



International Oil Pollution  
Compensation Funds

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## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### HEBEI SPIRIT

#### Note by the Secretariat

**Objective of document:** To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.

**Summary:** On 7 December 2007, the *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung N<sup>o</sup>1* while at anchor about five miles off Taean on the west coast of the Republic of Korea. About 10 900 tonnes of crude oil escaped into the sea from the *Hebei Spirit*. The three southerly provinces on the west coast of the Republic of Korea were affected to various degrees.

#### *Claims situation*

The amount available for compensation for the *Hebei Spirit* incident under the 1992 Civil Liability and Fund Conventions, KRW 321.6 billion (£207 million)<sup><1></sup>, has been paid in full. The Skuld Club has initially paid KRW 186.8 billion<sup><2></sup> (£121 million) in compensation. The 1992 Fund has paid KRW 134.8 billion (£87.3 million) in compensation to the Government of the Republic of Korea.

#### *Limitation proceedings by the shipowner of the Hebei Spirit*

All 127 483 claims submitted in limitation proceedings brought by the shipowner have now been finalised and the total amount awarded by the Court is KRW 432.9 billion (£278 million).

In November 2018, the Seosan Court determined the limitation fund to be deposited at KRW 230.9 billion (£148 million), of which KRW 139.4 billion (£89.6 million) represented the principal and KRW 91.5 billion (£58.8 million) interest.

The limitation fund was deposited in court in August 2019 and was distributed in September 2019, bringing the limitation proceedings to a close.

<1> The exchange rate used in this document as at 30 June 2021 is £1 = KRW 1 555.7137, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

<2> The Skuld Club had based its provisional calculation of the limitation amount on the exchange rate at 30 November 2008, the date on which the Letter of Undertaking was deposited into the Seosan Court. The Seosan Court established the limitation fund on 14 November 2018. On that date, the amount of the limitation fund was fixed by the Seosan Court at KRW 139 376 902 000 plus interest.

*Bilateral agreement between the 1992 Fund and the Government of the Republic of Korea*

In April 2019, the Director signed a bilateral agreement with the Government of the Republic of Korea by which the 1992 Fund transferred the remaining amount available for compensation i.e. KRW 27 486 198 196 (£18.3 million) to the Government for it to use when paying all the remaining claims.

*Recourse action against the bareboat charterer of the Samsung N<sup>o</sup>1, the two tugs and the anchor boat (known as the Marine Spread)*

In March 2009, the Seoul Central District Court rendered an order for the commencement of the limitation proceedings brought by the bareboat charterer of the Marine Spread involved in the collision, Samsung Heavy Industries Co., Ltd (SHI), and set the limitation fund at KRW 5.6 billion (£3.6 million). SHI deposited this amount in the Seoul Central District Court (SHI Limitation Court). The SHI Limitation Court decided to wait to distribute the limitation fund until after the assessment decision was issued by the Seosan Court.

In July 2019, the 1992 Fund submitted a claim in the limitation proceedings for the amount paid by the 1992 Fund in compensation, i.e. KRW 134.8 billion (£87.3 million), plus any interest accrued as per Korean law.

*Balancing payments to the Skuld Club*

In view of the overpayments made by the Skuld Club due to the different exchange rates used, the 1992 Fund has reimbursed a total of KRW 44 billion (£29.8 million) to the Skuld Club. The balance of KRW 3.4 billion (£2.3 million) was set aside to be paid when the legal proceedings had been concluded.

**Recent developments:**

*Balancing payments to the Skuld Club*

Since the legal proceedings have now been finalised, the balance of the overpayments made by the Skuld Club due to the difference exchange rates used, totalling KRW 3.4 billion (£2.3 million) was paid in July 2020.

*Recourse action against the bareboat charterer of the Marine Spread*

In February 2021, the SHI Limitation Court determined the 1992 Fund's claim to be KRW 155.8 billion (£100.1 million), i.e. the amount claimed in that court by the 1992 Fund plus statutory interest, and granted the 1992 Fund a share of the SHI distribution fund totalling KRW 3 271 486 069 (£2.2 million). That amount was paid to the 1992 Fund in June 2021.

