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OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
40th session  
Agenda item 3

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## INCIDENTS INVOLVING THE 1992 FUND

### HEBEI SPIRIT

#### Note by the Director

**Objective of document:**

To provide the Executive Committee with the most recent developments in respect of this incident which took place in the Republic of Korea, in particular with regard to the claims situation and the estimated impact of the spill.

**Summary of document:**

On 7 December 2007, the Hong Kong flag tanker *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung N° 1* while at anchor about five miles off Taean on the West Coast of the Republic of Korea. About 10 500 tonnes of crude oil escaped into the sea from the *Hebei Spirit*.

The oil polluted some 375 kilometres of the western coast of the Republic of Korea. Clean-up operations are still being carried out.

The Skuld Club and the 1992 Fund have appointed Korean and international experts to carry out surveys in the affected areas. The work of the experts continues.

The Skuld Club and the 1992 Fund have established a local claims office, called the *Hebei Spirit* Centre (HSC), in Seoul to receive and administer claims for compensation expected to arise from this incident and to provide information to claimants. A number of claims have already been received by the HSC.

Further acts of intimidation have taken place towards the Korean and international experts appointed by the Club and Fund. The Director has written, for a second time, to the Minister of Maritime Affairs and Fisheries, expressing the Club's and Fund's concern and requesting the Korean authorities' help to guarantee the expert's safety in the conduct of their work (section 1).

The Fund has been informed that the Ministry of Maritime Affairs and Fisheries (MOMAF) has made payments totalling £41 million<sup><1></sup> to victims of the incident. The Fund has not been informed of the nature and the beneficiaries of the payments (section 2).

<1>

Conversion of currencies in this document has been made on the basis of the exchange rates as at 18 February 2008 (£1= Won 1857.57; 1 SDR = £0.8064).

As at 25 February 2007, 64 claims totalling £18.3 million have been submitted. Interim hardship payments totalling £5 million have been made by the Skuld Club. More claims are expected (section 3).

According to a decision by the 1992 Fund's Assembly in October 1997, the total amount available for compensation, namely 203 million SDR, should be converted into Korean Won on the basis of the value on the date of the adoption of the Executive Committee's Record of Decisions, ie 14 March 2008 (section 4). 203 million SDR at the rate of exchange used in this document would be £164 million.

The total amount of the losses caused by the spill has been provisionally estimated between £190 million and £229 million (section 5).

On the basis of the information available at 26 February 2008, the Director recommends for the time being a level of the 1992 Fund's payments of 60%, to be reviewed at the next session of the Executive Committee (section 6).

***Action to be taken:***

To decide:

- (a) whether to authorise the Director to make settlements of claims.
- (b) whether to authorise the Director to make payment of claims and, if so, to determine the level of such payments.
- (c) the date to be used for the conversion of the limitation amount of 203 million SDR into Korean Won.

**1 Intimidation of the experts appointed by the Skuld Club and 1992 Fund**

- 1.1 As reported in document 92FUND/EXC.40/9, section 9, a number of demonstrations had taken place outside the provisional office which had been set up by the experts engaged by the Skuld Club and the 1992 Fund in a hotel building in Taean.
- 1.2 A second incident took place on 17 February 2008 when two experts acting on behalf of the Club and the Fund, one Korean and one from the International Tanker Owners Pollution Federation (ITOPF), were intimidated by a group of villagers whilst attempting to carry out a survey. During the events the villagers tried to force the Korean and the ITOPF expert into a car. A struggle took place and one of the villagers threatened the experts with a knife and indicated his willingness to take his own life. Eventually, the situation calmed down but it was however decided to abandon the survey.
- 1.3 In view of this incident, the Director has, with the full agreement of the Club, instructed the experts to suspend field visits to any area where they feel they are not safe to carry out their work. The Director has written for a second time to the Minister of Maritime Affairs and Fisheries, expressing the Club and the Fund's concern and requesting the Korean authorities' help to guarantee the experts safety in the conduct of their work.
- 1.4 The Korean authorities have responded swiftly and positively to the Director's letter, stating that they are taking this matter very seriously and that they have taken immediate measures to prevent a recurrence of such an incident. They have also indicated that they have requested the provincial police authorities to make available sufficient resources to guarantee the safety of the experts, both when they travel to affected areas and in their accommodation and offices. The Korean national authorities have also indicated that they have sent a clear message to local government for them to make it clear to their claimants and villagers that violence and improper behaviour will only be counterproductive and lead to delays in the claims assessment and handling process. Information on

