



## INCIDENTS INVOLVING THE 1992 FUND

### HEBEI SPIRIT

#### Note by the Director

**Objective of document:**

To inform the Committee of the latest developments in respect of this incident.

**Summary of the incident so far:**

On 7 December 2007 the Hong Kong Flag tanker *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 oil polluted, in varying degrees of contamination, three of the four provinces along the western coast of the Republic of Korea. Clean-up operations are still being carried out.

So far, claims totalling £44.2 million have been submitted for onshore clean-up operations. Claims totalling £39.7 million have been submitted for losses in the fisheries and mariculture sector. Claims totalling £13.5 million have been submitted for property damage and losses in the tourism and other economic sectors. One claim of £1.1 million has been submitted for the cost of an environmental impact study. Further claims are expected for at-sea and onshore clean-up operations. A significant number of aquaculture and mariculture facilities have been contaminated by the oil that escaped from the *Hebei Spirit*. Further claims are expected from the fisheries and mariculture sectors and from tourism-related and non tourism-related businesses (section 14).

The losses arising out of this incident are expected to exceed the limitation amount applicable to the *Hebei Spirit* under the 1992 Civil Liability Convention, ie 89.77 million SDR (£72 million)<sup><1></sup> (section 8).

The *Hebei Spirit* is insured for pollution risks by Assuranceforeningen Skuld (Gjensidig) (Skuld Club).

In March 2008 the Executive Committee, in view of the uncertainty as to the total amount of the potential claims, decided that payments should for the time being be limited to 60% of the amount of the damage actually suffered

<sup><1></sup> Conversion of currencies has been made on the basis of the exchange rates as at 14 May 2008 (£1= Won 2 039.96; SDR 1 = £ 0.8064).

by each claimant, as assessed by the Fund's experts.

The 1992 Fund and the Skuld Club have established a Claims Office (the Hebei Spirit Centre) in Seoul to assist claimants in the presentation of their claims for compensation.

The 1992 Fund and the Skuld Club have also appointed a number of Korean and international experts to assess claims in the property damage, clean up, fisheries/mariculture and tourism sectors.

