 <p>INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS</p>	Agenda item: 3	IOPC/OCT10/3/10	
	Original: ENGLISH	9 September 2010	
	1992 Fund Assembly	92A15	
	1992 Fund Executive Committee	92EC49	•
	Supplementary Fund Assembly	SA6	
1971 Fund Administrative Council	71AC25		

INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

HEBEI SPIRIT

Note by the Director

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary of the incident so far:	<p>On 7 December 2007 the <i>Hebei Spirit</i> (146 848 GT) was struck by the crane barge <i>Samsung N°1</i> 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 <i>Hebei Spirit</i>.</p> <p>The <i>Hebei Spirit</i> is insured for pollution risks by China Shipowners Mutual Insurance Association (China P&I Club) and by Assurancéföreningen Skuld (Gjensidig) (Skuld Club).</p> <p>The losses arising out of this incident are expected to exceed the limitation amount applicable to the <i>Hebei Spirit</i> under the 1992 Civil Liability Convention (1992 CLC), ie 89.8 million SDR (KRW 186.8 billion)<1>.</p> <p>The Skuld Club and the 1992 Fund have opened a Claims Office, the <i>Hebei Spirit</i> Centre (HSC), in Seoul to assist claimants in the presentation of their claims for compensation and have appointed a number of Korean and international experts to assess claims in the property damage, clean-up, fisheries/mariculture and tourism sectors.</p> <p><i>Level of payments</i></p> <p>In June 2008, the 1992 Fund Executive Committee, in view of the increased uncertainty as to the total amount of the admissible claims, decided to reduce the level of payments to 35% of the established claims. In October 2008, March, June and October 2009 and June 2010, the Executive Committee decided to maintain the level of the Fund's payments at 35% of the established claims.</p> <p><i>Fisheries restrictions</i></p> <p>The Korean Government established a number of fisheries restrictions in the weeks following the incident. The restrictions began to be lifted in April 2008. The last restrictions were lifted in September 2008.</p>

<1>

The liability of the owner of the *Hebei Spirit* has not yet been established by the Limitation Court. The Skuld Club is basing its calculation of the limitation amount on the exchange rate of 6 November 2008, the date on which the Letter of Undertaking was deposited into the Limitation Court. Otherwise in this document conversion of currencies has been made on the basis of the exchange rate as at 9 September 2010, (£1 = KRW 1 794.72 and 1 SDR = £0.978761).

In June 2009, the 1992 Fund Executive Committee decided that the assessment of claims in the fisheries sector should be based on conclusive scientific information available to the Fund and instructed the Director to continue to have bilateral consultations with the Republic of Korea with a view to resolving the remaining differences of opinion as soon as possible

In June 2010 the 1992 Fund Executive Committee noted that the Secretariat and the Republic of Korea had narrowed their differences of opinion and had reached a mutual understanding on the reasonable dates for lifting the fisheries restrictions within the 1992 Fund's policy on admissibility, as laid down in the Claims Manual, and on the basis of the instructions given by the Committee in June 2009 (section 9).

Limitation proceedings by the owner of the Hebei Spirit

In February 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings by the owner of the *Hebei Spirit* and decided that claims against the limitation fund of the *Hebei Spirit* should be registered with the Court by 8 May 2009.

One hundred and twenty six thousand three hundred and sixteen claims totalling KRW 3 597 billion (£2 billion) have been submitted in the limitation proceedings. The Limitation Court has appointed a court administrator to deal with the claims and has indicated its intention to monitor on a regular basis the progress of the registration and assessment of claims by the Skuld Club and the Fund (section 11.1).

Limitation proceedings by Samsung Heavy Industries (SHI)

In March 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings of SHI, the bareboat charterer of the two towing tugs and of the crane barge, and set the limitation fund, together with legal interest, at an amount of KRW 5 600 million (£3.1 million). The Limitation Court also decided that claims against the limitation fund should be registered with the Court by 19 June 2009. A number of claimants have appealed against the decision of the Limitation Court.

On 20 January 2010, the Court of Appeal dismissed the appeal against the commencement of the limitation proceedings of SHI. The claimants appealed to the Supreme Court (section 11.1).

Recourse action

In January 2009, the owner and insurers of the *Hebei Spirit* and the 1992 Fund commenced recourse action against Samsung C&T and SHI, the owner and operator/bareboat charterer of the two towing tugs, the anchor boat and the crane barge, in the Court of Ningbo in the People's Republic of China combined with an attachment of SHI's shares in two shipyards in China as security (section 12).

By September 2009, proceedings had been served on both Samsung C&T and SHI, but both have filed applications objecting to the jurisdiction of the Court of Ningbo and, in the case of SHI, objecting to the attachment. Submissions in response to the applications have been lodged on behalf of the 1992 Fund and the decision of the Court of Ningbo on all applications is expected before the end of 2010.

In February 2010, the Fund signed an agreement with the owner, Skuld Club and China P&I Club ('ship's interests') in connection with the recourse action, under

which the Fund and the ship interests will continue their actions separately in the Ningbo Maritime Court, sharing the costs of the recourse actions and apportioning the proceeds of any recovery by Court judgement or settlement on a 50/50 basis (section 12).

Recent developments:

Claims situation

As at 9 September 2010, 26 083 claims totalling KRW 2 145 million (£1 195 million) had been registered, including 241 group claims, together representing 98 969 claimants. Two thousand and twenty five claims have been assessed at a total of KRW 118 670 million (£66 million). Five thousand five hundred and seventy six claims have been rejected. The Skuld Club has made payments to 1 918 claimants totalling KRW 122 248 million (£62.5 million). The remaining claims are being assessed or additional information has been requested from the claimants. A further 1 880 claims are being registered. Further claims are expected (section 8).

Fisheries restrictions

Following the finalisation of the clean-up assessments, the reasonable dates for reopening the fisheries in Korea after the *Hebei Spirit* incident were further revised, extending the period in some limited areas (section 9).

Level of payments

The most recent estimate of the total amount of the losses caused by the spill is around KRW 438 500 million (£244.2 million). The Director proposes to maintain the level of the Fund's payments at 35%, to be reviewed at the next session of the 1992 Fund Executive Committee (section 13).

Action to be taken:

1992 Fund Executive Committee:

- (a) Decide whether to maintain the level of payments at 35% (section 13); and
- (b) Give the Director such other instructions in respect of the handling of this incident as it may deem appropriate.