the follow-up by local authorities will be provided to MOMAF and the Fund will be informed about this in due course.

- 1.5 The Director intends to continue to monitor this issue, in coordination with the Korean Government, with a view to ensuring the safety of the experts in the area, whilst making every attempt to prevent unnecessary delays in the claims assessment and handling process.

## **2 Payments made by the Korean Government**

- 2.1 The Korean authorities have informed the Director that payments totalling some Won 76.8 billion (£41 million) have been made by the Korean Government to local residents of two of the affected Provinces. The funds have been made available to the local authorities of the two Provinces for distribution. It has been reported that a total of 18 757 households, representing 74% of the total households in Taean County, have received payments between Won 746 862 (£400) and Won 2 916 600 (£1 570)
- 2.2 The Director does not, however, know the nature of the payments made by the Korean Government; it is possible that the Government might acquire by subrogation the rights that the person so compensated would have enjoyed under the Fund Convention (Article 9.3 1992 Fund Convention). The Director intends to examine this issue further and to report to the Executive Committee in the future.

## **3 Claims for compensation**

- 3.1 As at 25 February 2008, 64 claims for compensation totalling Won 33 944.4 million (£18.3 million) have been submitted as a result of the incident. An interim assessment of forty-five of these claims has been made at Won 10 735 million (£5.7 million) and the Skuld Club has made interim hardship payments in respect of 39 claims for Won 9 382.3 million (£5 million).
- 3.2 Since the *Hebei Spirit* Centre in Seoul became fully operational on 22 January 2008, more than one hundred prospective claimants have contacted the office and have communicated their intention to submit a claim in the future. Further claims are therefore expected.

## **4 Maximum amount available for compensation**

- 4.1 Under Article 4.4(e) of the 1992 Fund Convention, the maximum amount of compensation payable in respect of the *Hebei Spirit* incident is 203 million SDR.
- 4.2 At its 2nd session, held in October 1997, the 1992 Fund Assembly decided that the conversion of the SDR into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was further decided that if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of the session (document 92FUND/A.2/29, paragraph 17.2.8).
- 4.3 In view of this decision, the Director proposes that, should the Committee decide to authorise him to make payments, the conversion of 203 million SDR into Korean Won should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 40th session, ie 14 March 2008.

## **5 Level of payments**

- 5.1 The Director, in order to form a view as to whether the total amount available for compensation will be sufficient to pay all losses caused as a result of this incident, has started to collect information on the estimated level of losses and his preliminary findings are set out below. It should be noted that

the figures presented are intended to reflect both the likely overall costs incurred during the clean-up operations and the economic losses in the fisheries, aquaculture and tourism sectors that might form the basis of claims for compensation at a later stage. The number of claims actually received to date is however not sufficient to predict, with a useful degree of certainty, what the total claimed amount might be in the future.

