INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

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1992 Fund Executive Committee	**92EC65**	●
Supplementary Fund	**SA11**	

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.
Summary of the incident so far:	On 7 December 2007, the *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 10 900 tonnes of crude oil escaped into the sea from the *Hebei Spirit*. The three southerly provinces on the west coast of the Republic of Korea were affected to various degrees. *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*. By August 2012, a total of 127 483 claims totalling KRW 4 227 billion (£2 404 million) had been submitted. On 15 January 2013, the Limitation Court issued its judgment, awarding some KRW 738 billion (£420 million) [<1>] in respect of 63 213 claims and rejecting 64 270 claims. Some 87 000 claimants filed objections against the Limitation Court's decision in the Seosan Court. The 1992 Fund filed some 63 000 objections. The Court started its hearings in July 2013. *Legal proceedings against the 1992 Fund* By 7 December 2013, 117 504 separate legal actions against the 1992 Fund had been filed in the Seosan Court and the claimants had therefore protected their rights against the 1992 Fund. The Court decided not to progress the separate lawsuits for the time being, since the same claims were being dealt with in the objection proceedings.
Recent developments:	*Claims situation* As at 21 July 2015, 128 406 claims totalling KRW 2 776 billion (£1 580 million) have been submitted. The Skuld Club reached the limit of its liability under the 1992 Civil Liability Convention (1992 CLC), having paid KRW 186.8 million [<2>] in compensation by June 2015. The 1992 Fund will commence making payments shortly.

[<1>] The exchange rate used in this document (as at 13 July 2015) is £1 = KRW 1758.163.

Limitation proceedings by the owner of the Hebei Spirit

As at 21 July 2015, of the 127 483 claims submitted in the limitation proceedings 87 675 claims have been resolved by judgments, mediation or have been withdrawn. Of the 34 728 judgments issued by the Seosan Court, the majority of which agreed with the 1992 Fund's assessment of those claims. A total 39 808 claims are still pending either at the Seosan Court or at the Court of Appeal.

This document contains a summary of a number of judgments rendered by the Korean courts. Two of the judgments awarded two agencies of the Korean Government amounts related to VAT paid by the agencies to third parties. The 1992 Fund has provisionally appealed these two decisions, since the 1992 Fund's governing bodies have not yet taken a decision with regard to the recovery of VAT by governments agencies.

Level of payment

The Director will review the situation in light of the decisions by the Seosan Court and will make a recommendation to the 1992 Fund Executive Committee in respect of the level of payments in an addendum to this document.

Action to be taken: 1992 Fund Executive Committee

Information to be noted.

1 Summary of incident

Ship	*Hebei Spirit*
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	China
Gross tonnage	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 321.6 billion (£182 million)
Standing last in the queue (SLQ)	A number of central and local government agencies are 'standing last in the queue' with regard to their claims totalling KRW 611.7 billion (£348 million).
Legal proceedings	(i) Limitation proceedings on the liability of the owner of the *Hebei Spirit* (section 4.1); (ii) Proceedings in the Court of First Instance (Seosan Court) with regard to 149 922 objections to the decision of the Limitation Court, including judgments in respect of 34 728 claims (section 4.2); (iii) Legal proceedings against the 1992 Fund (section 5); and (iv) Two judgments awarding VAT paid by two government agencies to third parties (section 6)

<2> The amount for which the owner of the *Hebei Spirit* is liable has not yet been established. The Skuld Club is basing its calculation of the limitation amount on the exchange rate at 16 November 2008, the date on which the Letter of Undertaking was deposited into the Limitation Court.

2 Background information

The background information to this incident is summarised above and provided in more detail at the Annex.