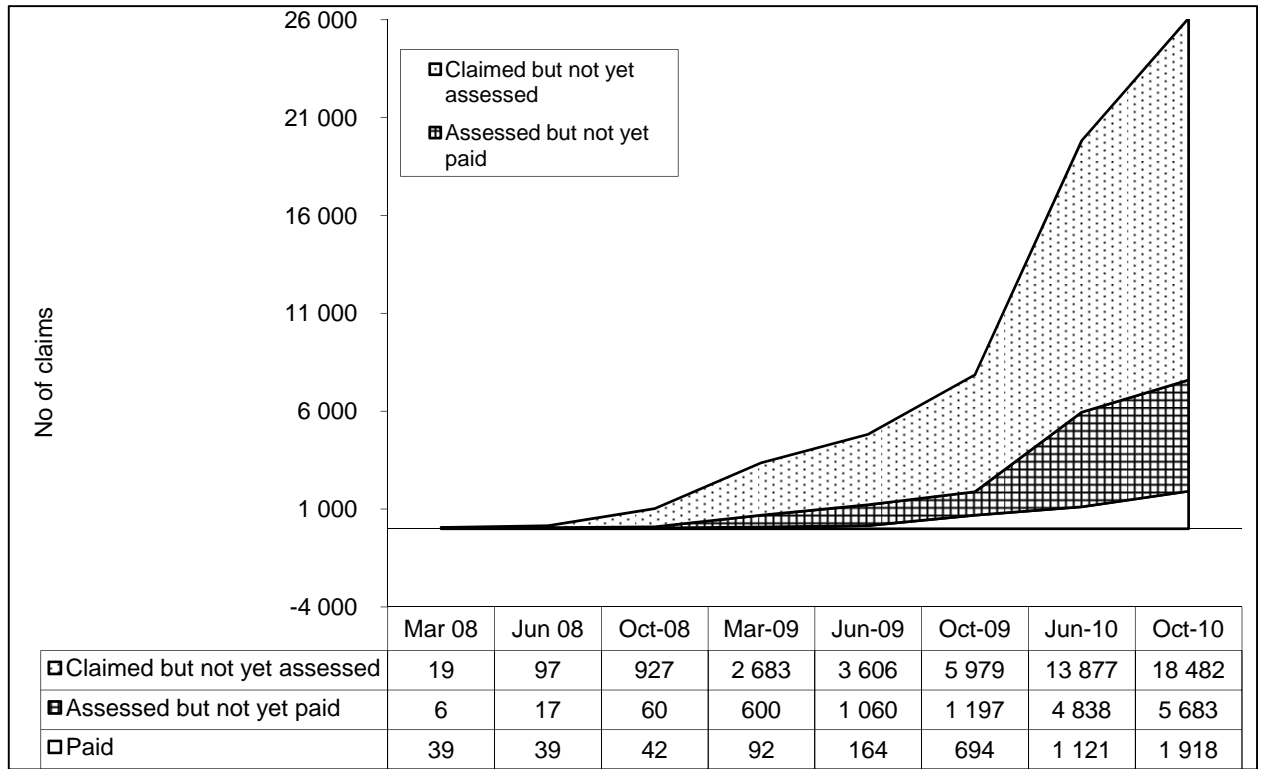
1 Summary of incident

Ship	<i>Hebei Spirit</i>						
Date of incident	07.12.07						
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	China (Hong Kong Special Administrative Region)						
Gross tonnage (GT)	146 848 GT						
P&I insurer	China Shipowners Mutual Insurance Association (China P&I)/ Assuranceföreningen Skuld (Gjensidig) (Skuld Club)						
CLC Limit	89.8 million SDR (approximately KRW 186.8 billion)						
STOPIA/TOPIA applicable	No						
CLC + Fund limit	KRW 321 619 million						
Compensation	Claimed but not yet assessed		Assessed but not yet paid		Paid		Rejected
	No. of claims	Amount KRW	No. of claims	Amount KRW	No. of claims	Amount KRW	No. of Claims
TOTAL (KRW million)	23 030	2 025 840	1 135	6 421	1 918	112 248	5 576
TOTAL (£ million)		1 128.8		3.6		62.5	
Standing last in the queue:	The Korean Government has expressed the intention to stand last in the queue for claims by a number of Ministries and Local authorities totalling KRW 115.3 billion						
Legal proceedings:	<ol style="list-style-type: none"> 1. Limitation proceedings of the owners of the <i>Hebei Spirit</i> in the Republic of Korea. 2. Limitation proceedings of the owners/operators of the Marine Spread in the Republic of Korea. 3. Recourse action by the 1992 Fund against the owners/operators of the Marine Spread in the People's Republic of China. 4. Recourse action by the Skuld Club against the owners/operators of the Marine Spread in the People's Republic of China. 						
Notes	Further claims are expected.						

2 Development of claims

The development of the incident in terms of volumes of claims processed by the Skuld Club and the 1992 Fund is reflected in Figure 1 overleaf:

Figure 1: Development of claims (number of claims)



3 The incident

The *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung N^o1* while at anchor about five miles off Taean on the west coast of the Republic of Korea. The crane barge was being towed by two tugs (*Samsung T-5* and *Samho T-3*) when the tow line broke. 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. Details of the incident, impact of the spill and clean-up operations can be found in the IOPC Funds' Annual Report 2009, Part 2, pages 31-32.

4 Claims handling

- 4.1 The Skuld Club and the Fund appointed a number 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. A total of 73 experts are currently working on the assessment of claims.
- 4.2 The Skuld Club and the Fund opened a Claims Office, the *Hebei Spirit* Centre (HSC) in Seoul to assist claimants in the presentation of their claims for compensation. The office became fully operational on 22 January 2008. The HSC has a manager and four supporting staff members. Two more temporary personnel are employed to facilitate the registration of the thousands of claims which have been received in the office.

5 The 1992 Civil Liability and Fund Conventions

- 5.1 At the time of the incident, the Republic of Korea was 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. As a consequence, since it is almost certain that the total amount of damages will exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund will be liable to pay compensation to the victims of the spill.

