



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

Agenda item: 3	IOPC/APR16/3/5/1	
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1992 Fund Assembly	92AES20	
1992 Fund Executive Committee	92EC66	•
Supplementary Fund Assembly	SA12	

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.

Agreement with the Government of the Republic of Korea

At its October 2015 session, the 1992 Fund Executive Committee instructed the Director to explore with the Government of the Republic of Korea (Korean Government) a possible global settlement to allow the 1992 Fund to pay the Korean Government the full compensation available under the 1992 Fund Convention.

The Director has had a number of fruitful exchanges with the Korean Government on the agreement. However, more time is needed for both parties to reach an agreement on the terms. The Director hopes to present the main components of the agreement to the Executive Committee at its next October session for the Committee's consideration and approval.

Level of payments

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 losses.

In October 2015, the 1992 Fund Executive Committee decided to increase the level of payments to 50% of the established losses taking into account the number of claims pending at that time and the amount already awarded for the finalised claims.

As at 31 March 2016, out of the 127 483 claims submitted in court, 119 111 (93% of the total) had been resolved. The total amount awarded for these claims is KRW 388 billion (£236 million). There are still 8 372 claims pending (7% of the total) totalling KRW 358 billion (£218 million) ^{<1>}.

The total amount available for compensation under the 1992 Fund Convention is 203 million SDR or KRW 321.6 billion (£196 million), including the amount paid by the Assuranceforeningen Skuld (Gjensidig) (Skuld Club) in accordance with the provisions of the 1992 Civil Liability Convention.

Since the amount available for compensation is clearly insufficient to pay all claims in full, the Executive Committee will have to take a decision as to what should be a

<1> The exchange rate used in this document (as at 4 April 2016) is £1 = KRW 1642.00.

safe level of payments to ensure the equal treatment of all claimants as provided in the 1992 Conventions.

Although there are still some uncertainties in respect of what the total amount of damages will be in this incident, the Director considers that there are sufficient safeguards to allow the Executive Committee to increase the level of payments. He therefore recommends that the Executive Committee increase the level of payments to 60% of the established losses so as to avoid an overpayment situation. The Director also recommends that this level of payments be reviewed at the next session of the Executive Committee.

Actions to be taken: 1992 Fund Executive Committee

- (a) Take note of the information contained in the document, in particular with regard to the negotiations on the agreement between the 1992 Fund and the Korean Government;
- (b) decide whether to increase the level of payments to 60% of the established losses; and
- (c) decide whether to review the level of payments at its next session.

1 Agreement with the Government of the Republic of Korea

- 1.1 At its October 2015 session, the 1992 Fund Executive Committee instructed the Director to explore with the Government of the Republic of Korea (Korean Government) a possible global settlement to allow the 1992 Fund to pay the Korean Government the full compensation available under the 1992 Fund Convention and to present it to the 1992 Fund Executive Committee at its spring 2016 session for the Committee's consideration and approval.
- 1.2 The Director has subsequently had a number of exchanges with the Korean Government on the text of the agreement. The Director is pleased to report that these talks have proven fruitful. However, given the legal challenges that an agreement of this size will entail, more time is needed for both parties to reach an agreement on the terms. It is hoped that by next October the main components of an agreement can be presented for the Executive Committee's consideration.
- 1.3 The Director notes that this is not a global settlement of all aspects of the incident but rather an agreement between the 1992 Fund and the Korean Government which will allow the 1992 Fund to pay to the Korean Government the full compensation available under the 1992 Fund Convention. After this payment is made, the 1992 Fund and the Korean Government will continue the management of the incident until all legal proceedings have been resolved by the Limitation Court.

2 Level of payments

- 2.1 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 losses. This decision was maintained at subsequent meetings of the 1992 Fund Executive Committee until the Executive Committee decided at its October 2015 session, to increase the level of payments to 50% of the established losses.
- 2.2 In January 2013, the Limitation Court awarded some KRW 738 billion (£450 million) to all claimants in the limitation proceedings.
- 2.3 As at 31 March 2016, out of the 127 483 claims submitted, 119 111 had been settled by agreement, judgment, mediation or were withdrawn (93% of total number claims submitted) and claimants had

been awarded a total of KRW 388 billion (£236 million). A total of 8 372 claims totalling KRW 358 billion (£218 million) were still pending before the Korean Courts.