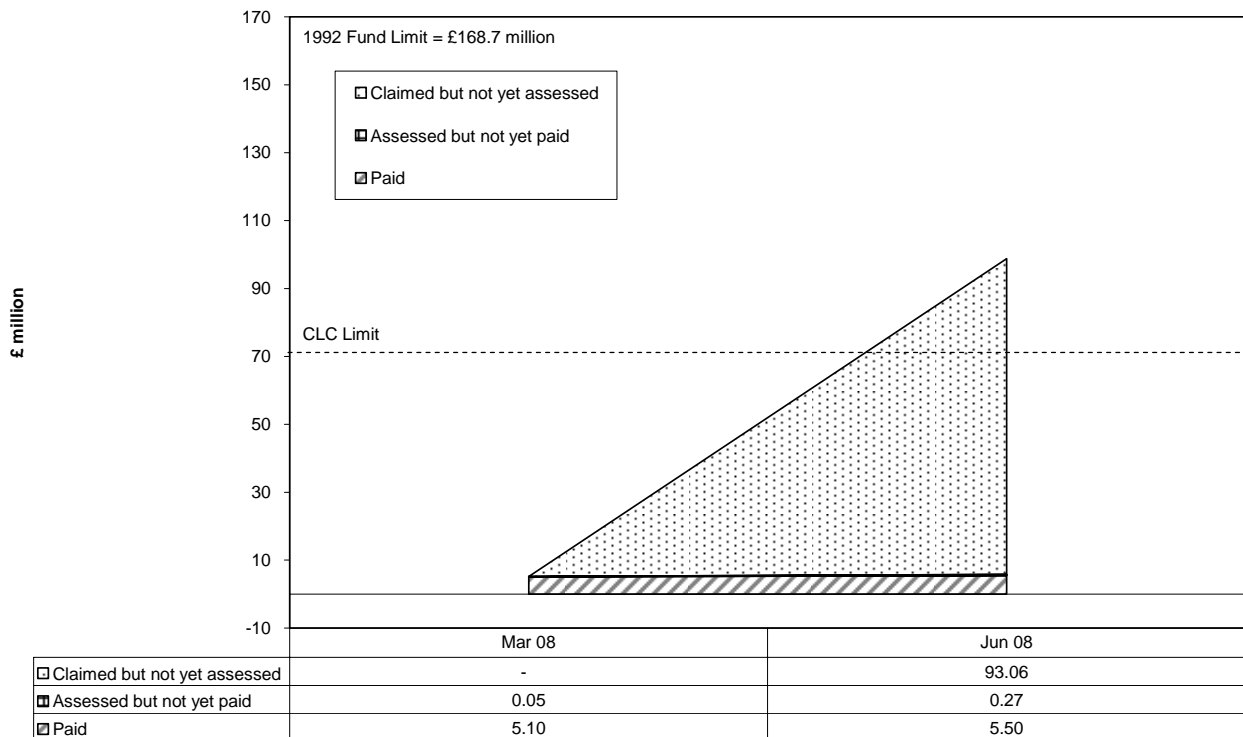
***Action to be taken:***

Information to be noted.

**1 Summary of incident**

Ship	<i>Hebei Spirit</i>		
Date of incident	07.12.2007		
Place of incident	Taean, 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	Hong Kong		
Gross tonnage (GT)	146 848 GT		
P&I insurer	Assuranceforeningen Skuld (Gjensidig) (Skuld Club)		
CLC Limit	£72 million		
STOPIA/TOPIA applicable	No		
Compensation (£ million):	Claimed but not yet assessed	Assessed but not yet paid	Paid
Property damage	0.18	-	-
Clean up/preventive measures	38.38	0.27	5.5
Fisheries	39.74	-	-
Tourism	13.33	-	-
Environmental damage	1.08	-	-
Miscellaneous	0.08	-	-
TOTAL	93.06	0.27	5.5
Notes:	Further claims are expected.		

**2 Development of claims**



### **3 The incident**

- 3.1 The Hong Kong Flag tanker *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 Korea. The crane barge was being towed by two tugs (*Samsung T-5* and *Samho T-3*) when the tow line broke. Weather conditions were poor and it is reported that the crane barge was blown by the strong wind into the tanker, puncturing three of its port cargo tanks.
- 3.2 The *Hebei Spirit* was laden with about 209 000 tonnes of four different crude oils. Due to inclement weather conditions, repairs of the punctured tanks were completed only after four days. In the meantime the crew of the *Hebei Spirit* tried to limit the quantity of cargo spilled through the punctures by creating a list and transferring cargo between tanks. Due to the fact that the tanker was almost fully laden, however, the effectiveness of such actions was limited.
- 3.3 As a result of the collision an estimated total of 10 900 tonnes of crude oil (a mix of Iranian Heavy, Upper Zakum and Kuwait Export) escaped into the sea. The remaining oil in the damaged tanks was transferred to other tanks on board and to another vessel. Once stabilised, the *Hebei Spirit* proceeded to the Hyundai Oilbank terminal in the port of Daesan, (Republic of Korea), where the cargo was discharged.
- 3.4 The *Hebei Spirit* is owned by Hebei Spirit Shipping Company Limited. It is insured by Assuranceforeningen Skuld (Gjensidig) (Skuld Club) and managed by V-Ships Limited. It is understood that the crane barge and the two tugs are owned and/or operated by Samsung Corporation and its subsidiary, Samsung Heavy Industries, which belong to the Samsung Group, Korea's largest industrial conglomerate.
- 3.5 The 1992 Fund and the Skuld Club appointed a team of Korean and international surveyors to monitor the clean-up operations and investigate the potential impact of the pollution on fisheries, mariculture and tourism activities.

