

**Twelfth session**

The Hague, 20-28 November 2013

Report of the Court on its Working Capital Fund***I. Introduction**

1. The Working Capital Fund (“WCF”) was established in accordance with Resolution ICC-ASP/1/Res.13 to ensure capital for the Court to meet short-term liquidity problems pending receipt of assessed contributions, as stipulated under Regulation 6.2 of the Financial Regulations and Rules of the Court. The Court’s WCF currently stands at €7.4 million. The Court reported to the Committee on Budget and Finance (“the Committee”) at its nineteenth session that to date, the Court has not resorted to the Working Capital Fund to resolve any liquidity problems associated with delays in receipts of assessed contributions.¹

2. However, given the Court’s growing financial needs in the future, there are some risks associated with the current level of the WCF which, if not managed, could result in the Court facing future liquidity problems. In 2011, the external auditors recommended that the Court review its working capital requirements and consider whether the current level of its WCF remains sufficient.²

3. At its nineteenth session, the Committee invited the Court to assess risks and, correspondingly, the current level of the WCF, in light of increasing financing needs in the future, associated with, for example, regular in-year payments for maintenance of the new premises, as well as the repayment of the host State loan and to report back to the Committee at its twentieth session.³

4. In the present report, the Court provides an overview of risks and the impact thereof on the Court given its current level of WCF.

II. Risks associated with the current level of Court’s Working Capital Fund

5. Were the risks associated with the current WCF to materialize, they could have an adverse impact on the Court’s daily activities. A negative cash flow could adversely affect the Court’s credibility. The current level of the WCF, if not managed carefully, might have consequences as regards payment of the Court’s staffing costs and other expenses involved in the discharge of the Court’s mandate in terms of conducting investigations and holding trials within agreed timeframes. In essence, a low level of WCF increases the risk of disruption to the Court’s operations and could expose the Court to reputational risks.

* Document previously issued as CBF/20/9.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eleventh session, The Hague, 14-22 November 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 32

² *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part C.1, para. 22

³ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 32.

6. The Court has identified four main factors which could affect the ability of the WCF to function as a last resort in the event of short-term liquidity problems pending receipt of assessed contributions. The following aspects should be taken into consideration when assessing the level at which the WCF should be set: (i) timely receipt of assessed contributions by the Court; (ii) change in contribution payment pattern; (iii) monthly average level of expenditure deriving from the size of the programme budget being implemented by the Court; and (iv) the total amount of contingency fund notifications submitted by the Court.

7. In addition to the factors highlighted in paragraph 6, the Court will have to consider the impact of the new scenario once the Court moves to the permanent premises. This is considered in this report in section G.

III. Delay in payment of assessed contributions by major donors

8. The Court relies on timely payments from States Parties to fund its day-to-day activities. This is particularly important considering that the assessed contributions of ten major donors amount to €84 million or 73 per cent of all assessed contributions to the Court (based on 2013 figures). While assessed contributions are payable within 30 days of receipt of the communication from the Registrar on the amount assessed in accordance with Regulation 5.6 rule 105.1 of the Financial Regulations and Rules of the Court, the payment history shows that this requirement is not met.

9. Since the start of the global financial crisis and the recent funding trend, the Court has observed significant delays in the payment of assessed contributions by large and small donors alike. If the trend continues, the Court could be in a position in which it is unable to fund its commitments out of the available assessed contributions and would have to access the WCF. As an example, by the end of 2012, the Court was already exposed to larger outstanding assessed contributions (6.9 per cent or €6.6 million) compared to the corresponding period in 2011 (0.3 per cent or €0.4 million). If the trend for 2012 were to be confirmed this year (i.e., same donors delaying payments), the Court would have an outstanding assessed contribution of €9 million (8 per cent of the total assessed contributions). This amount is quite significant should the Court need to resort to the WCF to fund its operating activities, given its current level. The Court would therefore be exposed to a very high risk.

10. In the worst case scenario, where some of the major donors delay payment by one month, based on their past payment history, and the payment pattern is pushed further downstream, the Court will risk failing to meet its short-term commitments out of the Working Capital Fund as it stands. A detailed simulation of cash flow projections show that if the payment pattern of States Parties, especially major donors, is delayed in the first quarter, the Court will experience a cash shortfall of €1.3 million and €4.5 million in January and February respectively, after applying the current WCF (based on 2013 figures) assuming same trend continues. In conclusion, it is clear that deferral of payment by several States Parties adversely affects the Court's cash flow and the level of the WCF should be raised accordingly to reduce the risk of business interruption.

IV. Change in contribution payment pattern

11. The financial crisis has affected most of the Court's Member States and has resulted in those Member States either delaying or not paying their assessed contributions in full. In recent years, the Court has seen a significant change in the payment pattern of assessed contributions from Member States. Some contributors who previously paid in one installment, usually in the first quarter of the year, have shown a trend towards paying in two installments spread over the budget year. This has an impact on the Court's cash projections, its cash operations needs and use of the WCF, particularly given that the current WCF represents less than one month of the Court's operating costs, currently around €9 million per month. If this trend is confirmed, an increase in the level of the WCF would reduce the risk of business interruption.

