



ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

Note by the Director

Summary:	The need for 2006 contributions to Major Claims Funds is examined. It is proposed that there should be no levies of 2006 contributions in respect of the three remaining Major Claims Funds, ie the <i>Vistabella</i> , <i>Nissos Amorgos</i> and <i>Pontoon 300</i> Major Claims Funds.
Action to be taken:	Decide on levies of 2006 contributions to the three remaining Major Claims Funds.

1 **Introduction**

- 1.1 Article 12.1 of the 1971 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 1971 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.
- 1.2 The 1971 Fund's expenditure consists of:
- (a) costs and expenses of the administration of the 1971 Fund, and any deficit from preceding years;
 - (b) payments of claims and claims-related expenditure up to 1 million SDR per incident (minor claims); and
 - (c) payments of claims and claim-related expenditure to the extent that the aggregate amount of the payments in respect of any one incident is in excess of 1 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 Since the 1971 Fund Convention has ceased to be in force it is not possible to levy further contributions to the General Fund, the balance of which is dealt with in the 2007 budget contained in a separate document (document 71FUND/AC.20/16). 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 71FUND/AC.20/5, Annex V, Schedule II) and to the various documents relating to incidents submitted to the 20th session of the Administrative Council.
- 1.6 It should be noted that any estimate in this document of amounts to be paid by the 1971 Fund in compensation has been made solely for the purpose of the assessment of annual contributions, without prejudice to the position of the 1971 Fund in respect of the claims.
- 1.7 It should also be noted that, unless stated otherwise, information on the payments of compensation and claims-related expenditure reflects the situation as at 30 June 2006.

2 **Vistabella Major Claims Fund**

2.1 Summary information

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

Incident	<i>Vistabella</i>
Place of incident	Caribbean
Date of incident	07/03/91
	Pound Sterling
Maximum amount of compensation payable by 1971 Fund	<i>not an issue</i>
Compensation paid by the 1971 Fund to 30 June 2006	1 002 512
Possible total compensation payable by 1971 Fund 1/7/06 – 1/3/08	0
Claims-related expenses paid by 1971 Fund up to 31/12/05	272 980
Claims-related expenses paid by 1971 Fund 1/1/06 – 30/6/06	0
Possible claims-related expenses payable by 1971 Fund 1/7/06 – 1/3/08	50 000
Maximum paid from General Fund (1 million SDR)	743 092
Total previously levied to Major Claims Fund	600 000
Estimated balance on <i>Vistabella</i> Major Claims Fund as at 30 June 2006	75 000

2.2 Analysis

- 2.2.1 During 1994 the total payments by the 1971 Fund in respect of the *Vistabella* incident reached the maximum amount payable from the General Fund, ie 1 million SDR (£743 092).
- 2.2.2 The 1971 Fund has taken legal action against the owner of the *Vistabella* and his insurer for the purpose of recovering the amount of compensation paid by the Fund. The insurer was ordered by the competent Court of first instance to reimburse the 1971 Fund the FFfr8.2 million or €1.25 million (£865 000) paid by the Fund in compensation plus interest. The insurer appealed against the judgement. In 2004 the Court of Appeal confirmed the judgement. The insurer did not appeal to the Court of Cassation. The 1971 Fund is taking steps to enforce the judgement.
- 2.2.3 In view of the uncertainty in respect of the legal proceedings referred to above and the relatively small amounts involved, the governing bodies had up to 2002 decided that the levy of annual contributions to the *Vistabella* Major Claims Fund should be postponed until the final total cost of the incident to the 1971 Fund could be established. Payments in excess of 1 million SDR were made from money borrowed from the General Fund. This loan was repaid with interest to the General Fund when contributions to the *Vistabella* Major Claims Fund were levied and received (cf Financial Regulations 7.1(c)(iv)).
- 2.2.4 In the interest of making progress towards winding up the 1971 Fund, the Administrative Council decided, at its 12th session in October 2003, to levy contributions to the *Vistabella* Major Claims Fund for £600 000 for payment by 1 March 2004 to cover the deficit on that Major Claims Fund and the costs resulting from the legal proceedings (document 71FUND/AC.12/22, paragraph 22.2).