3 Claims for compensation

3.1 As at 21 July 2015, of the 128 406 claims submitted to the 1992 Fund and the Skuld Club, totalling KRW 2 776 billion, all but seven claims had been assessed. Of these, 41 221 claims had been assessed at positive amounts and 87 178 claims had been rejected. Further claims are being reassessed as a result of the review of additional information submitted by the claimants during the court proceedings. The Skuld Club has paid KRW 186.8 billion in compensation to 32 665 claims, thus reaching its limit under the Civil Liability Convention (1992 CLC).

3.2 The Korean Government has continued making payments of compensation to the claimants in accordance with the Special Law, by providing compensation to claimants on the basis of any final recommendation or judgment.

3.3 The Korean Government has agreed to continue making payments of compensation to claimants at 100% of the established amount and will be reimbursed by the 1992 Fund up to the level of payments established by the Executive Committee, currently set at 35%. Payments by the 1992 Fund to the Korean Government are expected to commence shortly.

4 Limitation proceedings

4.1 Proceedings in the Limitation Court by the owner of the *Hebei Spirit*

4.1.1 On 27 August 2012, the Limitation Court received 127 483 claims totalling KRW 4 227 billion (£2 404 million).

4.1.2 In January 2013, the Court issued its decision, assessing the losses arising out of the *Hebei Spirit* incident at a total of KRW 738 billion (£420 million) and rejecting 64 270 claims. In its decision, the Court stated that it did not consider itself bound by the 1992 Fund's Claims Manual in determining the scope of compensation for damages arising from the *Hebei Spirit* incident, although it made clear that the claimants would still have to prove a link of causation between the damage and the incident for their claim to be considered admissible for compensation.

4.1.3 Under Korean law, the assessment decision by the Limitation Court can be objected to by referring the matter to a Court of First Instance. Any decision of the Court of First Instance in Seosan (Seosan Court) may be appealed to the Court of Appeal in Daejeon High Court (Appeal Court) and, in certain circumstances; a decision of the Appeal Court may be appealed to the Supreme Court in Seoul (Supreme Court).

4.1.4 Any decision by the Seosan Court would be directly enforceable only upon the shipowner or its insurer, since the liability being decided in the limitation proceedings is that of the owner/insurer.

4.1.5 Any decision on quantum would only be enforceable on the 1992 Fund if the claimant filed a separate lawsuit against the 1992 Fund to seek compensation for the Limitation Court's decision.

4.2 Proceedings in the Court of First Instance (Seosan Court)

4.2.1 Some 149 922 objections to the Limitation Court were filed in the Seosan Court (86 759) by the claimants and 63 163 by the Club/1992 Fund. The Seosan Court grouped the objections filed by the claimants into 126 cases and the objections filed by the Club/1992 Fund into 54 cases.

4.2.2 The Seosan Court has been seeking to encourage out-of-court settlements by proposing mediation settlement to the parties in cases where matters of principle were not under discussion. As a result of

the Court's action, as at 21 July 2015**,** a total of 80 285 claims had been resolved by reconciliation between the parties. None of these reconciliations involved matters of principle.

4.2.3 The Seosan Court has issued judgments in respect of 34 728 claims. The judgments which had become final before the April 2015 meeting of the Executive Committee were reported in document IOPC/APR15/3/4.

Five judgments on the claims by 4 658 individuals in Seocheon-gun and Dangjin

4.2.4 In May 2014, the Seosan Court issued five judgments in respect of claims by 4 658 claimants in Seocheon-gun and Dangjin. In its judgments, the Seosan Court upheld the decision of the Limitation Court and rejected the claims, since it found that the level of oil pollution was minimal and therefore it could not have affected the area and caused the alleged damages. All the claimants have appealed the judgments.

4.2.5 In May 2015, the Appeal Court however dismissed the appeal by the claimants from Seocheon. The claimants did not appeal, and accordingly, the judgments are final. At the time this document was issued, the Appeal Court had yet to make a decision for the claimants from Danjin.