- 2.4 The total amount available for compensation under the 1992 Fund Convention is 203 million SDR or KRW 321.6 billion (£196 million). This amount includes the amount paid by the Skuld Club in accordance with the provisions of the 1992 Civil Liability Convention.
- 2.5 The following table provides estimates of the total amount of losses in respect of this incident and the percentages of the amount claimed/awarded, taking into account the amount available for compensation.

Scenarios	Amount (KRW billion)	Amount (£ million)	1992 Fund's limit (KRW 321.6 billion) as a percentage of the amount claimed/ awarded
1. Claimed in court and amounts settled (paragraph 2.7 below)	746	455	43%
2. Amounts settled (119 111 claims) plus amounts awarded by the Limitation Court for the pending claims (8 372 claims) (paragraph 2.8 below)	447	272	72%

- 2.6 Based on the estimates set out in the table above, the following two scenarios can be envisaged.

Scenario 1

- 2.7 The amount still claimed in court (KRW 358 billion) plus the amounts already awarded by the Courts through reconciliation (KRW 388 billion) provide a total exposure of some KRW 746 billion. The amount available under the 1992 Conventions (KRW 321.6 billion) would correspond to 43% of the total exposure.

Scenario 2

- 2.8 The Korean Courts have resolved through reconciliation and judgments 119 111 claims, totalling KRW 388 billion. These decisions have become final. If the amounts which the Courts would award to the 8 372 pending claims were to be estimated, based on the figures awarded by the Limitation Court (KRW 59 billion) for these claims, it would provide a total exposure of some KRW 447 billion. The amount available under the 1992 Conventions would correspond to 72% of the total exposure.

3 Director's considerations

- 3.1 Some 119 111 claims have been settled either by agreement with the claimants or by judgments or mediation decisions through the Korean Courts. This represents 93% of the total claims submitted. The Korean Courts have followed the 1992 Fund's admissibility criteria so far. It is therefore to be expected that the Courts will continue the same pattern in respect of the remaining 8 372 unresolved claims (7% of the total claims submitted).
- 3.2 The Director considers that it is doubtful that the Korean Courts will award amounts higher than those awarded by the Limitation Court but that it would be prudent to maintain a safety margin to protect the 1992 Fund from an overpayment situation.
- 3.3 The Korean Government is, in accordance with the provisions of the Special Law, compensating all claimants at 100% of the established losses. The Korean Government is then subrogating these claims and receiving compensation from the 1992 Fund at the level of payments decided by the 1992 Fund Executive Committee.

- 3.4 The Korean Government has stated its intention to ‘stand last in the queue’ for 58 claims submitted by its local and central authorities, totalling KRW 594 billion (£362 million). Since the 1992 Fund is only paying compensation to the Korean Government, the fact that the Government is standing last in the queue for those claims does not have an impact on the level of payments. The Korean Government is in fact the only claimant affected by the level of payments.
- 3.5 In the Director’s view, the level of uncertainty in respect of this case is now small since 93% of the claims have been resolved. In his view, the total amount of established losses should not exceed the amounts reflected in scenario 2 above, i.e. the amounts settled (KRW 388 billion) plus the amounts awarded by the Limitation Court for the pending claims (KRW 59 billion). The Director considers that it would be prudent to apply a safety margin of 12%, and with this safety margin in place, he is prepared to recommend to the Executive Committee to increase the level of payments from 50% to 60%.
- 3.6 The Director accepts that this is not an easy decision for the Executive Committee. However, he is of the view that the 12% safety margin and the safeguards provided by the Korean Government protect the 1992 Fund against an overpayment situation.
- 3.7 The Director therefore recommends that the 1992 Fund Executive Committee increase the level of payments to 60% of the established losses so as to avoid an overpayment situation. The Director also recommends that this level of payments be reviewed at the next session of the 1992 Fund Executive Committee.

4 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to:

- (a) take note of the information contained in this document, in particular with regard to the negotiations on the agreement between the 1992 Fund and the Korean Government;
 - (b) decide whether to increase the level of payments to 60% of the established losses; and
 - (c) decide whether to review the level of payments at its next session.
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