- 5.2 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 89.8 million SDR. The limit of liability of the shipowner has not yet been established by the Limitation Court. The shipowner and the Skuld Club are basing their calculation of the limitation amount on the exchange rate of the date on which the Letter of Undertaking was deposited into the Limitation Court, ie 6 November 2009. The conversion rate on the basis of the rate applicable to that date gives 89.8 million SDR = KRW 186 826 630 900.
- 5.3 The amount available for compensation under the 1992 CLC and Fund Convention is 203 million SDR. The conversion on the basis of the rate applicable to this incident gives 203 million SDR = KRW 321 618 990 000 (cf Annual Report 2009, Part 2, page 32).

6 Actions by the Korean Government

6.1 Hardship payments made by the Korean Government

The Korean Government has informed the Fund that payments totalling KRW 117.2 billion (£65 million) have been made to residents in the affected areas and that these payments were made as donations to the affected residents. The payments therefore did not constitute payment of compensation of pollution damage and would not fall within the scope of Article 9.3 of the 1992 Fund Convention.

6.2 Payments made by local authorities

The governments of Taean County, Gunsan City and Boryeong City have made payments totalling KRW 4 411 million to 14 claimants in the clean-up sector in respect of the cost of villagers' labour in January and February 2008, corresponding to the difference between the amount claimed and the amount assessed. Further payments totalling KRW 9 569 million have been made by the same local authorities, Sinan County and Muan County to 20 claimants for similar costs incurred during the period March to June 2008 corresponding to the amounts claimed against the Skuld Club and Fund. Payments totalling KRW 23.5 million have been made by Yeonggwang County to one claimant for villagers' labour costs incurred during the period after August 2008. These local authorities have submitted claims in respect of these payments, which have been paid.

6.3 Special Law for the support of the victims of the *Hebei Spirit* oil pollution incident

- 6.3.1 In June 2008, the Korean Government informed the 1992 Fund Executive Committee that a special law for the support of the victims of the *Hebei Spirit* incident had been approved by the National Assembly in March 2008. Details of the Special Law can be found in the Annual Report 2009, Part 2, page 33.
- 6.3.2 As at 9 September 2010, the Korean Government had made payments totalling KRW 32 596 million to 377 claimants in the clean-up, tourism and fisheries and aquaculture sectors based on assessments provided by the Skuld Club and Fund and has claimed for part of these payments. The Skuld Club has paid the Government KRW 19 181 million in respect of 118 of these claims.
- 6.3.3 The Korean Government has, under the Special Law, set up a scheme to provide loans to victims of pollution damage for an amount fixed in advance if they have submitted a claim to the Skuld Club and the Fund but have not received an offer of compensation within six months. As at 9 September 2010, the Korean Government had granted loans totalling KRW 48 462 million to 19 613 claimants.

6.4 Korean Government's decision to 'stand last in the queue'

- 6.4.1 At the June 2008 session of the 1992 Fund Executive Committee, the Korean Government informed the Committee of its decision to 'stand last in the queue' in respect of compensation for clean-up costs and other expenses incurred by the central and local governments.

- 6.4.2 In September 2010, the Korean Government informed the Fund that the amounts for which the Government intended to 'stand last in the queue' would total some KRW 115 300 million (£64.2 million) corresponding to costs incurred by the Government in respect of clean up and preventive measures, environmental studies, restoration, marketing campaigns, tax relief and other expenses incurred to deal with the pollution and that this figure was likely to increase as the Government continued to pay costs to regenerate the local economy and promote consumer spending.
- 6.4.3 The Skuld Club and Fund maintain frequent contacts with the Korean Government to ensure a coordinated system for the exchange of information regarding compensation in order to avoid duplication of payments.

7 Cooperation Agreements between the shipowner/Skuld Club, KMPRC and MOMAF

- 7.1 In January 2008, a First Cooperation Agreement on compensation matters was concluded between the shipowner, Skuld Club, Korean Marine Pollution Response Corporation (KMPRC) and the Korean Government (Ministry of Maritime Affairs and Fisheries (MOMAF)). The 1992 Fund was consulted during the negotiations but is not a party to the Agreement. Details of the First Cooperation Agreement can be found in the Annual Report 2009, Part 2, page 33.
- 7.2 In July 2008, a Second Cooperation Agreement was concluded between the shipowner, Skuld Club and the Korean Government (Ministry of Land, Transport and Maritime Affairs (MLTM), which had incorporated part of the functions of MOMAF). Details of the Second Cooperation Agreement can be found in the Annual Report 2009, Part 2, page 34.