- 2.2.5 All established claims totalling £1 002 512 have been paid. The 1971 Fund will therefore only incur certain fees relating to the enforcement of the Court of Appeal's judgement.
- 2.2.6 As at 30 June 2006 there was a balance on the *Vistabella* Major Claims Fund of some £75 000. It is estimated that there will be a balance on the *Vistabella* Major Claims Fund of approximately £25 000 as at 1 March 2008 (the date when any 2007 contributions would be receivable) after payments of fees and other expenses.
- 2.2.7 The Director considers it unlikely that any further contributions will have to be levied to the *Vistabella* Major Claims Fund.

3 *Nissos Amorgos* Major Claims Fund

3.1 Summary information

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

Incident	<i>Nissos Amorgos</i>
Place of incident	Venezuela
Date of incident	28/02/97
	Pound Sterling
Maximum amount of compensation payable by 1971 Fund US\$83 221 800 – US\$7 274 268 = US\$75 947 532 (ie 60 million SDR – CLC limit)	41 061 598 ^{<1>}
Compensation paid by the 1971 Fund to 30 June 2006	10 979 550
Possible total compensation payable by 1971 Fund 1/7/06 – 1/3/08	1 000 000
Claims-related expenses paid by 1971 Fund up to 31/12/05	1 385 417
Claims-related expenses paid by 1971 Fund 1/1/06 – 30/6/06	6 523
Possible claims-related expenses payable by 1971 Fund 1/7/06 – 1/3/08	100 000
Maximum paid from General Fund (1 million SDR)	849 762
Total previously levied to Major Claims Fund	13 500 000
Estimated balance on <i>Nissos Amorgos</i> Major Claims Fund as at 30 June 2006	2 861 000

3.2 Analysis

- 3.2.1 The maximum amount payable from the General Fund (£849 762) has been used.
- 3.2.2 A total of £13.5 million has been levied as contributions to the *Nissos Amorgos* Major Claims Fund. There was a surplus on this Major Claims Fund of some £2.8 million as at 31 December 2005 (document 71FUND/AC.20/5, Annex V, Statement IV.3).
- 3.2.3 At its 14th session, held in May 2004, the Administrative Council authorised the Director to increase the level of payments from 65% to 100% of the established claims, once the Director had been given the assurance by the Republic of Venezuela that the Republic's understanding of the meaning of 'standing last in the queue' coincided with that of the Fund (document 71FUND/AC.14/4, paragraph 3.1.54). Such assurance was given. The level of payments was therefore increased to 100% in August 2004.
- 3.2.4 It is not possible to estimate at this stage the total amount of the established claims. The settled claims total some US\$25 million (£13.5 million), all of which have been paid.
- 3.2.5 The total amount of the outstanding claims in court by far exceeds the maximum amount payable under the 1971 Fund Convention of just under US\$76 million (£41 million). Some of these

^{<1>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2006, ie £1=US\$1.8496

claims are pending in the Supreme Court of Venezuela. The outcome of these proceedings is uncertain and there would be no possibility to appeal against the Supreme Court's judgements.

- 3.2.6 It is estimated that the balance on the *Nissos Amorgos* Major Claims Fund was some £2.8 million as at 30 June 2006.
- 3.2.7 The 1971 Fund may have to pay indemnification of the shipowner amounting to some US\$1.8 million (£970 000) and £100 000 in claims related costs by 1 March 2008 (the date when any 2007 contributions would be receivable).
- 3.2.8 As set out in the Annex, it appears that the amount available in the Major Claims Fund would be sufficient to cover the anticipated payments. The calculations do not include interest that will be earned on the assets of the Major Claims Fund for the period 1 July 2006 to 1 March 2008. The Director proposes therefore that no levy be made in respect of this Major Claims Fund.
- 3.2.9 However, if the courts were to accept the outstanding claims, which the 1971 Fund considers inadmissible, a further levy would be required in the future.

4 **Pontoon 300 Major Claims Fund**

4.1 Summary information

Background information for consideration of the *Pontoon 300* Major Claims Fund is as follows:

Incident	<i>Pontoon 300</i>
Place of incident	United Arab Emirates
Date of incident	07/01/98
	Pound Sterling
Maximum amount of compensation payable by 1971 Fund	48 146 365
Compensation paid by the 1971 Fund to 30 June 2006	817 208
Possible total compensation payable by 1971 Fund 1/7/06 – 1/3/08	456 000
Claims-related expenses paid by 1971 Fund up to 31/12/05	629 123
Claims-related expenses paid by 1971 Fund 1/1/06 – 30/6/06	20 526
Possible-claims related expenses payable by 1971 Fund 1/7/06 – 1/3/08	50 000
Maximum paid from General Fund (1 million SDR)	819 583
Total previously levied to Major Claims Fund	3 000 000
Estimated balance on <i>Pontoon 300</i> Major Claims Fund as at 30 June 2006	2 621 000