Two judgments on the claims by 111 individuals in Seocheon-gun

4.2.6 In July 2014, the Seosan Court issued two judgments in respect of claims by 111 claimants in Seocheon-gun and Dangjin. In its judgment in respect of the claims by 110 of the claimants, the Court upheld the decision of the Limitation Court and rejected the claims on the grounds that the claimants had failed to prove that they actually fished for a living in the affected area. In one of the cases, the Court found that the oil pollution had not affected the fishing grounds used by the claimant and did not cause the damages claimed. All the claimants appealed the judgment.

4.2.7 In May and June 2015, the Appeal Court dismissed all the appeals. The judgment is now final.

Judgment on the claim by a fish seller

4.2.8 In July 2014, the Seosan Court issued a judgment on the case of one fish seller who alleged losses due to lack of supply of oysters as a consequence of the incident. The claim, totalling KRW 12 069 420, consisted of economic losses in the amount of KRW 10 972 200 plus damage assessment fees in the amount of KRW 1 097 220. The Limitation Court had rejected the claim as the claimant had failed to provide sufficient information in support of his claim. The Seosan Court argued that, as the claimant had submitted to the Court additional information on his link with suppliers who were found to have been affected by the contamination, it was likely that the claimant had suffered a loss. The Seosan Court did not uphold the decision of the Limitation Court and awarded to the claimant the full amount of losses.

4.2.9 The 1992 Fund appealed the judgment, since, although the claimant may have proved that he purchased part of his supply from businesses that were affected by the incident, the information he had provided in support of the claim did not show that he had suffered a loss or that the loss was the same amount as claimed. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claim by a number of handgatherers and retail businesses

4.2.10 In July 2014, the Seosan Court issued a judgment on the claims submitted by one compensation committee on behalf of 247 handgatherers and fish retail business entrepreneurs. The Limitation Court had rejected their claim on the grounds that the items of claim had no causal relationship with the incident and/or were time barred. In its judgment, the Seosan Court upheld the decision of the Limitation Court and rejected the claim.

4.2.11 The claimants have appealed the judgment.

Judgment on the claim by a claimants' committee

4.2.12 In July 2014, the Seosan Court issued a judgment on the claim submitted by a claimants' committee seeking compensation for its costs. The Seosan Court decided that the Limitation Court judgment rejecting the claim was sound as the costs were not justified. The claimant appealed the judgment.

4.2.13 In May 2015, the Appeal Court dismissed the appeal. The claimant has filed an appeal to the Supreme Court.

Six judgments on the claims by 2 559 individuals in Seosan

4.2.14 In September 2014, the Seosan Court issued six judgments in respect of claims by 2 559 claimants. In the judgments, the Court upheld the decision of the Limitation Court and rejected the claims, since it found that the claimants had not proven to be genuine handgatherers.

4.2.15 The claimants appealed the judgments. At the time this document was issued, the Appeal Court had yet to make a decision.

Nine judgments on the claims by 2 559 handgatherers in Yeonggwang, Gochang and Sinan

4.2.16 In October 2014, the Seosan Court issued judgments on the claims by 2 559 handgatherers in Yeonggwang, Gochang and Sinan. In its judgments, the Court considered that, despite the fact that there was no fishing ban, the handgatherers would have suffered a total loss during a period of two to four months due to the incident and awarded a loss of KRW 11 216 759 760**.**

4.2.17 The 1992 Fund appealed the judgments, since it found that the Court had allowed for 100% losses even in the absence of a fishing ban for the entirety of that period, when a number of individuals had submitted evidence showing fishery activity during the same period.

4.2.18 At the time this document was issued, the Appeal Court had yet to make a decision.

Judgments on the claims by 6 843 handgatherers in Boryeong and Hongseong

4.2.19 In October 2014, the Seosan Court issued judgments on the claims by 6 843 handgatherers in Boryeong and Hongseong. In its judgments, the Court considered that the claims were admissible and awarded them a total of KRW 7 702 227 002.