8 Claims for compensation

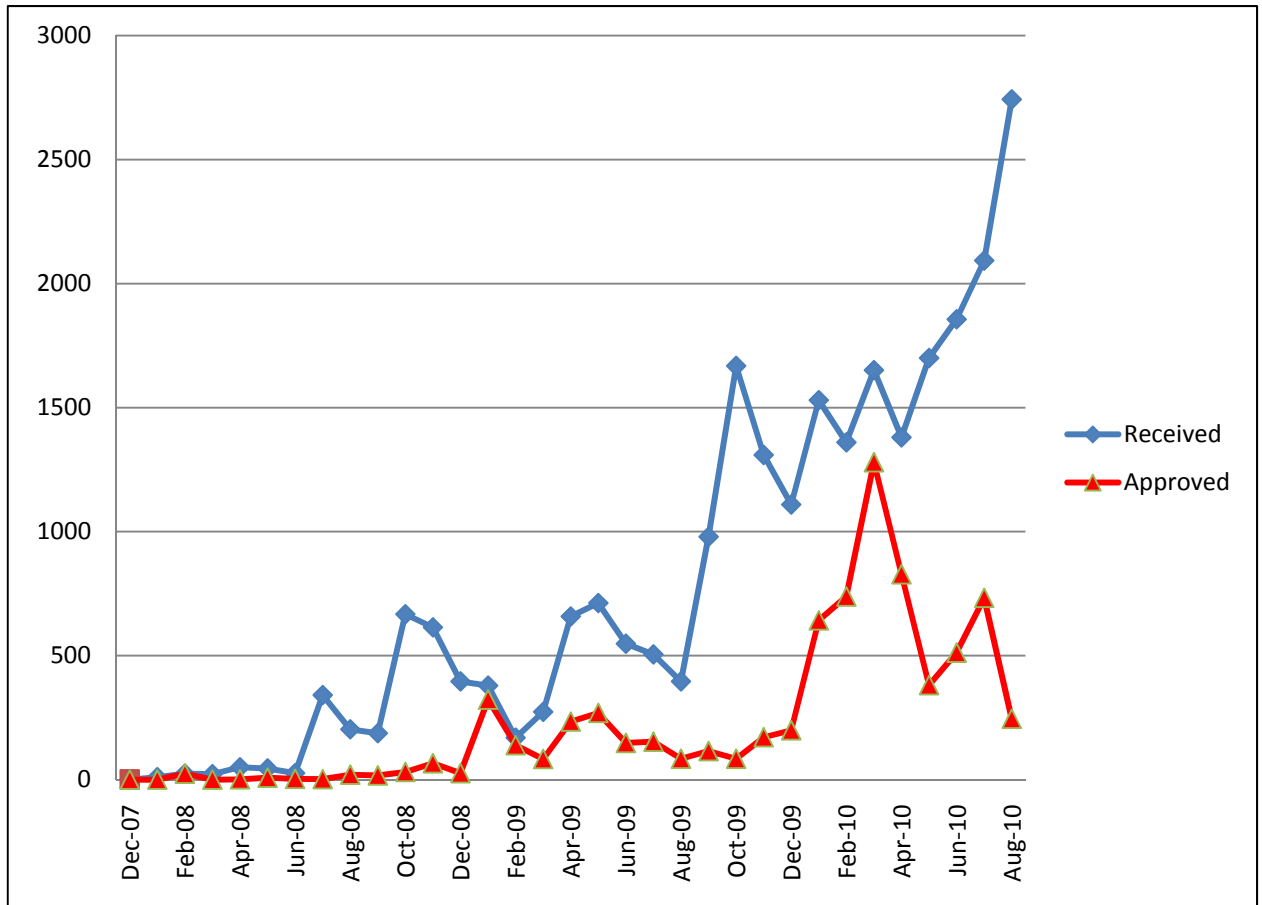
- 8.1 The table below provides an update of the claims registered in the HSC as at 9 September 2010:

Category of claim	Number of claims	Claimed amount (KRW million)	Claims assessed > 0	Assessed amount (KRW million)	Claims paid	Paid amount (KRW million)	Claims rejected
Clean up and preventive measures	274	197 221	204	90 419	172	85 708	28
Property damage	22	3 042	12	440	7	394	4
Fisheries and mariculture	10 219	1 575 088	200	10 860	187	9 919	996
Tourism and other economic damage	15 567	366 964	1 609	16 951	1 552	16 227	4 548
Environmental damage	1	2 195	-	-	-	-	
Total	26 083	2 144 510	2 025	118 670	1 918	112 248	5 576
Total (£ million)		1 195		66.1		62.54	

- 8.2 As at 9 September 2010, 26 083 claims had been registered in the HSC. Of these claims, 241 had been submitted by fishery cooperatives or committees on behalf of 98 969 small-scale fishermen affected by the oil spill. The total number of individual claimants was 124 811. Some 1 880 claims are in the process of being registered. Further claims are expected.
- 8.3 Two thousand and twenty five claims had been assessed. Five thousand five hundred and seventy six claims had been rejected. A total of 1 918 claims, totalling KRW 112 248 million had been paid by the Skuld Club. These payments also include a number of subrogated claims submitted by the Korean Government.

8.4 Graph 2 below shows the number of claims registered and assessed each month since the incident occurred. It can be seen that the rate at which claims have been assessed has broadly kept in step with the rate at which claims are received. The peaks in registration in October 2008 and October 2009 correspond to increases in the staffing of the HSC. The peak in assessment of claims in March and April 2010 relates to a great number of similar claims being rejected in that period on the grounds that there was no link of causation between the contamination and the loss. The peak in registration in August 2010 corresponds to the submission of some 2 500 claims in the aquaculture sector.

Figure 2: Claims Handling Process



8.5 The charts overleaf show the distribution of claims between the various categories, both in terms of number of claims and in terms of amount claimed.

Figure 3: Distribution of claims by amount (KRW billion)