V. Working Capital Fund, annual budget and Court's expenditure trend

A. Working Capital Fund and expenditure trend

12. The Court's annual budget has increased, triggering a rise in monthly average expenditures, whereas there has been no corresponding increase in the level of the WCF. The Court's average monthly operating costs currently stand at approximately €9 million compared to WCF of €7.4 million, representing less than one month's expenditure. Current Court practice is not in line with most UN Common System organizations which maintain their Working Capital Fund at a level equal to four to six weeks of their operating expenses. The Court implemented this best practice at four-week level when the WCF was established.

B. Working Capital Fund and the Court's annual budget

13. Analysis of the Court's annual budget and WCF has shown that the WCF has not grown in line with the approved Annual Budget. By 2013 the WCF had shrunk by 0.7 per cent compared to the 2011 budget. If the trend continues, the WCF will not be sufficient to meet the Court's future obligations should it face liquidity problems.

Table 1: Working Capital Fund as a percentage of the Court's annual budget

<i>Years</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
WCF as a % of the Budget	7.1%	6.8%	6.4%
WCF budget in absolute terms	€7.4 m	€7.4 m	€7.4 m
Monthly average operational costs	€8.6 m	€9 m	€9.5 m
Desirable WCF (six weeks of operating costs)	€12.9 m (12.5%)	€13.6m (12.5%)	€14.3m (12.5%)
WCF Gap	€5.5 million	€6.2 million	€6.9 million

VI. Pre-financing of Contingency Fund activities

14. In recent years, the Court has seen increased use of the Contingency Fund for activities relating to situations that were unforeseen during the budget preparations. Such activities need to be pre-financed using the regular budget until it is determined whether Contingency Funds can be accessed, which normally happens at year-end. Pre-financing these activities increases the Court's regular monthly operating costs. If these Contingency activities continue to grow, the Court will face financial difficulties given the current level of the WCF.

VII. Permanent Premises

A. Future regular maintenance and operating costs of the new Court's premises

15. Once the Court's permanent premises have been completed and handed over to Court for use, the Court will start to incur increased costs associated with the operation and maintenance of those premises. Those costs are currently estimated to be €3.3 million per year, a net additional increase of between €0.46 and €0.70 in comparison with current Court premises operation and maintenance costs. The costs will result in additional cash outflows for the Court. They will be budgeted for in the annual budget. However, any delay or non-payment of the assessed contributions will put the Court under additional financial strain.

B. Repayments of the Host State loan

16. From 2016 onwards the Court will be contractually obliged to make repayments on the host State loan. The repayment comprises a portion of the loan and the associated interest. The cost of the loan interest payment is projected to be €3.6 million in 2016 and the capital and interest repayment, €6.9 million per year thereafter until 2047, payable on 1 February of each calendar year. These additional costs to the annual budget represent a significant cash outlay for the Court, and a significant proportion of the Court's current WCF reserve. In the event of any delay by Member States in paying their assessed contributions to the loan, the Court will have to fund these costs out of the WCF until the contributions are received from those participating Member States in arrears. The current level of the WCF, which as already mentioned, is lower than the Court's monthly operating expenses, may not sustain this increase in additional expenditure if the WCF is not reviewed upwards.

Table 2: Working Capital Fund and Repayment of Host State loan

<i>Years</i>	<i>2016</i>	<i>2017</i>	<i>2018 onwards</i>
Additional WCF available to cover repayment of host State loan	0	0	0
Costs repayments of host State loan 1 February of each calendar year*	€3.6m	€6.9m	€6.9 m
Desirable WCF to cover repayment of host State Loan	€0.36 m (10%)	€0.69m (10%)	€0.69 m (10%)

* Note the average costs do not include maintenance and operating costs of the new Court's premises as identified above.

VIII. Conclusions

17. Although the Court's objective of establishing a WCF has been met, it is now facing increasing needs which may put its day-to-day activities at financial and operational risk.

18. The Court would like to request that the current WCF issues highlighted be addressed and an increase approved to bring the WCF into line with the Court's current financial and operational needs, estimated at four to six weeks of its average operational costs. This translates into an increase from €7.4 million to €9.6 million (four-weeks approach), should the Assembly of States Parties decide to maintain the original conservative level of the WCF.

19. In 2016, the Court will be obliged to repay the host State loan. There are currently no funds to cover this future additional expenditure, and the increase in costs has not been taken into account in the current level of the WCF. Although these costs are expected to be funded from contributions from States Parties, timing differences between the loan repayment, scheduled for 1 February of each year, and actual receipt of contributions may result in negative cash flow. Accordingly, a mechanism to manage the liquidity corresponding to the Court's obligation to repay the host State loan, such as an ad hoc WCF, will need to be created, as indicated in Table 2.