4.2.20 The 1992 Fund appealed the judgments, since it found that the Court had allowed for 100% losses even in the absence of a fishing ban for the entirety of that period, when a number of individuals had submitted evidence showing fishery activity during the same period. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claim by four individuals engaged in clean-up activities

4.2.21 In November 2014, the Seosan Court issued a judgment on the claims presented by four individuals alleging to have been involved in clean-up activities in the Bakripo beach area from March to June 2008. The 1992 Fund had rejected their claims considering the action was not reasonable. In its judgment, the Court rejected their claims since the claimants had failed to show that they had actually performed clean-up activities during the alleged period and that such activities, if carried out, were reasonably required.

4.2.22 The claimants appealed the judgment. At the time this document was issued, the Appeal Court had yet to make a decision.

Two judgments on the claims by handgatherers, village fisheries, and salt farmers from Hampyeong and Muan

4.2.23 In December 2014, the Seosan Court issued two judgments covering claims presented by handgatherers, village fisheries and salt farmers from Hampyeong and Muan. In its judgments, the Court upheld the 1992 Fund's assessment of some claims but rejected the ones it considered unsubstantiated. However, it awarded more than the 1992 Fund's assessment to a number of claimants.

4.2.24 The claimants appealed the judgments. The 1992 Fund also appealed the judgments in respect of those claims for which the Court awarded an amount that the 1992 Fund considered excessive based on the evidence submitted. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claims by 2 056 handgatherers from Muan and Sinan

4.2.25 In December 2014, the Seosan Court issued a further judgment on 142 claims by handgatherers from Muan and Sinan. In its judgment, the court held that, regardless of the fact that there was no official fishing ban in the area, the claimants had still suffered losses for a period corresponding to that of the fishing ban in other areas.

4.2.26 The claimants appealed the judgment. The 1992 Fund has also appealed the judgment, arguing that unsubstantiated losses had been allowed. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claims by 478 non-fishery claimants and grass eel catcher

4.2.27 In February 2015, the Seosan Court issued a judgment on the claims by 478 non-fishery claimants and grass eel catchers. The 1992 Fund had rejected the claims since the claimants had failed to prove that they had suffered a loss as a consequence of the contamination and they had failed to provide a valid license to exercise the activity. In its judgment, the Seosan Court upheld the 1992 Fund's assessment of these claims and rejected all the claims.

4.2.28 The claimants appealed the judgment. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claim by two handgatherers in Boryeong

4.2.29 In February 2015, the Seosan Court issued two judgments on the claims by two handgatherers in Boryeong. The 1992 Fund had rejected the claims since the claimants had failed to protect their claims in court and the claims had therefore become time barred. In its judgment, the Seosan Court upheld the 1992 Fund's rejection of the claim for time bar reasons.

4.2.30 The claimants appealed the judgment. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claims by six central and local authorities

4.2.31 In February 2015, the Seosan Court issued a judgment on the claims by six local authorities in respect of transportation costs and other expenses incurred for volunteers' clean-up activities, totalling KRW 2 757 572 430. In its judgment, awarding KRW 31 001 690, the Court upheld the 1992 Fund's position in respect of the transportation costs and other expenses incurred for the volunteers' clean-up activities. The Seosan Court held that:

(1) the transportation costs incurred to the point until those volunteers arrived at the gathering points would not be considered reasonable; and

(2) the expenses incurred for the volunteers after 1 January 2008 were not recoverable either unless it was established that the clean-up activities involving those volunteers were technically reasonable.

4.2.32 Two of the claimants appealed the judgment. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claims by 1 577 handgatherers

4.2.33 In February 2015, the Seosan Court issued a judgment on the claims by 1 577 handgatherers in Buan-gun and Gunsan. The 1992 Fund had rejected the claims since the claimants had not proven to have been engaged in the handgathering activities at the time of the incident or that they had suffered a loss as a consequence of the contamination. In its judgment, the Court upheld the 1992 Fund's view that the claimant had not proven to be engaged in handgathering activities or that they had suffered a loss as a consequence of the contamination,

4.2.34 The claimants appealed the judgment. At the time this document was issued, the Appeal Court had yet to make a decision.