## 5.2 Estimated cost of the clean-up operations

- 5.2.1 The Korean authorities have provided estimates of the costs of clean up of the hulls of military and coast guard vessels employed in clean-up operations. The Korean authorities have not provided other estimates of the costs of clean-up activities. ITOPF has made a preliminary estimate of the costs of clean-up operations on the basis of their own on-site surveys and those of the Korean experts engaged by the Skuld Club and the 1992 Fund.
- 5.2.2 Estimates have been made of the costs of manpower and equipment, specialised and non-specialised offshore oil recovery vessels, and aircraft used for aerial surveillance, based on ITOPF's and other experts' reports, as well as data on usage and involvement of resources supplied by other sources including the Korean Coast Guard. Where available, ITOPF has incorporated known claimed amounts into the estimate. Where rates had been agreed, these rates have also been used to estimate claimed figures, as in the case of the rates applicable for the involvement of local villagers and fishing vessels. The construction of temporary oil storage pits and the disposal of solid and liquid wastes have also been included.
- 5.2.3 Shoreline clean-up operations are expected to continue along the western coast of Korea until at least the end of March 2008. ITOPF has estimated that the final clean up response costs could be in the region of Won 110 billion (£59 million).

## 5.3 Estimated losses in the fisheries and aquaculture sectors

- 5.3.1 The experts appointed by the Club and the Fund have estimated the likely total losses in the fisheries and mariculture sectors in the area affected by the incident. The estimates were made on the basis of field visits conducted by the Korean and international experts and by using statistical records of landings by species, volumes and values in the Republic of Korea. Losses have been estimated using data for the affected area in 2006 and making adjustments to take into account price and volume changes. In all cases the data has been adjusted to reflect loss of profit, not reduction in turnover.
- 5.3.2 It is unclear whether an official ban has been enforced in the affected area. Some reports indicate that there are official bans in place in the area affected by the contamination, while others indicate that the ban is either not in place or is not being observed. Experts visiting the ports in the Taean area in early January noticed that some fishing activity was taking place and that some fish was being landed.
- 5.3.3 For the purpose of estimating the total losses, the experts have assumed that all fisheries activities will resume as of April 2008.
- 5.3.4 The Korean aquaculture sector is extremely developed and is characterised by a wide range of species under cultivation through a diverse range of methods, with mariculture responsible for the highest contribution to the total aquaculture production. Mariculture is dominated by seaweed, molluscs and finfish.
- 5.3.5 Considerable data is available on areas of farms, such as productivity per unit area and up-to-date prices. However, due to the lack of sufficient information on the extent and intensity of contamination over a wide area, there are considerable uncertainties as to the likely impact of the spill at this stage.
- 5.3.6 ITOPF and the Korean and international experts are carrying out surveys which, when completed,

will provide a better basis for a global estimate of losses in the aquaculture sector.

- 5.3.7 Based on the information available to date, the Fund and Skuld Club's experts have estimated the total possible impact of the incident on fisheries, mariculture and aquaculture and activities relating to the processing of sea products, will be in the region of Won 170 billion (£92 million).

#### 5.4 Estimated losses in the tourism sector

- 5.4.1 Tourism experts engaged by the Club and Fund have pointed out that it is too early to be able to generate any meaningful figures in respect of potential losses in the tourism sectors in the affected area.

- 5.4.2 The area of Taean County is largely dependant on the domestic market (98% of visitors to the area), with almost 21 million visitors in 2006, mostly concentrated in the months of July and August. However, field visits in the area indicated that weekends and other holiday periods, especially Christmas and the New Year, could be busy trading periods for commercial operators as well.

- 5.4.3 There are no official estimates to indicate the value of tourism in Taean or in any of the other areas affected. A significant part of the tourism sector in the area is composed of very small businesses, some of which may keep very poor or no records. An official request for information regarding the economic value of the tourism activities in the area was made to the local tax office in Seosan-si. However at the time this document was prepared, no data had been received.

- 5.4.4 In view of the limited extent of the information available, the experts drew attention to a number of assumptions on which their report was based which prevented them from reaching a precise estimate of the likely losses. Based on the information available as at 26 February 2008, the experts have estimated that the likely total of the losses in the tourism sector could be in the range of Won 72 billion to Won 144 billion (£39 million-£78 million).