### **4 Cooperation Agreement between the Owners/Skuld Club, KMPRC and MOMAF**

Shortly after the incident the Korean Government declared it a national disaster, and on 24 December 2007 the *Hebei Spirit* was arrested at the suit of the Korean Marine Pollution Response Corporation (KMPRC), a state-owned pollution response agency. Discussions took place on compensation issues between the Owners/Skuld Club and the Ministry of Maritime Affairs and Fisheries (MOMAF), which resulted in a cooperation agreement concluded on 5 January 2008 between the Owners/Skuld Club, KMPRC and MOMAF. The 1992 Fund was consulted during the negotiations but is not a party to the Agreement. Details on the contents of the Cooperation Agreement can be found in document 92FUND/EXC.40/9. On 7 January 2008 the ship was allowed to sail from Korean waters.

### **5 Impact of the spill**

- 5.1 Much of Korea's western coast has been affected to varying degrees. Shoreline composed of rocks, boulders and pebbles, as well as long sand amenity beaches and port installations in the Taean Peninsula and in the nearby islands, were polluted. Over a period of several weeks, mainland shorelines and islands further south also became contaminated by emulsified oil and tar balls. A total of some 375 kilometres of shoreline were affected along the west coast of Korea. A considerable number of commercial vessels were also contaminated.
- 5.2 The west coast of the Republic of Korea hosts a large number of mariculture facilities, including several thousand hectares of seaweed cultivation. It is also an important area for shellfish cultivation and for large-scale hatchery production facilities. The area is also exploited by small and large-scale fisheries. The oil affected a large number of these mariculture facilities, as it passed through the

supporting structures, contaminating buoys, ropes, nets and the produce.

- 5.3 The oil has also impacted amenity beaches and other areas of the Taean National Park. The Taean peninsula is a favourite tourist destination for visitors from the Seoul metropolitan area, with an estimated 20 million visitors every year, mostly in the months of July and August.

## **6 Clean-up operations**

- 6.1 The Korea National Coast Guard Agency, a department of MOMAF, has overall responsibility for marine pollution response in the waters under the jurisdiction of the Republic of Korea.

- 6.2 The response to the incident has taken place on the basis of the National Disaster Prevention Master Plan, which was prepared in 2000 by the Korean Coast Guard to ensure a proper response to spills of oil in the marine environment.

### **6.3 At-sea clean up**

- 6.3.1 The Coast Guard coordinated the response at sea. Over 100 vessels of the Coast Guard, the Navy and KMPRC were deployed to carry out clean-up operations. Over 1 500 fishing vessels were also deployed. The Coast Guard applied dispersants from vessels and later helicopters over patches of floating oil. Tens of kilometres of booms were also deployed at sea and along coastal areas.

- 6.3.2 The government-led response at sea was completed within two weeks although a large number of fishing vessels were still deployed in the following weeks to tow sorbent booms and collect tar balls. Some are still being used to transport manpower and materials to offshore islands in support of clean-up operations.

### **6.4 Onshore clean up**

- 6.4.1 The Korean Coast Guard tasked a total of 21 licensed clean up contractors, supported by local authorities and fisheries cooperatives to undertake shoreline clean-up operations. Onshore clean-up operations were carried out at several locations along the western coast of Korea. Local villagers, army and navy cadets and volunteers from all over Korea also participated in the clean-up operations. In excess of one million man-days were worked during the first two months.

- 6.4.2 Clean-up operations involved both manual and mechanical removal of bulk oil and the work of a large number of volunteers wiping rocks and pebbles using sorbent materials.

- 6.4.3 The removal of the bulk oil was completed by the end of March 2008. Secondary clean-up operations, involving, among other techniques, surf washing, flushing and hot water high-pressure treatment, are expected to be completed shortly.

## **7 The 1992 Civil Liability and Fund Conventions**

- 7.1 The Republic of Korea is a party to the 1992 Civil Liability Convention (1992 CLC) and a Member State of the 1992 Fund, but not a Member State of the Supplementary Fund.

- 7.2 As a consequence, if the total amount of damages were to exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund will be liable to pay compensation to the victims of the spill.