Judgment on the claim by one grass eel catcher

4.2.35 In April 2015, the Seosan Court issued a judgment in respect of the claim by one grass eel catcher. The 1992 Fund had originally rejected the claim since the claimant had not submitted sufficient information to support his claim. In its judgment, the Court rejected the claim since it found that there was no evidence indicating that the supply of grass eel had been diminished at all or even if it had been, it had been due to the incident. The claimant did not appeal the judgment, which is now final.

Judgment on the claims by 28 handgatherers

4.2.36 In May 2015, the Seosan Court issued a judgment in respect of the claim brought forth by a Compensation Committee with regard to 28 handgatherers. The 1992 Fund had originally rejected the claim since the claimants had not submitted sufficient information to support their claims. In its judgment, the Court dismissed the claims since the claimants had unfortunately passed away before the objections were filed and had therefore no capacity to file such objections. The compensation committee did not appeal the judgment, which is now final.

Judgment on the claims by 470 claims for economic losses

4.2.37 In May 2015, the Seosan Court issued a judgment with respect to the claims of 470 individuals operating in various businesses including, *inter alia*, a taxi business, comic book rental shop, newspaper delivery business and boiler sales. The 1992 Fund had originally rejected the claims since the claimants had not submitted sufficient information to support their claims. In its judgment, the Court rejected the claims since it found that there was no evidence supporting that the claimants' business losses had been due to the incident.

4.2.38 The claimants appealed the judgment.

Judgment on the claims by 252 taxi drivers

4.2.39 In May 2015, the Soesan Court issued a judgment with respect to 252 taxi drivers claims. The 1992 Fund had originally rejected the claims since the claimants had not submitted evidence to prove that they had suffered a loss as a consequence of the contamination. In its judgment, the Court rejected the claims as it found that there was no evidence supporting that the claimants' taxi businesses had been damaged due to the incident. The claimants did not appeal the judgment, which is now final.

Judgment on the claim by a local authority

4.2.40 In May 2015, the Seosan Court issued a judgment with respect to a claim by a local authority for costs incurred after the incident. The 1992 Fund had originally rejected the claim since the claimant had not provided sufficient information supporting the claim. The claimant subsequently provided information to the Court, which the Court considered sufficient to prove that some of the costs incurred were due to the contamination. The Court awarded the claimant a total of KRW 76 990 770. The 1992 Fund examined the information provided and considered the Court's assessment reasonable. The claimants did not appeal the judgment, which is now final.

Judgments on two claims by the Republic of Korea for costs incurred by the Korean Navy in relation to the purchase of clean-up materials

4.2.41 In May 2015, the Seosan Court issued judgments on two claims by the Royal Navy for costs incurred during clean-up operations. The 1992 Fund had originally rejected the claim since no evidence had been produced showing that the claimed costs had been incurred. However, the Court found that, on the basis of evidence submitted during the objection proceedings, the cost of KRW 4 149 520 for clean-up materials was reasonable. The 1992 Fund's experts were able to review the evidence submitted to Court and advised the 1992 Fund that the assessment was technically reasonable. The claimants did not appeal the judgments, which are now final.

Judgment on a claim by the Republic of Korea for costs incurred by the Korean Navy in relation to clean-up operations

4.2.42 In May 2015, The Seosan Court issued a judgment on a claim by the Korean Navy for costs related to clean-up operations. The 1992 Fund originally assessed the claim at KRW 12 473 332 (£7 000). During the Court proceedings, and after additional information was submitted by the claimant in court, the 1992 Fund was able to revise the assessment to KRW 21 136 864 (£12 000). The court accepted the 1992 Fund's revised assessment and rejected the rest of the claim. The claimants did not appeal the judgment, which is now final.

