

 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	<b>Agenda item: 9</b>	IOPC/OCT10/9/3/3	
	Original: ENGLISH	1 September 2010	
	1992 Fund Assembly	<b>92A15</b>	
	1992 Fund Executive Committee	<b>92EC49</b>	
	Supplementary Fund Assembly	<b>SA6</b>	
1971 Fund Administrative Council	<b>71AC25</b>	•	

## ASSESSMENT OF CONTRIBUTIONS TO MAJOR CLAIMS FUNDS

### 1971 FUND

#### Note by the Director

<b>Summary:</b>	As indicated in document IOPC/OCT10/9/3, the need for 2010 contributions to Major Claims Funds is examined. It is proposed that there should be no levies of 2010 Contributions payable in 2011 in respect of the two remaining Major Claims Funds, ie the <i>Vistabella</i> and <i>Nissos Amorgos</i> Major Claims Funds.
<b>Action to be taken:</b>	<u>1971 Fund Administrative Council</u>  Decide on levies of 2010 Contributions to the two 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 1971 Fund Administrative Council acting on behalf of 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<sup><1></sup> per incident (minor claims); and
  - (c) payments of claims and claims-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)).

<sup><1></sup> The SDR (Special Drawing Rights) which is the unit of account used in the Conventions referred to in paragraph 1.2 is valued on the basis of a basket of key international currencies and serves as the unit of account of the International Monetary Fund (IMF) and a number of other intergovernmental organisations.

- 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 2010 budget contained in a separate document (document IOPC/OCT10/9/2/3). 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 2009 Financial Statements (document IOPC/OCT10/5/6/3, Annex V, Schedule II) and to the various documents relating to incidents submitted for consideration by the 1971 Fund Administrative Council at its 25th session (see document IOPC/OCT10/3/1).
- 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 2010**.

## 2 Vistabella Major Claims Fund

### 2.1 Summary information

Background information in respect 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 up to 31/12/09	1 002 512
Compensation paid by the 1971 Fund 01/01/10 – 30/06/10	0
Possible total compensation payable by 1971 Fund 01/07/10 – 01/03/12	<b>0</b>
Claims-related expenses paid by 1971 Fund up to 31/12/09	311 353
Claims-related expenses paid by 1971 Fund 01/01/10 – 30/06/10	2 601
Possible claims-related expenses payable by 1971 Fund 01/07/10 – 01/03/12	<b>10 000</b>
Maximum payable 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 2010 ( <b>see Annex</b> )	39 000

### 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<sup><2></sup> (£1 023 500) 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 commenced summary proceedings against the insurer to enforce the judgement in Trinidad and Tobago, where the insurer is based. In March 2008, the Court delivered a judgement in the 1971 Fund's favour. The insurer has appealed against this judgement to the Court of Appeal.

<sup><2></sup> Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2010, ie €1=£0.8188

- 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.
- 2.2.4 In the interest of making progress towards winding up the 1971 Fund, the 1971 Fund 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). The loan referred to in paragraph 2.2.3 above was then repaid with interest to the General Fund when contributions to the *Vistabella* Major Claims Fund were received (cf Financial Regulations 7.1(c) (iv)).
- 2.2.5 All established claims totalling £1 002 512 have been paid. The 1971 Fund will therefore only incur legal fees relating to the enforcement of the Court of Appeal's judgement.
- 2.2.6 As at 30 June 2010 there was a balance on the *Vistabella* Major Claims Fund of some £39 000. It is estimated that there will be a nil balance on the *Vistabella* Major Claims Fund as at 1 March 2012 (the date when any 2011 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.
- 2.2.8 Should the amount to be paid during the period 1 July 2010 – 1 March 2012 exceed the Director's estimate of £10 000, any deficit that may arise could be covered by a loan from the General Fund under Financial Regulation 7.1(c) (iv), to be repaid with interest.

