



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/APR17/3/5/1	
<b>Date</b>	22 September 2017	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92A22	
<b>1992 Fund Executive Committee</b>	92EC69	●
<b>Supplementary Fund Assembly</b>	SA14	

## INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

### HEBEI SPIRIT – level of payments

#### Note by the Secretariat

**Objective of document:** To provide the 1992 Fund Executive Committee with the latest information regarding the amounts claimed in court and settled so that it can decide as to the level of payments regarding this incident.

**Summary:** *Compensation paid and available*

The total amount available for compensation under the 1992 Fund Convention is SDR 203 million or KRW 321.6 billion (£226 million), including the amount paid by the Assuranceöreningen Skuld (Gjensidig) (Skuld Club) in accordance with the provisions of the 1992 Civil Liability Convention (1992 CLC). The Skuld Club had paid KRW 186.8 billion<sup><1></sup> (£132.7 million). The 1992 Fund has paid KRW 65 billion (£39.7 million) to the Korean Government in respect of 51 606 subrogated claims, corresponding to 60% of the established losses. The 1992 Fund has therefore KRW 70 billion (£47 million) available to pay compensation in respect of this incident.

#### *Level of payments*

In April 2016, the 1992 Fund Executive Committee decided to increase the level of payments from 50% to 60% of the established losses taking into account the number of claims pending at that time and the amount already awarded for the finalised claims. The initial level of payments had been set at 35% in June 2008 and increased to 50% in October 2015.

As at 22 September 2017, out of the 127 483 claims submitted in court, 127 197 (99.8% of the total claims submitted) had been finalised. The total amount awarded for these claims is KRW 432 billion (£292 million). There are still 286 claims pending (0.2% of the total claims submitted) totalling KRW 109 billion (£74 million)<sup><2></sup>.

<sup><1></sup> The amount for which the owner of the *Hebei Spirit* is liable has not yet been established. The Skuld Club is basing its provisional calculation of the limitation amount on the exchange rate at 18 November 2008, the date on which the Letter of Undertaking was deposited into the Limitation Court. The limitation amount in Korean won will be fixed by the Korean Courts when all legal proceedings have been finalised.

<sup><2></sup> The exchange rate used in this document £1 = KRW 1 482.94 except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

<b>Action to be taken:</b>	<p>The Director considers that there is still a certain level of uncertainty in respect of the pending claims and therefore recommends that the Executive Committee maintain the level of payments at 60%. The Director also recommends that this level of payments be reviewed at the next session of the Executive Committee.</p> <p><u>1992 Fund Executive Committee</u></p> <p>(a) Take note of the information contained in this document;</p> <p>(b) decide whether to maintain the level of payments at 60% of the established losses; and</p> <p>(c) decide whether to review the level of payments at its next session.</p>
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## 1 Level of payments

- 1.1 The total amount available for compensation under the 1992 Fund Convention is SDR 203 million or KRW 321.6 billion. This amount includes the amount paid by the Skuld Club in accordance with the provisions of the 1992 Civil Liability Convention (1992 CLC).
- 1.2 The following table provides estimates of the total amount of losses in respect of this incident and the percentages of the amount claimed/awarded, taking into account the amount available for compensation.

Scenarios	Amount (KRW billion)	Amount (£ million)	1992 Fund's limit (KRW 321.6 billion) as a percentage of the amount claimed/awarded
1. Claimed in court and amounts settled (paragraph 1.4 below)	542	292	59%
2. Amounts settled (127 197 claims) plus amounts awarded by the Limitation Court for the pending claims (286 claims) (paragraph 1.5 below)	433	365	74%

- 1.3 Based on the estimates set out in the table above, the following two scenarios can be envisaged.

### *Scenario 1*

- 1.4 The amount still claimed in court (i.e. KRW 109 billion) plus the amounts already awarded by the Courts (KRW 432 billion) provide a total exposure of some KRW 542 billion. The amount available under the 1992 Conventions (KRW 321.6 billion) would correspond to 59% of the total exposure.

### *Scenario 2*

- 1.5 Some 127 197 claims, totalling KRW 432 billion, have been finalised by judgment and reconciliation through the Korean Courts or have been withdrawn. These decisions have become final. If the amounts which the Courts may award to the 286 pending claims were to be estimated, based on the figures awarded by the Limitation Court (i.e. KRW 1.2 billion) for these claims, it would provide a total exposure of some KRW 433 billion. The amount available under the 1992 Conventions would correspond to 74% of the total exposure.

**2 Director's considerations**

- 2.1 The total amount available for compensation under the Conventions is KRW 321.6 billion (£217 million). The Skuld Club has paid KRW 186.8 billion (£126 million). The 1992 Fund has paid KRW 65 billion (£39.7 million) to the Korean Government in respect of 73 044 subrogated payments, corresponding to 60% of the established losses. The 1992 Fund has therefore KRW 70 billion (£47 million) available to pay compensation in respect of this incident.
- 2.2 It is clear at this stage that the total amount of compensation available will have to be paid and that therefore the 1992 Fund will have to pay KRW 70 billion (£47 million), which is still available in compensation.
- 2.3 Some 99.8% of the claims submitted (127 197 claims) have been finalised by judgment and reconciliation through the Korean Courts or have been withdrawn. The Korean Courts have followed the 1992 Fund's admissibility criteria so far. It is therefore to be expected that the Courts will continue the same pattern in respect of a remaining 286 unresolved claims (0.2% of the total claims submitted).
- 2.4 The Director considers that it is unlikely that the Korean Courts will award amounts higher than those awarded by the Limitation Court but that it would be prudent to maintain a safety margin to protect the 1992 Fund from an overpayment situation.
- 2.5 The Korean Government is, in accordance with the provisions of the Special Law, compensating all claimants at 100% of the established losses. The Korean Government is then subrogating these claims and receiving compensation from the 1992 Fund at the level of payments decided by the 1992 Fund Executive Committee. The Korean Government is in fact the only claimant affected by the level of payments.
- 2.6 The Director therefore recommends that the 1992 Fund Executive Committee maintain the level of payments at 60% of the established losses. The Director also recommends that this level of payments be reviewed at the next session of the 1992 Fund Executive Committee.

**3 Action to be taken**

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to:

- (a) take note of the information contained in this document;
  - (b) decide whether to maintain the level of payments at 60% of the established losses; and
  - (c) decide whether to review the level of payments at its next session.
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