*Lessons learned from the Hebei Spirit incident*

In October 2019, the Director informed the Executive Committee that it was his intention to hold a meeting with all those involved in the handling of the incident to discuss the case and the lessons to be learned from it, to enable the IOPC Funds to deal with incidents more efficiently in the future.

The meeting was scheduled to take place in Seoul in May 2020, with the participation of the Government of the Republic of Korea, the Skuld Club and the

experts involved, as well as central and local government agencies involved in the incident. However, due to the global COVID-19 situation and the restrictions placed on travel, the meeting has been postponed. The Director will update the Executive Committee as to when it will be possible to reschedule the meeting at a subsequent session of the governing bodies.

**Relevant documents:** The online *Hebei Spirit* incident report can be found via the Incidents section of the IOPC Funds' website.

**Action to be taken:** 1992 Fund Executive Committee  
Information to be noted.

## 1 Summary of incident

Ship	<i>Hebei Spirit</i>
Date of incident	07.12.2007
Place of incident	Taeon, Republic of Korea
Cause of incident	Collision
Quantity of oil spilled	Approximately 10 900 tonnes of crude oil
Area affected	The three southerly provinces on the west coast of the Republic of Korea.
Flag State of ship	People's Republic of China
Gross tonnage	146 848 GT
P&I insurer	China Shipowners Mutual Insurance Association (China P&I)/ Assuranceföreningen Skuld (Gjensidig) (Skuld Club)
CLC limit	SDR 89.77 million or KRW 139.4 billion
STOPIA/TOPIA applicable	No
CLC + Fund limit	SDR 203 million or KRW 321.6 billion
Legal proceedings	(i) Limitation proceedings concerning the liability of the shipowner of the <i>Hebei Spirit</i> (section 4.1); (ii) Limitation proceedings concerning the liability of the bareboat charterer of the Marine Spread, Samsung C&T Corporation and SHI (section 4.2).

## 2 Background information]

The background to this incident is summarised above and provided in more detail in the online *Hebei Spirit* incident report.

## 3 Claims for compensation

- 3.1 A total of 127 483 claims for KRW 4 227 billion (£2 717 million) were submitted in the limitation proceedings. On 15 January 2013, the Seosan Court rendered its judgment, awarding KRW 738 billion. A large number of objections were filed in the Seosan Court by the claimants, the Skuld Club and the 1992 Fund.
- 3.2 All the claims submitted in the limitation proceedings have now been finalised.
- 3.3 The Skuld Club had paid KRW 186.8 billion (£121 million) in compensation. The 1992 Fund has paid a total of KRW 134.8 billion (£87.3 million) in compensation to the Government of the Republic of Korea.

*Payment made to the Skuld Club*

- 3.4 The total compensation payable for the *Hebei Spirit* incident under the 1992 Conventions (SDR 203 million) was fixed in March 2008 at KRW 321.6 billion. The 1992 Civil Liability Convention (CLC) limitation amount (SDR 89.77 million) was fixed at KRW 139.4 billion by the Seosan Court in November 2018, at the exchange rate of SDR 1 = KRW 1 552.60.
- 3.5 Before the decision by the Seosan Court on the limitation amount, the Skuld Club had made interim payments of some KRW 186.8 billion, based on a Cooperation Agreement signed in July 2008 between the shipowner, the Skuld Club and the Government of the Republic of Korea.
- 3.6 In order to commence making payments pending the decision on the exchange rate by the Seosan Court, the Skuld Club had converted SDR 89.77 million into KRW 186.8 billion using the exchange rate in November 2008, when it deposited a Letter of Undertaking at the Seosan Court. Due to the 2008 financial crisis, this exchange rate was much higher than the rate subsequently applied by the Seosan Court in 2018.
- 3.7 For that reason, in April 2017, the Executive Committee authorised the Director to make an advance payment to the Skuld Club totalling KRW 22 billion (£14.8 million), i.e. 50% of the estimated balance between the amount paid by the Skuld Club based on the rate used by the Club and the rate used by the 1992 Fund, on account of the amount ultimately due to the Club. This amount was paid in May 2017.
- 3.8 In November 2018, the Seosan Court determined the exchange rate applicable to the *Hebei Spirit* limitation fund, fixing the amount to be distributed at KRW 139.4 billion. The overpayments made by the Skuld Club were thus determined to be some KRW 47.4 billion. Given the amount already paid by the 1992 Fund in May 2017, the amount due from the 1992 Fund to the Club was KRW 25.4 billion.
- 3.9 A number of claimants raised objections to the amount awarded to the Skuld Club in the distribution table. As a consequence, the Executive Committee authorised the Director to make an additional payment of KRW 22 billion (£14.8 million) to the Skuld Club on account of the amount due, setting aside a balance of KRW 3.4 billion (£2.3 million), to be paid once all legal proceedings had been finalised.
- 3.10 In November 2019, all legal proceedings related to the *Hebei Spirit* incident were finalised. As a consequence, the 1992 Fund could pay the balance of KRW 3.4 billion (£2.3 million) to the Skuld Club. This payment was made in July 2020. With that payment, the entirety of the overpayment by the Skuld Club was reimbursed.
- 3.11 A final reconciliation of costs has been completed in 2021. The joint costs which are still being incurred after the end of 2020, which are mainly related to the storage of incident documents for the period of time required under Korean law, are being shared between the Skuld Club and the 1992 Fund.

