



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/OCT17/3/5/2	
<b>Date</b>	11 October 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

#### Advance payment to the Korean Government

#### Note by the Secretariat

<b>Objective of document:</b>	To consider the proposal by the Director to make an advance payment to the Korean Government.
<b>Summary:</b>	<p>As at 22 August 2017, approximately 99.8% of all claims submitted in the incident, have been resolved by the Korean Courts either by judgments or mediation, or have been withdrawn by claimants. The remaining claims have all been assessed and it is evident that the 1992 Fund will pay all of the amount available for compensation (i.e. SDR 203 million) in settlement of the claims.</p> <p>On the basis of the Second Cooperation Agreement and under the Special Law in respect of the <i>Hebei Spirit</i> incident, the Republic of Korea pays compensation to all claimants in excess of the Skuld Club's and the 1992 Fund's limits, and as a consequence, the Korean Government has been paying all claimants the full established amount of their claims, i.e. at 100%, and has subrogated those claims against the 1992 Fund.</p> <p>In view of the limited number of claims outstanding, and the desire for the Korean Government to continue to pay all claimants the full established amount of their claims, the Director proposes to make an advance payment of KRW 40 billion to the Korean Government to enable the prompt reimbursement of the remaining outstanding claims.</p>
<b>Action to be taken:</b>	<p><u>1992 Fund Executive Committee</u></p> <p>Decide whether to authorise the Director to make an advance payment of KRW 40 billion to the Korean Government.</p>

### 1 **Background information**

- 1.1 The total amount available for compensation for this incident is SDR 203 million, corresponding to KRW 322 billion.
- 1.2 This amount is insufficient to pay all established claims in full since the total amount awarded so far by the Korean Courts is KRW 415 billion, with some 286 claims still pending in court. The remaining claims have all been assessed and it is evident that the 1992 Fund will pay the total amount available for compensation (i.e. SDR 203 million) in settlement of the claims.

- 1.3 The total share of the compensation payable by the Skuld Club for this incident under the 1992 Civil Liability Convention (1992 CLC) is SDR 89.77 million. The Skuld Club has so far paid a total of KRW 186.8 billion at 100% of the assessed or established claim amounts, on the basis of the Second Cooperation Agreement concluded between the Skuld Club and the Korean Government.
- 1.4 On the basis of the Second Cooperation Agreement and under the Special Law in respect of the *Hebei Spirit* incident which entered into force in June 2008, the Korean Government undertook to pay compensation to all claimants in excess of the Skuld Club's and the 1992 Fund's limits, and as a consequence, the Korean Government has been paying all claimants the full established amount of their claims, i.e. at 100%, and has subrogated those claims against the 1992 Fund.
- 1.5 In July 2015, the 1992 Fund started making compensation payments to the Korean Government in respect of subrogated claims. As at 22 August 2017, the 1992 Fund has made compensation payments totalling KRW 65 billion to the Korean Government in respect of 73 044 subrogated claims. These payments have been made at 60% of the amount of the established losses, which is the level of payments decided upon by the Executive Committee at its April 2016 session. Since the Korean Government is paying compensation at 100%, it means that in practical terms, the Korean Government is the only claimant receiving compensation on a pro-rated basis.
- 1.6 As at 22 August 2017 about 99.8% of the claims submitted have been resolved by the Korean Courts either by judgments or mediation, or have been withdrawn by claimants.

## **2 Director's considerations**

- 2.1 In view of the limited number of claims outstanding, and the desire for the Korean Government to continue to pay all claimants the full established amount of their claims, the Director proposes to approach the future handling of the case in the following manner:
- (1) The 1992 Fund will (subject to the approval of the Executive Committee) pay to the Korean Government an advance payment of KRW 40 billion in return for a receipt and release document acknowledging the sum as an advance reimbursement out of the total amount of compensation payable by the 1992 Fund under the 1992 Fund Convention, in order to enable the Korean Government to pay outstanding claims at the full established amount of the claims;
  - (2) The 1992 Fund will continue defending itself before the Korean Courts and will continue to pay for the legal costs of doing so and will continue handling the cases in court until the last court proceedings in the Republic of Korea have been fully and finally settled, and will continue to cooperate closely with the Korean Government as has been the case for the last 10 years;
  - (3) The 1992 Fund will continue operating the management of the claims procedure with the Korean Government in exactly the same manner as it has done before, with both parties continuing with the administrative tasks necessary to complete the assessment and matching of all claims;
  - (4) Upon receipt of the payment by the 1992 Fund, the Korean Government will continue making advance payments to the victims submitting the necessary evidence of payment for the purpose of the payment procedure, until the final balancing account at the end of the case is completed;
  - (5) The Fund would withhold approximately KRW 22 billion of the Fund balance as a safety margin against the unlikely event that the Korean Courts make an unexpectedly large award for any of the few remaining claims, and then to use this safety margin to pay any remaining outstanding claims after the Korean Government has utilised the KRW 40 billion.

- 2.2 It is clear that the 1992 Fund will pay the total amount available for compensation in respect of this incident and that the total amount awarded by the Korean Courts exceeds the 1992 Fund limit for this incident. The Executive Committee has set the level of payments at 60%, to ensure that the 1992 Fund complies with the obligation placed on it to treat all claimants equally.
- 2.3 The Director notes that the proposed advance payment to the Korean Government will still require the Korean Government to release the 1992 Fund in respect of that payment, and to issue the relevant receipt and release. The advantage of an advance payment, is to speed up the payment process, thereby allowing the Korean Government to allocate the available funds to claimants quicker than at present.
- 2.3 The level of payments can remain at 60% for the time being and until all claims have been established by the Korean Courts. The Executive Committee will then be able to establish a final level of payments for this incident to ensure that the 1992 Fund Convention is applied correctly.
- 2.4 Given the relatively small number of claims outstanding in court, the consistent manner in which the Korean Courts have supported the 1992 Fund assessment criteria, combined with the safety margin retained in the unlikely event of large judgments arising from the Courts; the Director recommends that he be authorised to make an advance payment of KRW 40 billion to the Korean Government as he believes that such an advance payment will more readily allow claimants to be paid swiftly.

**3 Action to be taken**

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to decide whether to authorise the Director to make an advance payment of KRW 40 billion to the Korean Government.

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