



## WORKING CAPITAL

### Note by the Director

<b>Summary:</b>	The Director proposes maintaining the working capital at £20 million.
<b>Action to be taken:</b>	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 £3.4 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**

In recent years the Assembly has taken the following decisions in respect of the working capital:

Assembly session	Working capital changed		Document	Paragraph
	From:	To:		
1st extraordinary		£7 million	92FUND/A/ES.1/22	18
2nd	£7 million	£9 million	92FUND/A.2/29	26
3rd	£9 million	£12 million	92FUND/A.3/27	24
4th	£12 million	£15 million	92FUND/A.4/32	28
5th	£15 million	£18 million	92FUND/A.5/28	27
6th	£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 £2.1 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 £567 000) 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).
- 3.2 At the time of the 8th session of the Assembly, 82 States will be Members of the 1992 Fund and a further four States will be Members by 4 July 2004. It is expected that in the next few years a considerable 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 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 normally made (August), the Assembly's decision to levy contributions is taken (usually in 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 normally be avoided. If the 1992 Fund had a relatively large working capital, it might in some cases be possible to use the working capital in the form of a loan to a Major Claims Fund which has to be established in respect of a major new incident rather than making a supplementary levy.

- 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 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.
- 3.6 In recent years there have been several incidents involving the 1992 Fund or the 1971 Fund in which there was no P & I insurer who could make payments promptly to individual claimants and small businesses. 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 cases where it is not possible to identify the owner of the tanker which caused a spill. In such cases involving the 1992 Fund, it will be imperative that the 1992 Fund is in a position to act promptly in order to mitigate undue financial hardship to victims. This is particularly important in respect of individuals and small businesses and generally in respect of victims in developing countries.

#### **4 Director's proposal**

The Director is of the view that the 1992 Fund should hold sufficient liquid funds to enable it to pay claims during 2004 without having to wait for the receipt of contributions in March 2005. The Director is nevertheless aware of the importance of limiting the financial burden on contributors. In his view, the working capital of the 1992 Fund should continue to be built up in stages. In the light of the situation in respect of pending incidents and since a significant levy will have to be made in respect of the *Prestige* Major Claims Fund for payment by 1 March 2004, the Director considers that the present level of the working capital should be sufficient for the time being. For this reason, he proposes that the working capital be maintained at £20 million.

#### **5 Action to be taken by the Assembly**

The Assembly is invited to consider the Director's proposal to maintain the working capital of the 1992 Fund at £20 million.

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