*Payments made by the Government of the Republic of Korea*

- 3.12 A Special Law for the support of the affected inhabitants and the restoration of the marine environment in respect of the *Hebei Spirit* incident was approved by the National Assembly of the Republic of Korea in March 2008 and entered into force in June 2008. Under the provisions of the Special Law and on the basis of the Cooperation Agreement, the Government of the Republic of Korea was authorised to make payments in full to claimants based on the assessments made by the Skuld Club and the 1992 Fund. The Government has been making payments of compensation to the claimants at 100% of the assessed amounts in accordance with the Special Law and has become subrogated to the rights of the claimants against the Skuld Club and 1992 Fund.

*Payments made to the Government of the Republic of Korea by the 1992 Fund*

- 3.13 As at October 2017, the 1992 Fund had made payments totalling KRW 67.3 billion (£41.5 million) to the Government of the Republic of Korea at a level of payments of 60% of the established losses in respect of its subrogated claims.
- 3.14 In October 2017, the Executive Committee authorised the Director to make an advance payment of KRW 40 billion (£27.5 million) to the Government to speed up the payment process, thereby allowing the Government to allocate the available funds to claimants more quickly. The payment required the Government to release the 1992 Fund in respect of that amount and to issue the relevant receipt and release document. The payment was made in November 2017.
- 3.15 In April 2019, the Executive Committee authorised the Director to sign a bilateral agreement with the Government which would allow the 1992 Fund to pay the Government the remaining amount available for compensation and would provide the safeguards the 1992 Fund would need to be protected from further actions in the courts.
- 3.16 In late April 2019, the Director signed a bilateral agreement with the Government and the 1992 Fund paid the remaining compensation, i.e. KRW 27 486 198 196 (£18.3 million).
- 3.17 In September 2019, the Government distributed the KRW 27 486 198 196 to claimants.

#### **4 Limitation proceedings**

##### **4.1 Proceedings in the Limitation Court by the shipowner of the *Hebei Spirit***

- 4.1.1 A total of 127 483 claims were submitted in the limitation proceedings. On 15 January 2013, the Seosan Court rendered its judgment, assessing the losses arising out of the *Hebei Spirit* incident at a total of KRW 738 billion in respect of 63 213 claims and rejecting 64 270 claims. Some 150 367 objections were filed in the Seosan Court.
- 4.1.2 As a result of the Courts' actions, all claims have now been resolved and a total of KRW 432.9 billion (£278 million) have been awarded to 59 597 claims. A total of 67 886 claims were rejected.
- 4.1.3 The *Hebei Spirit* limitation proceedings were finalised in September 2019. At that time, the distribution of the *Hebei Spirit* limitation fund was completed and the Seosan Court announced the conclusion of the limitation proceedings, which are now officially closed.
- 4.1.4 A summary of the judgments rendered by the Seosan Court, the Appeal Court and the Supreme Court can be found in the online *Hebei Spirit* incident report, which can be accessed via the Incidents section of the IOPC Funds' website.