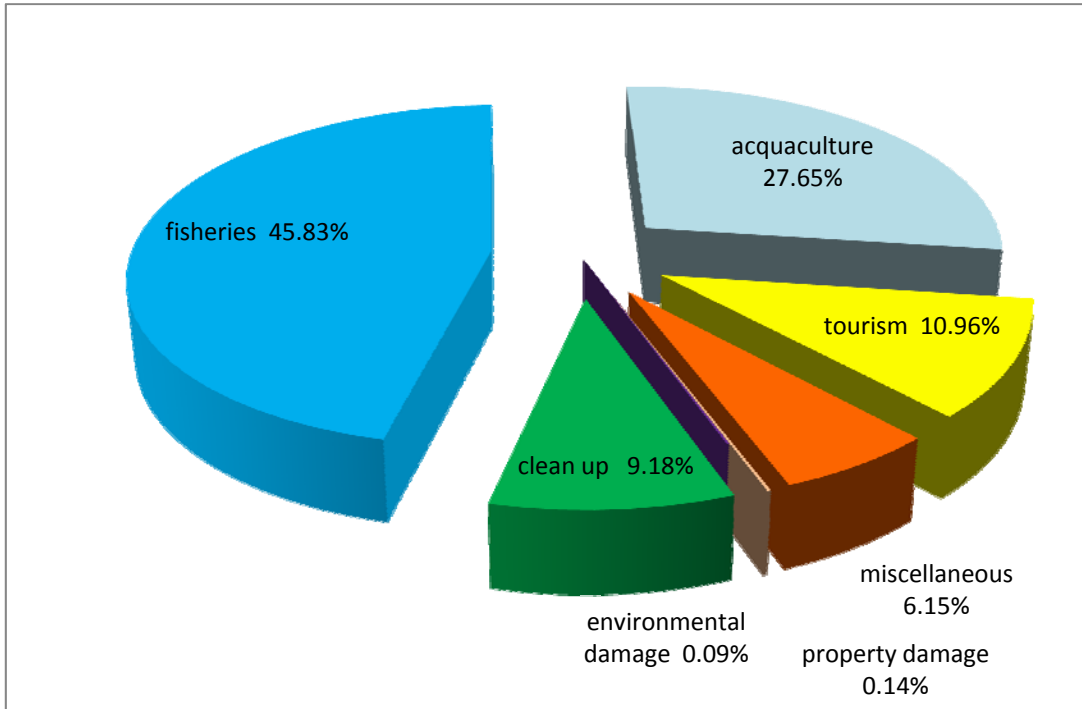
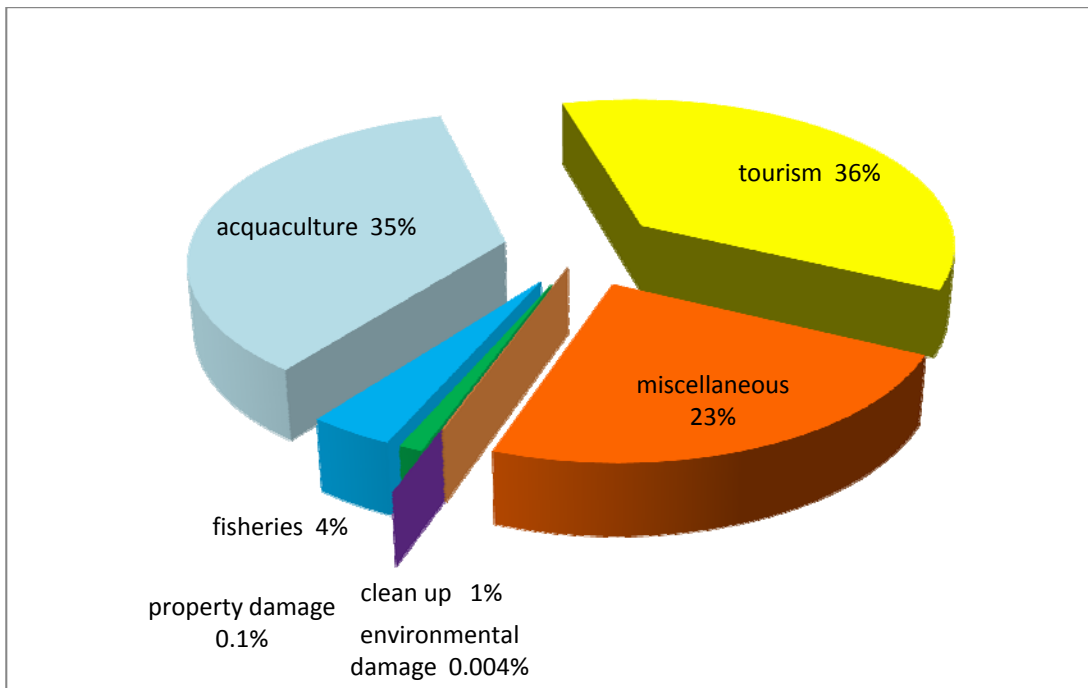
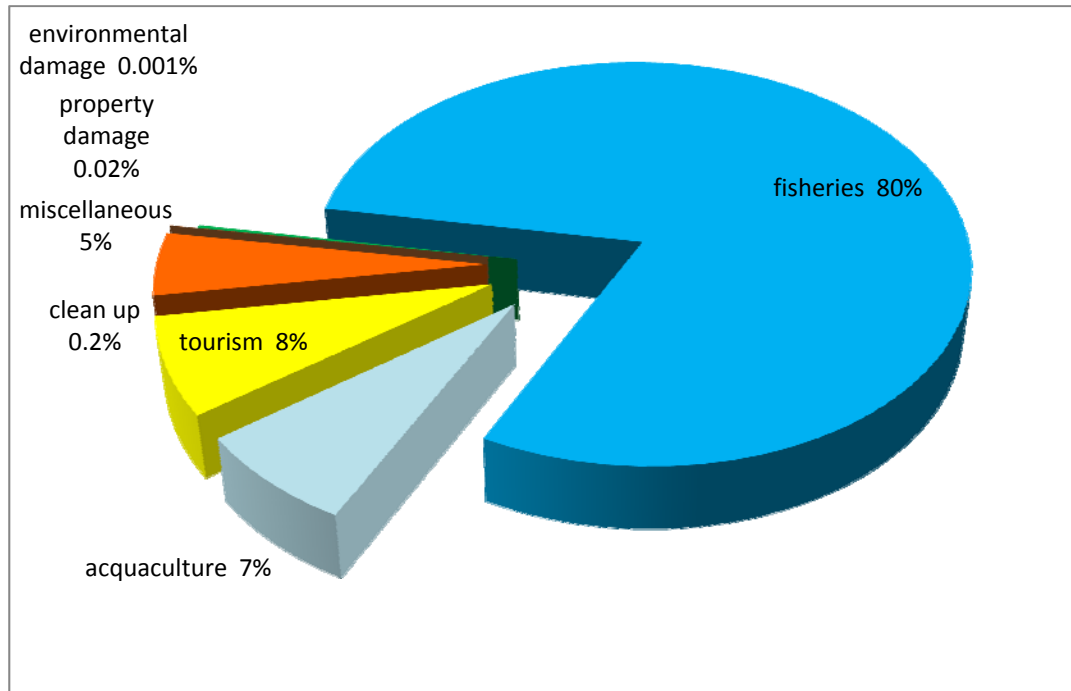


Figure 4: Distribution of claims by category



8.6 The significant difference between the number of claims and the amount claimed for the fisheries sector is due to the fact that the vast majority of the individual claims in the fisheries sector have been submitted as part of group claims. Figure 5 overleaf shows the distribution of individual claimants by category.