- 7.3 The tonnage of the *Hebei Spirit* (146 848 GT) is in excess of 140 000 GT. The limitation amount applicable is therefore the maximum under the 1992 CLC, namely 89.77 million SDR (£72 million). The total amount available for compensation under the 1992 CLC and the 1992 Fund Convention is 203 million SDR (£164 million).

## **8 Limitation of liability under the 1992 Civil Liability Convention**

- 8.1 Further to the Cooperation Agreement referred to in section 4, the Skuld Club entered into discussions with the government of the Republic of Korea in order to resolve its concern that the Limitation Court might not fully take into account any payment made by the Skuld Club and that therefore the Club would run the risk of paying compensation in excess of the limitation amount.
- 8.2 Meetings on this issue between the Skuld Club and the Korean government took place during April and May 2008. The Secretariat is monitoring the progress of this discussion, which is still ongoing.

## **9 Level of payments**

- 9.1 In March 2008 the Committee noted that, based on a preliminary estimation, the total amount of the losses to arise from the *Hebei Spirit* incident was likely to exceed the amount available under the 1992 Civil Liability and Fund Conventions.
- 9.2 At that session, the Executive Committee authorised the Director to settle and pay claims arising from this incident to the extent that they did not give rise to questions of principle not previously decided by the Committee.
- 9.3 In view of the uncertainty as to the total amount of the losses, the Committee also decided that any payments should for the time being be limited to 60% of the amount of the damage actually suffered by the respective claimants as assessed by the Fund's experts (cf document 92FUND/EXC.40/11, paragraphs 3.7.15-3.7.16).

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

- 10.1 The Korean Government has informed the 1992 Fund that payments totalling Won117.2 billion (£57 million) have been made or will soon be made to residents in the affected areas. Out of this amount, the Central Government has provided Won 76.8 billion (£41 million), the Choongcheonam Province Won 15 billion (£7.3 million) and private donors Won 25.4 billion (£13 million). The local authorities in the affected provinces are distributing the payments.
- 10.2 It has been reported in the press that in Taean County, which is one of the most affected areas, a total of 18 757 households have received payments between Won 746 862 (£400) and Won 2 916 600 (£1 570).
- 10.3 The Director has not been informed whether these payments were made by the Korean Government as an advance of compensation for oil pollution damage or as donations. If these payments were an advance of compensation, the Government would have acquired by subrogation the rights that the persons so compensated would have enjoyed against the Fund (Article 9.3 of the 1992 Fund Convention). The Director intends to examine this issue further and report his findings to the Executive Committee in the future.

## **11 Special Law for the Support of Affected Inhabitants and the Restoration of the Marine Environment in respect of the *Hebei Spirit* Oil Pollution Incident**

- 11.1 The Korean government has informed the 1992 Fund that a Special Law for the support of the victims of the *Hebei Spirit* incident was approved by the National Assembly in March 2008. Under the provisions of the Special Law, the government was authorised to make payments in the form of advance compensation or loans to claimants, provided such payments were based on the assessment made by the 1992 Fund and the Skuld Club. The Special Law will enter into force on 15 June 2008.
- 11.2 The 1992 Fund and the Skuld Club have been informed by the Government that it intends to begin to make payments to claimants in accordance with the Special Law in the near future.

- 11.3 The 1992 Fund and the Skuld Club are maintaining frequent contacts with the Korean government to set up a coordinated system for the exchange of information regarding compensation in order to avoid duplication of payments.

## **12 Claims Office**

In anticipation of receiving a large number of claims, and after consultation with the Korean Government, the 1992 Fund and the Skuld Club have established a Claims Office (the Hebei Spirit Centre) in Seoul to assist claimants in the presentation of their claims for compensation. The Centre has a manager and two supporting staff members. The office became fully operational on 22 January 2008.