Judgment on the claims by 196 handgatherers

4.2.43 In July 2015 the Seosan Court issued a judgment in respect of 196 handgatherer claimants from Yeongwang-gun. The 1992 Fund had rejected the claims since it had found that the claimants had not suffered a loss because of the contamination. In its judgment, the Court found that the claimants were not genuine handgatherers and therefore dismissed the claimants' claim.

4.2.44 At the time this document was issued it was not known whether the claimants had appealed the judgment.

Judgment on the claims by two aquaculture operators

4.2.45 In July 2015 the Seosan Court issued a judgment in respect of two aquaculture operators claiming for economic losses suffered as a consequence of the contamination. The 1992 Fund had rejected the claims since they claimants had not provided sufficient information to prove that they had suffered a loss. In its judgment, the Court determined that the claimants had failed to prove their alleged damages with sufficient evidence and therefore rejected their claims. One of the claimants filed an appeal to the Appeal Court.

4.2.46 At the time this document was published, it is not known whether the claimant had appealed further.

Judgment on the claims by three local authorities claims for costs incurred in relation to clean-up operations and economic losses

4.2.47 In July 2015, the Seosan Court issued a judgment in respect of the claims by three local and central government authorities for clean-up-related costs and economic losses for costs incurred to minimise losses in the area. The 1992 Fund had originally only partially accepted the claims, since the

claimants had not submitted sufficient information in support of their claim. Further information was submitted during the legal proceedings and the 1992 Fund and its experts were able to review this information. In view of the additional information submitted, the 1992 Fund could agree with the judgment.

4.2.48 The Appeal Court dismissed the appeal and at the time this document was issued it was not known whether the claimants had appealed the judgment.

Judgment on the claim by the Republic of Korea for costs incurred in relation to clean-up operations

4.2.49 In July 2015, the Seosan Court issued a judgment in respect of the claim by the Korean Coast Guard with respect to the costs incurred in clean-up operations. In its judgment, the Court awarded a total of KRW4 938 453 835 (£2.8 million). The 1992 Fund had originally assessed the claim at a total of KRW4 580 541 635 (£2.6 million). In its judgment, the Court allowed for a number of items, which the 1992 Fund had originally rejected since they were not sufficiently documented.

4.2.50 The Court also accepted costs for, among other things, the repair to an aircraft, which had been damaged on landing after clean-up operations. The 1992 Fund's experts were able to review the evidence submitted to the Court and advised the 1992 Fund that the majority of the Court's assessment was technically reasonable.

4.2.51 The 1992 Fund has however appealed this part of the Court judgment since it considered that the repair costs were not due to the contamination.

Judgment on a claim by the Republic of Korea for costs related to environmental health surveys

4.2.52 In July 2015, the Seosan Court issued a judgment in respect of a claim by the Korean Ministry of Environment totalling KRW3 794 299 600 (£2.2 million), for costs related to conduct surveys on the short-term effect of the oil spill on the villagers and people who were engaged in clean-up activities and the costs for the operation of an environment health centre established in the affected area after the incident. The 1992 Fund had rejected the claim since the claimant had failed to prove a link between the contamination and the studies carried out, as well as to prove the reasonableness of the environmental health centre. In its judgment, the Court awarded the Republic of Korea the full amount of the claim.

4.2.53 The 1992 Fund appealed the judgment, since the claimant had failed to prove a link between the contamination and the studies carried out, or to prove the technical reasonableness of the environmental health centre.

Judgment on the claims by three handgatherrs in Hongseong

4.2.54 In August 2015, the Court of Seosan issued a judgment in respect of three handgatherer claimants from Hongseong. The Fund had originally assessed the claims at the aggregate amount of KRW 510 000. During the Court proceedings, and after additional information was submitted by the claimant in court, the Court awarded damages to the claimants totalling KRW 1 019 780. The 1992 Fund's experts reviewed the submitted information as well as the judgment, and the 1992 Fund considered the judgment to be reasonable.