##### **4.2 Recourse action against the bareboat charterer of the *Marine Spread* (SHI)**

- 4.2.1 In December 2008, the bareboat charterer of the *Marine Spread*, SHI, filed a petition in the Seoul Court requesting the SHI Limitation Court to issue an order granting SHI the right to limit its liability in the amount of SDR 2.3 million.
- 4.2.2 In March 2009, the SHI Limitation Court rendered an order for the commencement of the limitation proceedings. The SHI Limitation Court decided to grant SHI the right to limit its liability and set the

limitation fund at KRW 5.6 billion (£3.6 million) including legal interest. SHI deposited this amount in court.

- 4.2.3 In June 2009, a number of claimants appealed to the Seoul High Court against the decision of the SHI Limitation Court to grant SHI the right to limit its liability. In January 2010, the Seoul High Court dismissed the appeal and confirmed the SHI Limitation Court's decision. The claimants appealed to the Supreme Court. In April 2012, the Supreme Court dismissed the appeal.
- 4.2.4 After the Supreme Court's dismissal, the SHI Limitation Court decided to adjourn the hearings for investigation of the registered claims until after the assessment decision was issued by the Seosan Court, in view of the fact that a large number of claims were submitted in both courts, and that a similar assessment process was already ongoing in the *Hebei Spirit* limitation proceedings.
- 4.2.5 In July 2019, after the finalisation of the Hebei Spirit limitation fund proceedings, the SHI Limitation Court resumed its hearings. The 1992 Fund submitted a claim in the limitation proceedings for the amount paid in compensation for this incident, i.e. KRW 134 787 509 429 (£87.3 million), plus any statutory interest accrued as per Korean law.
- 4.2.6 In July 2020, the SHI Limitation Court examined the claims submitted in the proceedings. At that hearing, it was found that, in addition to the 1992 Fund and the Government of the Republic of Korea, some 24 000 private claimants had also submitted claims. In addition, SHI confirmed that they had decided not to pursue their claim for the amount settled with the Skuld Club during the proceedings in China.
- 4.2.7 At the same hearing, the 1992 Fund submitted to the Court that, since all private claimants had already been fully compensated from the *Hebei Spirit* limitation proceedings, they were not entitled to also claim in the SHI proceedings, as all their rights to claim had been passed by subrogation to the 1992 Fund and the Government of the Republic of Korea and, therefore, were included in those claims.
- 4.2.8 In February 2021, the SHI Limitation Court, in its assessment decision, accepted all points previously made by the 1992 Fund, and recognised the Fund's claim as totalling KRW 155 785 519 163 (£100.1 million), i.e., the principal amount of KRW 134 787 509 429 (£86.6 million) plus KRW 20 998 009 734 (£13.5 million) in interest. At the same time, the Court issued a table showing the distribution of the SHI limitation fund to the parties to the proceedings. The Court determined the 1992 Fund's share of the SHI distribution fund to be KRW 3 271 486 069 (£2.2 million).
- 4.2.9 The Court's decision was not appealed nor was the distribution table challenged and, therefore, the decision became final in May 2021. In June 2021, the Limitation Court paid the amount of KRW 3 271 486 069 (£2.2 million) to the 1992 Fund.

## **5 Director's considerations**

- 5.1 The Director is grateful for the close cooperation and assistance provided to the 1992 Fund by the Skuld Club and the Government of the Republic of Korea in resolving this major incident.
- 5.2 The Director is pleased to inform the Executive Committee that the 1992 Fund's share from the SHI limitation fund has now been recovered and that it has been added to the amount available under the *Hebei Spirit* Major Claim Fund.
- 5.3 Once all claims arising out of a major incident have been finalised, the IOPC Funds will hold a wash-up meeting with all those involved to discuss the case and identify what lessons can be learned to enable the IOPC Funds to deal with incidents more efficiently in the future. A document will be submitted to the governing bodies summarising the lessons learnt.

- 5.4 The wash-up meeting for the *Hebei Spirit* incident was scheduled to take place in Seoul in May 2020. However, due to the global COVID-19 situation and the restrictions on travel, the meeting has been postponed. The Director will update the Executive Committee as to when it will be possible to reschedule the meeting at a subsequent session of the governing bodies.

**6 Action to be taken**

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.

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