembly in which he proposes an increase of the working capital from £15 million to £20 million (document 92FUND/A.5/23).
- 4.2.2 In order to ensure that funds are available to meet unforeseen payments and payments in respect of new incidents, the Director considers that the working capital should not be used for the payment of claims arising from the *Nakhodka* and *Erika* incidents over and above 4 million SDR.

4.3 Loans from balances on other Major Claims Funds

- 4.3.1 Financial Regulation 7.2(d) provides that monies in any Major Claims Funds may be used to make loans to the General Fund or other Major Claims Funds, to the extent that sufficient money is not available in the relevant funds. Regulations 7.1(a)(iv) and 7.2(b)(iii) provide that any such loans shall be repaid with interest.
- 4.3.2 There would not be any Major Claims Funds from which loans could be made.

4.4 Director's proposal

On the basis of these considerations, the Director proposes that levies in the form of 2000 contributions should be made to the *Nakhodka* Major Claims Fund for £35 million and to the *Erika* Major Claims Fund for £50 million.

4.5 Timing of levies

- 4.5.1 Internal Regulation 3.7, as amended by the Assembly at its 4th session (document 92FUND/A.4/32, paragraph 14.2), provides that unless the Assembly decides otherwise, payment of annual contributions shall be due on 1 March of the year following that in which the Assembly decides on the levy of annual contributions.

- 4.5.2 At its 1st session, the Assembly decided to introduce a deferred invoicing system. Under this system the Assembly fixes the total amount to be levied in contributions for a given calendar year, but may decide that only a specific lower 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).
- 4.5.3 The Director proposes that £17 million of the proposed levy to the *Nakhodka* Major Claims Fund and £25 million of the proposed levy to the *Erika* Major Claims Fund should be due for payment by 1 March 2001, that the remainder of each levy (£18 million) and (£25 million), respectively, should be deferred and that the Director should be authorised to decide whether to invoice all or part of the deferred levies.
- 4.5.4 The Director's proposals are summarised in the following table:

Levy	Total proposed levy £	Proposed payment by 01/03/01 £	Maximum deferred levy £
<i>Nakhodka</i> Major Claims Fund	35 000 000	17 000 000	18 000 000
<i>Erika</i> Major Claims Fund	50 000 000	25 000 000	25 000 000
Total	85 000 000	42 000 000	43 000 000

5 Action to be taken by the Assembly

The Assembly is invited, in accordance with Article 12 of the 1992 Fund Convention:

- (a) to take note of the information contained in this document;
- (b) to decide in respect of the assessment for 2000 contributions to the *Nakhodka* Major Claims Fund (paragraphs 2.2.5 and 4.4);
- (c) to decide in respect of the assessment for 2000 contributions to the *Erika* Major Claims Fund (paragraphs 3.2.5 and 4.4); and
- (d) to decide on the date of payment of 2000 contributions to these Major Claims Funds (paragraph 4.5.3).

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ANNEX

Major Claims Fund expenditure

(Figures in £ Sterling)

Incident	Date	Balance	Previous levies				Maximum	Payments by 31/12/99		Balance	Major	2000 Expenditure to 30/6/00		2000 Major Claims		Estimated	Possible Total	Projected
		Payable from General Fund 31/12/99	Contribution	Assembly	Date	Amount	Payable from General Fund: 4 million SDR	(including General Fund)		Payable from General Fund 31/12/99	Claims Fund Balance 31/12/99	Compensation	Miscellaneous	Fund Estimated Income		Major Claims Fund Balance 30/06/00	Expenditure compensation and miscellaneous 1/7/00-1/3/02	Major Claims Fund Surplus on Requirement up to 01/03/02
			Year	Session	Due			Compensation	Miscellaneous			Paid	Paid	Contributions	Interest			
								Paid by 31/12/99	Paid by 31/12/99			1/1/00-30/6/00	1/1/00-30/6/00	due in 2000	to 30/6/00			
Nakhodka	02/01/97		1996	2nd ext	01/09/97	7 000 000												
			1998	3rd	01/02/99	21 000 000												
					01/09/99	9 000 000												
			1999	4th	01/09/00	13 000 000												
						50 000 000		3 382 620	(4 936 220)		(105 372)							
			Authorised but not levied			01/09/98	30 000 000											
			Authorised but not levied			01/09/99	11 000 000											
Erika	12/12/99	3 379 981	2000	4th ext	01/09/00	40 000 000	3 380 680	0	(699)	3 379 981		0	(800 165)	40 000 000	0		(90 000 000)	(50 000 000)
											37 330 881					15 260 000	(154 000 000)	(85 740 000)