## **13 Assessment of claims**

- 13.1 Large numbers of claims are expected for clean up costs, property damage and for consequential and pure economic losses in the fisheries, mariculture and tourism sectors. The 1992 Fund and the Skuld Club have appointed three Korean firms of surveyors and pollution claims experts, as well as a number of international experts. In total some 50 surveyors and assessors are involved in assisting the 1992 Fund and the Club in assessing claims for clean up and in the fisheries, mariculture and tourism sectors.
- 13.2 Most of these firms of surveyors and experts have established temporary offices in Taean in order to be in close proximity to the affected areas.

## **14 Claims for compensation**

### **14.1 Clean up**

- 14.1.1 As at 15 May 2008, 112 claims totalling Won90 071 283 114 (£44.2 million) have been submitted for clean-up activities carried out as a result of the incident. Of the submitted claims, 45 have been assessed at a total of Won11 776 050 717 (£5.7 million). The Skuld Club has made interim hardship payments for a total amount of Won11 220 279 050 (£5.5 million) in respect of these claims. The majority of these payments by the Skuld Club were made by early February 2008 pursuant to the Cooperation Agreement referred to in section 4. The rest of the claims are being assessed or are awaiting further supporting documentation.

- 14.1.2 Further claims are expected for clean-up activities undertaken, both at sea and on shore.

### **14.2 Fisheries and mariculture**

- 14.2.1 The west coast of the Republic of Korea has a high density of mariculture facilities and these, together with a large capture fisheries sector operating in the area, have been affected by the spill to various degrees.
- 14.2.2 As at 15 May 2008, 10 claims totalling Won 81 081 304 016 (£39.7 million) had been submitted for losses allegedly incurred by the fisheries and mariculture sectors. These claims are being assessed. The experts appointed by the 1992 Fund and the Skuld Club have been informed that a number of fisheries cooperatives are preparing claims on behalf of in excess of 12 000 capture fishermen. It is expected that these claims will be submitted in early 2009.
- 14.2.3 A number of mariculture and aquaculture facilities suffered contamination of net-supporting and other structures. The most affected structures are being removed at present. It is expected that a number of significant claims will be submitted by the mariculture sectors in the near future.

### 14.3 Tourism

The affected coastline is also known to be a tourist destination for the Seoul metropolitan area, and is characterised by a high number of small-scale tourism establishments. Nine claims totalling Won27 183 800 000 (£13 million) have been submitted for losses in the tourism sector. The experts appointed by the 1992 Fund and the Skuld Club have been informed that a few hundreds of individuals and organisations are preparing supporting documentation and are expected to submit claims by the end of June 2008 for losses allegedly suffered as a consequence of the contamination. A significant number of claims are therefore expected from the tourism sector.

### 14.4 Environmental studies

In December 2007 MOMAF instructed the Korean Ocean Research & Development Institute (KORDI) and Chungnam National University to carry out a Marine Pollution Impact Survey and Marine Ecological Restoration. After discussions between MOMAF, the 1992 Fund and the Skuld Club in January 2008, the International Tanker Owners Pollution Federation (ITOPF) was invited to join the surveys which were being carried out by KORDI and to offer technical advice on the activities undertaken in the context of the survey. In February 2008 MOMAF submitted a claim totalling Won2 195 million (£1.1 million) for the costs of the survey.

## 15 Investigations into the cause of the incident

- 15.1 Investigations into the cause of the incident have been initiated by the competent authorities in Korea and by the ship's flag state administration in Hong Kong. It is understood that these inquiries are still in progress.
- 15.2 It is understood that the incident is also being investigated by the owners of the *Hebei Spirit*, the Skuld Club and V-Ships Limited.
- 15.3 The Skuld Club has informed the Fund that, shortly after the incident, letters were sent on behalf of the ship's managers to the chief executive officers of both Samsung Corporation and Samsung Heavy Industries, inviting them to take the lead in providing their government with resources in response to the incident. It is understood that no reply was received to those letters.
- 15.4 It is not known whether under Korean law Samsung Corporation and/or Samsung Heavy Industries are entitled to invoke limitation of liability in respect of the collision of the crane barge *Samsung N°1* with the *Hebei Spirit*. If they were entitled to limit their liability, it is possible that a recovery from them would be restricted to relatively small amounts. The Director intends to investigate this issue further.