4.2.55 At the time this document was issued it was not known whether the claimants would appeal the judgment.

Judgment on the claims by 28 handgatherers

4.2.56 In August 2015, the Court of Seosan issued a judgment on the claims by 28 handgatherers. In its judgment, the Court rejected 27 claims since the claimants failed to prove that they were genuine handgatherers. One claimant submitted additional information and the Court assessed the claim at KRW 236 456. The 1992 Fund's experts reviewed the submitted information as well as the judgment, and the 1992 Fund considered the judgment as reasonable.

4.2.57 At the time this document was published, it was not known whether the claimant had appealed further.

4.3 Proceedings in the Daejon Court of Appeal (Appeal Court)

Judgment on the claim by one fisherman

4.3.1 In May 2015, the Appeal Court issued a judgment in respect of the appeal of one fisherman against the decision of the Seosan Court to reject his claim for economic losses. In its judgment, the Court considered that the area of operation of the fisherman was not affected by the contamination and that, additionally, there was no fishing ban in place, and therefore dismissed the appeal. The claimant did not appeal the judgment, which is now final.

Judgment on the claims by six handgathers' claims

4.3.2 In May 2015, the Appeal Court issued a judgment in respect of six handgatherers who had appealed the Seosan Court's earlier judgment rejecting their claim. In its judgment, the Court maintained that it was reasonable for the Seosan Court to reject the claims, since no objective evidence had been submitted to prove that they were genuine handgatherers at the time of the incident. The claimants did not appeal the judgment, which is now final.

Judgment on the claims by 106 handgathers

4.3.3 In May 2015, the Appeal Court issued a judgment in respect of 106 handgatherers claimants who had appealed the Seosan Court's judgment rejecting their claims. In its judgment, the Court maintained that it was reasonable for the Seosan Court to reject the claims, since it found that the majority of the claimants did not live or operate in an affected area, and that the rest had submitted no evidence to prove that they were genuine handgatherers at the time of the incident. The claimants did not appeal the judgment, which is now final.

Judgment on the claims by 72 fishermen

4.3.4 In May 2015, the Appeal Court issued a decision in respect of the Assessment Decision by the Seosan Court in January 2013 in respect of 72 fishermen who were operating without license. In its judgment, the Court found that the claimants' unlicensed fishing operations were seriously illegal, and the income originated from such actions could not be taken into account when assessing compensable damages. The Court therefore rejected the claim.

4.3.5 The claimants appealed the judgment.

5 Civil proceedings

5.1 Legal proceedings against the 1992 Fund

5.1.1 At the time of the October 2013 session of the 1992 Fund Executive Committee, some 86 758 claimants had filed objections against the Limitation Court judgment on the liability of the owner of the *Hebei Spirit* in the Seosan Court. However, only four legal actions had been commenced by 53 claimants against the 1992 Fund.

5.1.2 According to Korean law, the Limitation Court's judgment can become binding upon the 1992 Fund only with regard to the admissibility and quantum of the loss and would not be directly enforceable on the 1992 Fund. However, although a decision on the quantum of claims taken by the limitation proceedings would have an impact on a subsequent civil action against the 1992 Fund, if actions against the 1992 Fund had been commenced after 7 December 2013, such claims would have been time barred under the 1992 Fund Convention (Article 6 of the 1992 Fund Convention).

5.1.3 In November 2013, a note by the Director was sent to all those claimants who had not submitted an action in court against the 1992 Fund to inform them of the forthcoming time bar. The Korean Government also sent a note to all claimants to inform them of the time bar provision in the

1992 Fund Convention and the local authorities also ensured that the information regarding time bar was publicised in all affected areas.