Figure 5: Individual claimants by category



Small scale non-fisheries related claims

- 8.7 Many tourism claims are poorly documented and would, in normal circumstances, be rejected. The experts have informed the Fund that one of the reasons for this poor documentation is that small businesses with annual revenue below KRW 24 million are exempt from VAT and business tax and keep either very limited or no records of revenues and/or costs. The Fund is aware that many of these businesses may have suffered losses as a result of the pollution but it is, however, very difficult to determine the amounts.
- 8.8 The current policy of the 1992 Fund is that a claimant is entitled to compensation only to the extent that he or she has suffered a quantifiable economic loss and there is a sufficiently close link of causation between the loss and the contamination resulting from the spill, provided that the claimant proves the amount of his or her expense, loss or damage by producing appropriate documents or other evidence (cf 1992 Fund's Claims Manual, December 2008 edition, section 1.5).
- 8.9 However, the Director believes, on the basis of the advice by the Club's and Fund's experts, that many small-scale businesses located in the areas affected by the contamination caused by the *Hebei Spirit* and which have not so far been able to prove their losses, have probably suffered losses as a result of the pollution.
- 8.10 In October 2009 the Director presented to the 1992 Fund Executive Committee a methodology developed by the Club's and Fund's experts for assessing small non-fisheries claims in case the claimant is not able to prove his/her losses. Details of this methodology can be found in document IOPC/OCT09/3/8/1, section 4. The 1992 Fund Executive Committee endorsed the Director's intention to apply this methodology on a trial basis, in order to gain experience with it and further develop the pool of reliable data.
- 8.11 As at 9 September 2010, about 60% of the small-scale business claims submitted had been assessed using the methodology described above. The others are being assessed. Further claims from small-scale businesses are expected.
- 8.12 The Director intends to present the results of the application of this methodology once all small-scale claims, for which the methodology is suitable, have been assessed.

9 **Fisheries restrictions**

- 9.1 Following the incident, the Korean Government established a number of fisheries restrictions, which were lifted between April and September 2008. Details can be found in document IOPC/OCT09/3/8/1, paragraph 2.3.
- 9.2 After examination of the data provided by the Korean Government regarding the basis on which the fisheries restrictions were imposed and lifted, the Fund and its experts considered that the sampling and decision making for seafood safety purposes had taken significantly longer than could be considered reasonable under the circumstances.
- 9.3 In June 2009, the 1992 Fund Executive Committee decided that the assessment of claims in the fisheries sector should be based on conclusive scientific information available to the Fund. Details of the decision can be found in document 92EXC.45/8 paragraph 3.4.21.
- 9.4 Following a number of meetings with the Korean Government, the Secretariat presented at the October 2009 session of the 1992 Fund Executive Committee, the result of a review of the reasonable dates when fisheries restrictions could have been safely lifted (cf document IOPC/OCT09/3/8/1, paragraph 2.4).
- 9.5 In accordance with the Committee's instructions to resolve the remaining differences of opinion with the Korean Government, the Fund and its experts conducted another thorough review of the information provided and the circumstances and conditions following the incident. The Fund's experts considered that there were two adjustments that should be made to the initially proposed dates when fisheries restrictions could have been safely lifted without departing from existing Fund policy:
- Varying reasonable dates had originally been suggested for a group of small islands due to the extremely patchy nature of contamination by oil from the incident. On review, it became apparent that the proximity of the islands to each other and the absence of clear delineations of fishing grounds between them, would have made it impossible in practice to impose closures specific to some island fisheries but not others. Based on the precautionary principle, the closures suggested as technically reasonable were therefore standardised for the entire group of islands without distinction.
 - Taking into consideration the size of the incident and areas affected, as well as the importance of seafood for the Korean population and economy, the sampling and decision making processes to ensure seafood safety were reviewed again in detail. The experts concluded that on the basis of chemical analysis and remaining environmental contamination, precautionary fisheries restrictions could only have been lifted once an absence of contamination in seafood samples had been firmly established. While in some areas it had been suggested that fisheries could have been reopened as early as February because analysis results had shown that the level of pollution did not actually necessitate a fishery restriction from a seafood safety perspective, the review of ongoing clean-up activities at that time revealed that restrictions could have reasonably been in place until early March, after no further risk of renewed contamination from remaining pollutant remained and relevant chemical analysis data had confirmed the absence of contamination in seafood samples.
- 9.6 The changes described above represent a minor correction to the position initially taken by the Secretariat in this matter and are well within the existing Fund policy.
- 9.7 A meeting took place in June 2010 in London between representatives of the Korean Government and the Fund. At that meeting the Director laid out the considerations described above, and the fact that they are within the current policy on admissibility of claims as laid down in the 1992 Fund's Claims Manual and in accordance with the decision of the 1992 Fund Executive Committee taken in June 2009. As a result of that meeting, the differences between the Korean Government and the Fund on the fisheries restrictions, were narrowed.

- 9.8 At the June 2010 session of the 1992 Fund Executive Committee, the delegation of the Republic of Korea confirmed that although not completely satisfied with the proposal made by the Director, the Korean Government would respect the Executive Committee's decision reflecting the Director's proposal at the meeting in June 2010, with the aim of facilitating the compensation process. At that meeting, the Executive Committee noted that the Secretariat and the Republic of Korea had narrowed their differences of opinion and had reached a mutual understanding on the reasonable dates for lifting the fisheries restrictions and on the basis of the instructions given by the Executive Committee in June 2009.
- 9.9 In line with the assessment of reasonable clean-up operations, the periods for the resumption of fisheries activities have been extended in some locations.

10 Investigations into the cause of the incident

10.1 Investigation in the Republic of Korea

- 10.1.1 An investigation into the cause of the incident was initiated after the incident by the Incheon District Maritime Safety Tribunal in the Republic of Korea. Details of the results of the investigation, and of the decisions taken by the Incheon Maritime Safety Tribunal in September 2008 and by the Central Maritime Safety Tribunal in December 2008 can be found in the IOPC Fund's Annual Report 2009, Part 2, page 35.
- 10.1.2 The owners of the two tugs and the owners of the *Hebei Spirit* have appealed to the Supreme Court against the decision of the Central Maritime Court. The decision of the Supreme Court is still pending.

10.2 Investigation in China (Hong Kong Special Administrative Region (HKSAR))

- 10.2.1 An investigation into the cause of the incident was also carried out by the ship's flag State administration in China (HKSAR). The investigation found that the decision by the operator of the Marine Spread to commence the towing voyage when adverse weather had been forecast was the main contributory factor to this accident. Moreover, the delay by the Marine Spread in notifying the Vessel Traffic Information Station (VTIS) and other ships in the vicinity resulted in insufficient time being given to the *Hebei Spirit* to take necessary actions to avoid the collision. The investigation further indicated that the actions taken by the Master and the crew of the *Hebei Spirit* after the collision had fully complied with the provisions as set out in the ship's Shipboard Oil Pollution Emergency Plan.
- 10.2.2 The Secretariat is examining the investigation report.