4.2 Analysis

- 4.2.1 The maximum amount payable from the General Fund incident (£819 583) has been used. The Administrative Council decided at its October 2003 session to levy £3 million to the *Pontoon 300* Major Claims Fund for payment by 1 March 2004 (document 71FUND/AC.12/22, paragraph 22.2).
- 4.2.2 Claims have been presented for a total amount of some Dhs199 million (£29.3 million). However, in the 1971 Fund's view, claims totaling Dhs192 million (£28.3 million) are time-barred and in any event claims totalling some Dhs130 million (£19 million) are considered inadmissible under the 1971 Fund Convention.
- 4.2.3 It is not possible to estimate at this stage the total amount of the established claims. The Director takes the view that a further Dhs 3.1 million (£456 000)^{<2>} would be payable. This amount

^{<2>} Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2006, ie £1=UAE Dirham 6.7932

includes payment of the balance of 25% of Dhs.6.3 million (£927 398) in respect of the settled claims, payment of which is currently limited to 75% of the settlement amounts.

- 4.2.4 It is estimated that there was a surplus on the *Pontoon 300* Major Claims Fund of some £2.6 million as at 30 June 2006.
- 4.2.5 The Director takes the view that some £506 000, including claims-related expenses, may be payable by the 1971 Fund by 1 March 2008 (the date when any 2007 contributions would be receivable).
- 4.2.6 As set out in the Annex, it appears that the amount available in this Major Claims Fund would be sufficient to cover the anticipated payments for the period up to 1 March 2008. The Director proposes therefore that no levy be made in respect of this Major Claims Fund.
- 4.2.7 However, if the courts were to accept the outstanding claims, which the Fund considers inadmissible or time-barred, a further levy would be required in the future.

5 Director's proposals

The Director proposes that no levies should be made as 2006 contributions in respect of the three remaining Major Claims Funds, ie the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* Major Claims Funds (paragraphs 2.2.7, 3.2.8 and 4.2.6).

6 Action to be taken by the Administrative Council

The Administrative Council is invited, in accordance with Article 12 of the 1971 Fund Convention:

- (a) to take note of the information contained in this document; and
- (b) to decide on the Director's proposal that there should be no levies of 2006 contributions in respect of the *Vistabella*, *Nissos Amorgos* and *Pontoon 300* Major Claims Funds (paragraphs 2.2.7, 3.2.8 and 4.2.6).

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ANNEX

Major Claims Funds expenditure

(Figures in Pounds Sterling)

Incident	Date	Previous levies/reimbursements				Maximum paid from General Fund: 1 million SDR	Payments by 31/12/05 (including General Fund)		Balance 31/12/05	2006 Expenditure to 30/6/06		2006 Income to 30/6/06		Estimated Balance 30/06/06	Possible Total Expenditure 1/7/06-1/3/08	Projected Surplus (excluding interest income wef 01.07.06) 01/03/08
		Contribution Year	Assembly/ Administrative Council Session	Date Due	Amount		Compensation paid by 31/12/05	Claims-related expenses paid by 31/12/05		Compensation/ Indemnification paid to 30/6/06	Claims-related expenses paid to 30/6/06	Contributions due in 2006	Estimated Interest to 30/6/06			
Vistabella	07/03/91	2003	12th	01/03/04	600,000	743,092	(1,002,512)	(272,980)	73,396	0	0	0	1,400	75,000	(50,000)	25,000
Nissos Amorgos	28/02/97	1997	20th	01/02/98	2,000,000	849,762	(10,979,550)	(1,385,417)	2,813,426	0	(6,523)	0	55,000	2,861,000	(1,100,000)	1,761,000
		2003	12th	01/03/04	11,500,000											
					13,500,000											
				01/09/98	3,000,000											
				01/09/01	25,000,000											
		01/09/02	21,000,000													
		01/09/03	21,000,000													
Pontoon 300	07/01/98	2003	12th	01/03/04	3,000,000	819,583	(817,208)	(629,123)	2,592,385	0	(20,526)	0	50,000	2,621,000	(506,000)	2,115,000
									5,479,207					5,557,000	(1,656,000)	3,901,000