



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 3	IOPC/APR15/3/4/1	
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1992 Fund Assembly	92AES19	
1992 Fund Executive Committee	92EC64	•
1992 Fund Working Group 7	92WG7/4	

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. <i>Level of payments</i> In June 2008 the 1992 Fund Executive Committee decided, in view of the uncertainty as to the total amount of the admissible claims, to set the level of payments at 35% of the established claims. This decision was maintained at subsequent meetings of the 1992 Fund Executive Committee. As at 18 March 2015, 48 853 claims totalling KRW 2 476 billion (£1 454 million) are still pending before the Korean Courts. In view of the uncertainty regarding the pending claims, the Director with regret proposes to maintain the level of payments at 35% so as to avoid an overpayment situation. The Director also proposes that this level of payments be reviewed at the next session of the 1992 Fund Executive Committee.
Action to be taken:	<u>1992 Fund Executive Committee</u> Decide whether to maintain the level of payments at 35%.

1 Level of payments

- 1.1 As at 18 March 2015, out of the 127 483 claims submitted, 78 630 have been resolved by judgments, mediation or withdrawn (62% of total number claims submitted). There are still 48 853 claims pending (38% of the total number of claims submitted) totalling KRW 2 476 billion (£ 1 454 million). It is not known what decisions the courts will take in respect of these claims.
- 1.2 The following table provides estimates of the total amount of losses which might be awarded by the Korean Courts.

	Amount (KRW billion)	Amount (£ million)	1992 Fund's limit (KRW 321.6 billion) as a percentage of the amount claimed/ awarded
Amount still claimed in court (including amounts settled through reconciliation)	2 562	1 500	13%
Amount claimed in court (including amounts settled through reconciliation and excluding the SLQ claims)	1 971	1 158	16%
Estimate based on the amounts settled through reconciliation by the Courts (78 630 claims) plus the amount awarded by the limitation court for the pending claims (48 853 claims)	604	355	53%
Estimate based on the amounts settled through reconciliation by the Courts (78 630 claims) and the amount awarded by the limitation court for the pending claims (48 853 claims and excluding the SLQ claims)	386	227	83%

- 1.3 The total amount available for compensation under the 1992 Fund Convention is 203 million SDR or KRW 321.6 billion.
- 1.4 As at 18 March 2015, there are 48 853 claims still pending before the Korean Courts. 21 335 claims are subject to appeals and the remaining are being examined by the Courts.
- 1.5 The amount still claimed in court (KRW 2 331 billion) plus the amounts already awarded by the Courts through reconciliation (KRW 232 billion) provide a total exposure of some KRW 2 562 billion. The amount available under the 1992 Conventions (KRW 321.6 billion) would correspond to 13% of the total exposure.
- 1.6 If, in the previous scenario, we exclude the claims for which the Korean Government is 'standing last in the queue' (SLQ), the amount available under the 1992 Conventions would correspond to 16% of the total exposure.
- 1.7 The Korean Courts have resolved through reconciliation and judgments 78 630 claims totalling KRW 232 billion. These decisions have become final. If we were to estimate the amounts which the Courts would award to the 48 853 pending claims, assuming that the Courts would award the same amounts as the Limitation Court (KRW 372 billion), would provide a total exposure of some KRW 604 billion. The amount available under the 1992 Conventions would correspond to 53% of the total exposure.
- 1.8 If in the previous scenario we exclude the claims for which the Korean Government is SLQ, the amount available under the 1992 Conventions would correspond to 83% of the total exposure.
- 1.9 The Korean Courts have so far resolved many claims through reconciliation and judgments, for amounts well below the amount claimed in the proceedings. However, there are 48 853 claims which are still pending, totalling KRW 2 476 billion (£ 1 454 million), and it cannot be said with any certainty that the future decisions by the Courts will follow the same pattern.
- 1.10 In addition, the judges dealing with the proceedings have recently changed, and this factor adds more uncertainty as to the outcome of the pending claims.

- 1.11 Taking into account the remaining uncertainties in respect of the claims pending before the Korean Courts, the Director is of the view that it is still premature to raise the level of payments.
- 1.12 The Director with regret therefore recommends the 1992 Fund Executive Committee to maintain the level of payments at 35% of the amount of the loss or damage as assessed by the 1992 Fund's experts or by the Courts through final judgment or reconciliation, so that the principle of equal treatment in the Conventions is respected and to avoid an overpayment situation.
- 1.13 The Director also recommends that this percentage should be revised at the next session of the 1992 Fund Executive Committee.

2 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to decide whether to maintain the level of payments at 35%.