11 Legal proceedings

11.1 Civil proceedings

Limitation proceedings by the owner of the Hebei Spirit

- 11.1.1 In February 2008, the owner of the *Hebei Spirit* made an application to commence limitation proceedings before the Seosan Branch of the Daejeon District Court (Limitation Court).
- 11.1.2 In February 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings.
- 11.1.3 In February 2009, a number of claimants appealed to the Court of Appeal against the decision of the Limitation Court to commence limitation proceedings. In July 2009 the appeal was dismissed. A number of claimants appealed to the Supreme Court.

- 11.1.4 On 26 November 2009 the Supreme Court dismissed the appeal and consequently, the Limitation Court's decision for the commencement of the limitation proceedings for the owner of the *Hebei Spirit* became final.
- 11.1.5 One hundred and twenty six thousand three hundred and sixteen claims totalling KRW 3 597 billion (approximately £2 billion) have since been submitted to the Limitation Court. In August 2009 the Limitation Court indicated that it would not accept further claims. The claimants would however, still have time to modify the amount of their claim until such time as the Limitation Court completes the assessment of the claims.
- 11.1.6 The Limitation Court appointed a court administrator to deal with the claims and indicated its intention that the Court Administrator review the assessments by the Club's and the Fund's experts and by the claimants' experts rather than appoint his own experts. The Limitation Court has indicated that it intends to hold the first inspection hearing in the course of 2011. The Court is monitoring on a regular basis the Club's and Fund's progress in the registration and assessment of claims.
- 11.1.7 The 1992 Fund's Korean lawyer is following the developments in the limitation proceedings.

Limitation proceedings by SHI

- 11.1.8 In December 2008, SHI, the bareboat charterer of the two towing tugs and of the crane barge, filed a petition requesting the Limitation Court to issue an order granting the right to limit its liability at the amount of 2.2 million SDR (£2.1 million).
- 11.1.9 In March 2009, the Limitation Court rendered the order for the commencement of the limitation proceedings and set the limitation fund, together with legal interests, at an amount of KRW 5 600 million (£3.1 million). The Limitation Court also decided that claims against the limitation fund should be registered with the Court by 19 June 2009.
- 11.1.10 In June 2009, a number of claimants appealed to the Court of Appeal against the decision of the Limitation Court to grant to SHI the right to limit its liability.
- 11.1.11 On 20 January 2010, the appeal filed by the claimants against the decision of the Limitation Court was dismissed by the Court of Appeal, which confirmed the Limitation Court's decision. The claimants appealed to the Supreme Court and the case is still pending.

12 Recourse action against Samsung C&T and SHI

- 12.1 Details of the recourse action by the owner and the insurers of the *Hebei Spirit* (ship's interests) and the Fund against Samsung C&T and SHI can be found in document 92FUND/EXC.44/7, section 13.3.
- 12.2 At its session in March 2009, the 1992 Fund Executive Committee endorsed the decision taken by the Director in January 2009 to commence and continue the recourse action against Samsung C&T and SHI in the Ningbo Maritime Court in the People's Republic of China at the same time as the owner and the insurers of the *Hebei Spirit*. Details on the decision of the Executive Committee can be found in document 92FUND/EXC.44/10, paragraphs 3.5.28 and 3.5.29.
- 12.3 In February 2010, the Fund signed an agreement with the ship's interests in connection with the recourse action under which the Fund and the ship's interests will continue their actions separately in the Ningbo Maritime Court, sharing the costs of the recourse actions and enjoying the proceeds of any recovery by court judgement or settlement on a 50/50 basis.
- 12.4 In accordance with the agreement, the Fund has paid US\$3 million to the Skuld Club, corresponding to half of the costs incurred by the Club in collecting evidence for the recourse action. In February 2010, the Fund also paid the Club for the cost of the security of US\$20 million provided by the Club in relation to the attachment of SHI's shares in the shipyards in the People's Republic of China (cf document 92FUND/EXC.44/7, paragraph 13.3.31).

- 12.5 By September 2009, proceedings had been served on both Samsung C&T and SHI. Both have filed applications objecting to the jurisdiction of the Court of Ningbo and, in the case of SHI, objecting to the attachment. Submissions in response to the applications have been lodged on behalf of the Fund. The Court of Ningbo has not yet made a decision on the applications.

13 Level of payments

- 13.1 At its June 2008 session, the 1992 Fund Executive Committee decided that, in view of the uncertainty as to the total amount of the potential claims, and in view of the need to ensure equal treatment for all claimants, any payments made by the 1992 Fund should for the time being be limited to 35% of the amount of the damage actually suffered by the respective claimant as assessed by the Fund's experts. The Executive Committee decided to maintain the level of payment at 35% of the amount of the established damages, and to review the situation at its next session in October 2008, as well as in March, June and October 2009 and in June 2010 (cf Annual Report 2009, Part 2, page 32 and documents 92FUND/EXC.44/10, paragraph 3.5.7, 92FUND/EXC.45/8, paragraph 3.4.25, IOPC/OCT09/11/1 paragraph 3.8.27 and IOPC/JUN10/6/1 paragraph 3.5.26).

- 13.2 The Director has continued to collect the most up-to-date information on the estimated total exposure of the Fund. The revised estimated figures are set out in the following paragraphs.

13.3 Clean up

- 13.3.1 The revised estimate of the expected admissible costs for the at sea and onshore clean-up, consequent disposal of waste and for environmental restoration and monitoring as a result of the incident totals KRW 180 100 million.

- 13.3.2 The estimate has been reduced slightly to take into account the increased understanding of the total levels of claims and of the losses assessed so far. The revised estimate takes into consideration the assessed amount of the claims settled to date, as well as the claims for property damage related to clean-up operations that have been submitted so far.

13.4 Fisheries and aquaculture

- 13.4.1 The total estimated losses in the fisheries, aquaculture and ancillary industries sector have been increased to around KRW 186 000 million.

- 13.4.2 Previous global estimates had been based on official historical fisheries landings data, with a number of assumptions about what actually happened. For this updated estimate, the experts engaged by the Club and Fund have reviewed the significant number of claims already received and considered the likely level of established losses based on the assessment of the claims already submitted and those likely to follow, and comparing the results with the available official statistics.

- 13.4.3 Differences between this estimate and the previous one are due to a better understanding of the likely losses in certain categories of aquaculture loss (fin fish, seaweed, property damage) and in the capture fisheries sector, based on the review of the claims submitted, and a comparison of the data obtained during the assessment process with the official estimates existing for the fisheries and aquaculture sectors.