## 16 Legal proceedings

### 16.1 Criminal proceedings before the Seosan Branch of Daejeong District Court (Seosan Court)

On 21 January 2008 the Seosan Branch of the Daejeong District Prosecutor's Office brought criminal charges against the masters of the crane barge and the two tugs. The two masters were arrested. Criminal proceedings were also brought against the master and chief officer of the *Hebei Spirit*. These defendants have not been arrested, but they are not permitted to leave Korea until the proceedings are concluded.



## 16.2 Limitation Proceedings

16.2.1 In February 2008 the owners of the *Hebei Spirit* made an application to commence limitation proceedings. According to Korean Law, before limitation proceedings commence, the shipowner is required to provide evidence that the total amount of the claims against him are likely to exceed the limitation amount.

16.2.2 In February 2008 the limitation Court decided to postpone its decision on the shipowners' right to limit his liability since the shipowners had not provided evidence that claims in excess of the limitation amount had been submitted and since the results of the criminal investigation had not been presented to the Court.

## 16.3 Proceedings before the Seosan Branch Court of the Daejon District Court

16.3.1 In December 2007 a group of fishery claimants belonging to the Seosan Fisheries Cooperatives made an application to the Seosan Branch Court of the Daejon District Court (Seosan Court) requesting the Court to order the preservation of evidence in respect of the fishery damages and to appoint a court expert for the assessment of damages. The claimants proposed the appointment of their own surveyor as Court expert.

16.3.2 The 1992 Fund has instructed its Korean lawyers to intervene in the proceedings to ensure that the interests of the 1992 Fund are protected and that the court expert is appointed in an impartial manner.

16.3.3 In January 2008, the Seosan Court appointed the Maritime Research Institute of Pukyong National University as the court expert tasked with the assessment of the damages arising from the *Hebei Spirit* incident. The Court ordered that any material that the court experts receive from the claimants is made available to the experts engaged by the Club and the Fund and that the latter have unrestricted access to any material necessary to conduct the assessment of losses.

## 16.4 Proceedings before the Hongsung Branch of Daejeon District Court

16.4.1 In March 2008 a group of some 5 926 fishery claimants from the area of Boryeong City and Hongsung County made an application to the Hongsung Branch of Daejeon District Court requesting the Court to order the preservation of evidence in respect of the fishery damages and to appoint a court expert for the assessment of damages. The claimants proposed the appointment of the Fishery Science Institute of the Jeonnam University as Court expert.

16.4.2 The 1992 Fund has instructed its Korean lawyers to intervene in the proceedings to ensure that the interests of the 1992 Fund are protected and that the court expert is appointed in an impartial manner.

16.4.3 In April 2008, the Hongsung Court appointed the Fishery Science Institute of the Jeonnam University as Court expert tasked with the assessment of the damages arising from the *Hebei Spirit* incident. The Court ordered that any material the court experts receive from the claimants is made available to the experts engaged by the Club and the 1992 Fund and that the latter have unrestricted access to any material necessary to conduct the assessment of losses.

## 16.5 Injunction against the Skuld Club's and Fund's joint experts

16.5.1 In March 2008, three fishermen and two owners of raw-fish restaurants filed an application for an injunction with the Seoul Central District Court. This was aimed at preventing the experts appointed by the Skuld Club and the 1992 Fund from carrying out the assessment of damages arising from the *Hebei Spirit* incident on the grounds that they were not qualified under Korean Law to carry out such work.

16.5.2 In April 2008 the Seoul Central District Court dismissed the claimants' application for the injunction. The Court reasoned that the rights of the claimants would not be affected by the assessment work

carried out by the joint experts. Furthermore, the Court stated that under the regime of the Korean Oil Pollution Damage Compensation Guarantee Act, the joint experts were considered as eligible surveyors and therefore authorised to carry out investigation and assessment of the damage arising from an oil pollution incident.

16.5.3 In late April 2008 the claimants appealed against the decision. The Seoul Appeal Court is considering the appeal.

**17 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

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