### 3 *Nissos Amorgos* Major Claims Fund

#### 3.1 Summary information

Background information in respect 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)	50 763 673 <sup>&lt;3&gt;</sup>
Compensation paid by the 1971 Fund up to 31/12/09	10 979 550
Compensation paid by the 1971 Fund 01/01/10 to 30/06/10	0
Possible total indemnification payable by 1971 Fund 01/07/10 – 01/03/12	<b>1 200 000</b>
Claims-related expenses paid by 1971 Fund up to 31/12/09	1 435 145
Claims-related expenses paid by 1971 Fund 01/01/10 – 30/06/10	24 770
Possible claims-related expenses payable by 1971 Fund 01/07/10 – 01/03/12	<b>50 000</b>
Maximum payable 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 2010 (see Annex)	3 300 000

#### 3.2 Analysis

- 3.2.1 The maximum amount payable from the General Fund (£849 762) in respect of the *Nissos Amorgos* incident was reached during 2001.

<sup><3></sup> Conversion of currency has been made on the basis of the rate of exchange applicable on 30 June 2010, ie £1=US\$1.4961.

- 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 £3.3 million as at 31 December 2009 (document IOPC/OCT10/5/6/3, Annex V, Statement II.2).
- 3.2.3 At its 14th session, held in May 2004, the 1971 Fund 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 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 (£50 million). Some of these 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 is some £3.3 million as at 30 June 2010.
- 3.2.7 The 1971 Fund may have to pay indemnification of the shipowner amounting to some US\$1.8 million (£1 200 000) and some £50 000 in claims-related costs by 1 March 2012 (the date when any 2011 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 which will be earned on the assets of the Major Claims Fund for the period 1 July 2010 to 1 March 2012.
- 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 Director's proposals**

The Director proposes that no levy should be made for 2010 Contributions in respect of the two remaining Major Claims Funds, ie the *Vistabella* and *Nissos Amorgos* Major Claims Funds (paragraphs 2.2.7-2.2.8 and 3.2.8-3.2.9).

#### **5 Action to be taken**

##### 1971 Fund Administrative Council

The 1971 Fund 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 for 2010 Contributions in respect of the *Vistabella* and *Nissos Amorgos* Major Claims Funds (paragraph 4).

ANNEX

**Estimated Major Claims Funds expenditure**

*(Figures in Pounds Sterling)*

Incident	Date	Previous levies/reimbursements				Maximum paid from General Fund: 1 million SDR	Payments by 31/12/09 (including General Fund)		Balance 31/12/09	2010 Expenditure to 30/06/10		2010 Income to 30/06/10		Estimated Balance 30/06/10	Possible Total Expenditure 01/07/10-01/03/12	Projected Surplus (excluding interest income wef 01/07/10) 01/03/12
		Contribution Year	Assembly/ Administrative Council Session	Date Due	Amount		Compensation paid by 31/12/09	Claims-related expenses paid by 31/12/09		Compensation/ Indemnification paid to 30/06/10	Claims-related expenses paid to 30/06/10	Contributions due in 2010	Estimated Interest to 30/06/10			
Vistabella	07/03/91	2003	12th	01/03/04	600 000	743 092	(1 002 512)	(311 353)	41 862	0	(2 601)	0	95	39 000	(10 000)	29 000
Nissos Amorgos	28/02/97	1997	20th	01/02/98	2 000 000	849 762	(10 979 550)	(1 435 145)	3 306 999	0	(24 770)	0	9 000	3 292 000	(1 250 000)	2 042 000
		2003	12th	01/03/04	11 500 000											
					13 500 000											
			<i>Authorised but not levied</i>	<i>01/09/98</i>	<i>3 000 000</i>											
			<i>Authorised but not levied</i>	<i>01/09/01</i>	<i>25 000 000</i>											
	<i>Authorised but not levied</i>	<i>01/09/02</i>	<i>21 000 000</i>													
				<i>01/09/03</i>	<i>21 000 000</i>											
									<b>3 348 861</b>					<b>3 331 000</b>	(1 260 000)	<b>2 071 000</b>

Figures in brackets show outflow.