Capture fisheries

- 13.4.4 The losses to capture fisheries have now been estimated at KRW 79 700 million, an increase compared to June 2010. Given that a vast amount of claims have already been submitted, the Club's and Fund's experts have used the information obtained through the individual surveys already carried out to prepare a more accurate estimate of the overall losses in this sector.

- 13.4.5 This estimate is based on the impact of the spill on the fishery sector if the fishing restrictions imposed by the authorities were to be accepted. It would therefore be significantly lower if the estimate was based on the periods when business was interrupted, applying the dates determined by the Fund on the basis of technical reasonableness (cf section 9 above).

Aquaculture

- 13.4.6 In the most recent analysis of the expected losses in the aquaculture sector, the Club's and Fund's experts have mainly considered the number and type of claims submitted so far, as well as the result of the assessments carried out until now. Where the two sources of information above were not sufficient to carry out a meaningful estimate, official government statistics on business revenues in the area, as well as data concerning the physical contamination in the facilities were also utilised.
- 13.4.7 Based on the information available, the losses to the aquaculture sector arising from the *Hebei Spirit* incident have been estimated at about KRW 80 400 million, which is slightly lower than in June 2010. The estimates for this sector have taken into consideration the 1992 Fund Executive Committee's decision to reject, in principle, claims submitted by fishermen not in possession of a valid license or permit where such license or permit was legally required (cf document 92FUND/EXC/45/8, paragraph 3.4.11).

Ancillary industries

- 13.4.8 The Club's and the Fund's experts also took into account the possible losses of ancillary industries to fisheries and aquaculture, both upstream (eg gear, fuel and ice) and downstream (eg marketing, processing, distribution) and have estimated their losses at KRW 25 900 million, which is higher than in June 2010. Where the hard data could be obtained from the assessment of existing claims, this has been used. In other cases, a proportion of the estimated value of lost catches and crops in the fisheries and aquaculture sectors has been used to estimate losses to marketing and processing.

13.5 Tourism and other economic losses

- 13.5.1 On the basis of the available information the experts have revised the total estimated loss in the tourism sector and this is expected not to exceed KRW 72 400 million. This estimate also takes into account that further claims might be submitted.
- 13.5.2 The current estimated losses are lower than the estimates provided in the past since the Fund's experts can now take into consideration the assessments of claims already submitted and the average ratio between the assessed value and claimed amounts by type and size of business and by geographic area. The average assessed loss per business per geographic area has been calculated and then applied to the number of claims yet to be assessed.

13.6 Director's considerations

- 13.6.1 On the basis of the information set out above, the Director considers that the total amount of the losses arising from the *Hebei Spirit* incident could be estimated as set out in the table below:

Category of loss	Estimated losses October 2009 (KRW billion)	Estimated losses June 2010 (KRW billion)	Estimated losses October 2010 (KRW billion)	Estimated losses October 2010 (£ million)
Clean up	195	186.9	180.1	100.3
Fisheries and mariculture	149	166.2	186	103.6
Tourism	198-233	100	72.4	40.3
Total	542-577	453.1	438.5	244.2

- 13.6.2 The total amount available for compensation under the 1992 CLC and Fund Convention is 203 million SDR or KRW 321 619 million (cf section 5).
- 13.6.3 The table below shows the amount available for compensation under the 1992 CLC and Fund Convention as a percentage of the amounts claimed in the HSC, of the amounts claimed in the limitation proceedings, and of the total losses estimated by the Fund's experts.

	Exposure (KRW billion)	Percentage of the Fund's limit of KRW 321.6 billion (KRW billion)
Amount claimed in HSC	2 145	15%
Amount claimed in limitation proceedings	3 597	9%
Estimate of losses	438.5	73%

- 13.6.4 The Korean Government, has stated its intention to 'stand last in the queue' for claims in respect of compensation for clean-up costs and other expenses incurred by the central and local governments (paragraph 6.4.2) with the aim of facilitating the increase of the level of payment in the incident. The claims for which the Korean Government has stated its intention to 'stand last in the queue' however total some KRW 115.3 billion (£64.2 million), which corresponds to about 5.4% of the total amount claimed so far, and would therefore have no significant impact on the Fund's total exposure.
- 13.6.5 The total amount of the claims against the Fund registered at the HSC so far is KRW 2 145 billion (£1 195 million) and claims are still being received. Currently, the amount available under the 1992 Conventions corresponds to 15% of the total amount claimed. By applying an appropriate safety margin for the Fund, it would mean a level of payment of about 10% of the established claims. However, the levels at which claims have been assessed so far are significantly lower than the amounts claimed, which seems to indicate that the assessed losses will be appreciably below the level that was originally estimated. This is in line with the fact that in past incidents in the Republic of Korea, the total amount of the claims as settled has generally been significantly lower than the amount originally claimed and the Korean courts have tended to uphold the assessment of losses based on the Fund's criteria for admissibility of claims.
- 13.6.6 The amount available under the 1992 Conventions corresponds to 9% of the total amount claimed in the limitation proceedings, ie KRW 3 597 billion (£2 004 million). Applying these figures, with an appropriate safety margin for the Fund, would mean a level of payment of about 5%. However, on the basis of the current information available, it appears that many claims submitted in the limitation proceedings appear to be for losses which are not admissible under the 1992 CLC and Fund Convention.
- 13.6.7 The amount available under the 1992 Conventions as a percentage of the total estimated losses, based on the current estimates prepared by the Skuld Club's and the Fund's experts, is 73%. That would mean that the level of payment could be raised to 60-65%. Taking into account that the advice of the Club's and Fund's experts is still the most reliable and realistic estimate of the total exposure of the Fund in this case, but taking into consideration the circumstances considered in the paragraphs above and the remaining uncertainties surrounding the claims situation in this incident, the Director takes the view that maintaining the level of payment at 35% will continue to provide the 1992 Fund with reasonable protection against a possible overpayment situation.
- 13.6.8 The Director therefore proposes to maintain the level of payments at 35% of the amount of the loss or damage as assessed by the Club's and Fund's experts and that this percentage should be reviewed at the 1992 Fund Executive Committee's next session.

14 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to decide whether to maintain the level of payments at 35% (section 13); and
 - (c) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.
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