#### 5.5 Total amount of estimated losses

On the basis of the limited information available as at 26 February 2008, the total estimated amount of likely losses arising from the *Hebei Spirit* incident could be between Won 352 billion and Won 424 billion (£190 million-£229 million), as set out in the table below:

Category of loss	Estimated losses (Won billion)	Estimated losses (£ million)
Clean up	110	59
Fisheries and mariculture	170	92
Tourism	72/144	39/78
Total	352/424	190/229

## 6 Director's considerations

- 6.1 The Director has examined the issues arising in respect of this incident and has considered the following:

- The governing bodies have in the past taken the view that the 1992 Fund should exercise appropriate caution in the payment of claims if there is a risk that the total amount of the claims arising from any one incident will exceed the total amount of compensation available under the Conventions, since under Article 4.5 of the Fund Convention all claimants have to be given equal treatment in such a situation. They also however expressed the view that a balance should be struck between the importance of the Fund paying compensation as promptly as possible and the need to avoid an over-payment situation (document 92FUND/A.ES/2.6, paragraph 3.1.14).

- The value of the maximum amount available for compensation, 203 million SDR, on the basis of the rate of exchange applied in this document would correspond to approximately Won 303 billion (£164 million).
- This major incident is still in its early stages and, so far, few claims for compensation have been presented. The number of claims presented to date does not allow an estimate of the amount of future claims.
- The experts engaged by the Fund have estimated that the total amount of the likely losses arising from this incident is between Won 352 billion and Won 424 billion (£190-229 million).

- 6.2 The Director is of the opinion that it is important that the Executive Committee takes a decision, enabling him to make payments in an incident at the earliest possible opportunity. In a case like this, this would mean that a decision would have to be made regarding an appropriate level of payment, even though it is very difficult to decide on the right percentage. This is clearly not an ideal situation. On balance however, the Director is of the view that the inability of the Fund to make payments at all, at least until the June session of the Executive Committee, would not reflect very well on the international regime, which should be seen to be able to respond quickly to the needs of those affected by an oil pollution incident. Also it is important for the Club to be able to make payments to claimants at an appropriate percentage, for which the guidance of the Fund's governing bodies would be important.
- 6.3 It should be noted that in most cases a decision regarding an appropriate percentage for the purpose of pro-rating could be made, taking into account both the total amount claimed and the total amount estimated by the Fund's experts as the likely total of the damages as properly assessed. In this case however, at this stage only the latter figure is available, which would mean that a sufficient safety margin of at least 10% would have to be built in, in case the amounts claimed will be significantly higher.
- 6.4 In the light of the information contained in this document and summarised above, the Director considers that it would be in the interest of both the claimants and the Fund to authorise him to make payments if necessary and to decide on an appropriate percentage for the purpose of pro-rating. He believes the percentage should be determined applying the higher figure within the range provided of the total estimated amount of likely losses arising from the incident in the table in paragraph 5.5, which would provide a reasonable safety margin against over-payment, as well as ensure that compensation is promptly paid to claimants.
- 6.5 In view of the uncertainty as to the level of the total amount of the claims and the other considerations set out above, the Director proposes that the Executive Committee authorise him to make payments and that the payments to be made by the 1992 Fund should, for the time being, be limited to 60% of the amount of the damage actually suffered by the respective claimant on the basis of the advice of the experts engaged by the 1992 Fund and the Skuld Club at the time when the payment is made. He also proposes that this percentage should be reviewed at the Executive Committee's next session.

## **7 Actions to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
- (b) to give the Director such instructions in respect of the handling of claims and other issues arising from this incident as it may deem appropriate;
- (c) to authorise the Director to make settlements of claims arising from this incident to the extent that they do not give rise to questions of principle not previously decided by the Committee;

- (d) to decide whether to authorise the Director to make payments of claims and to determine the level of such payments; and
  - (e) to determine the date to be used for the conversion of the limitation amount of 203 million SDR into Korean Won.
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