5.1.4 By 7 December 2013, 117 504 claimants had filed legal actions against the 1992 Fund in the Seosan Court and had therefore protected their rights against the 1992 Fund. The Court decided not to progress the separate lawsuits for the time being, since the same claims were being dealt with in the objection proceedings.

5.2 Legal proceedings by a claimants' committee against the owner of the *Hebei Spirit* and the 1992 Fund

5.2.1 In April 2013 a claimants' committee filed a lawsuit against the owner of the *Hebei Spirit* and the 1992 Fund, requesting them to pay a total of KRW 109 956 900 in compensation for two claims for economic losses plus interest, which the committee had settled with two abalone farmers. The committee was exercising its subrogation rights over those claims.

5.2.2 In October 2013, the Court decided to stay the proceedings until the objection proceedings involving the claimants were finalised.

6 Matter to be considered by the Executive Committee

Judgments awarding VAT to the Korean Government

6.1.1 In May 2015, the Seosan Court issued two judgments on claims by the Korean Navy and the Korean Naval Operation Command related to costs incurred during the response to the spill.

6.1.2 The 1992 Fund had assessed the claim by the Korean Navy at KRW 975 848 374 (£555 000) and the claim by the Naval Operation Command at KRW 298 291 200 (£170 000).

6.1.3 In the judgments, the Court accepted the 1992 Fund's assessment of both claims. However, the Court also held that the VAT paid to external contractors in the amount of KRW 1 037 092 (£590) and KRW 1 350 511 (£770) respectively, was compensable.

6.1.4 In its reasoning, the Court emphasised that determining compensable amounts through the objection proceedings and calculating VAT returns (or deductions) are separate procedures, and that therefore it would not be fair to change the amount of the damages purely depending on whether or not the claimant was a government agency.

6.1.5 The 1992 Fund objected to these judgments since, even though the claimant's payment to the contractors company included VAT, the claimant was in fact the party imposing the VAT, and therefore the payment of such VAT could not constitute a loss to the claimant. On the basis of the legal opinion provided by the Fund's Korean lawyers (document IOPC/OCT14/4/5 Annex III, page 25), under Korean law,

> "a body or agency which has a separate and independent legal personality would be able to recover the VAT it has incurred acting in mitigation of a breach of contract or some other breach of civil law from the breaching party. On the other hand, if a body or agency is a part of the State such as a branch, department, or division of the Korean Government, it would not be able to recover the VAT".

6.1.6 Both the Korean Navy and the Korean Naval Operation Command are considered, under Korean law, as part of the State and not independent agencies. Accordingly, any VAT paid would eventually be returned to the claimant (i.e., to the Republic of Korea), a payment of VAT to the government as part of the compensation for its department's claim, would therefore have to be considered double compensation.

6.1.7 The 1992 Fund's Korean lawyer has since reviewed the case and considered that, based on a 1989 Supreme Court judgment, as a matter of Korean law, reimbursement of VAT should not be deemed double compensation if the basis of the recovery is separate or not directly linked. In the case in

object, the lawyer noted that it could be argued that, while the VAT paid by the government to the contractors was an expenditure incurred by the government for pilotage operations carried out in the context of the preventive measure following the oil spill, the VAT paid by the contractors to the Korean Government arose from the procurement of pilotage services performed in connection with the pollution. As a consequence, the two payments of VAT, although factually linked to each other, arose from separate causes and should therefore not be considered a double payment. Furthermore, the Fund's Korean lawyer advises that, in his view, if the Government were not to recover the VAT it paid to the contractors, the Fund would have infringed the Government's right to impose tax on pilotage businesses and secure its tax revenues.

Director's considerations

6.1.8 The position taken by the IOPC Funds over the years in the matter of VAT is that VAT is compensated to all victims who have been required by national law to pay these sums in respect of the purchase of equipment or the procurement of services and cannot recover it as part of their normal business. This includes private individuals, companies or local and regional authorities as long as they are separate legal entities.

6.1.9 In the case of the central government, it may be made up of several ministries or departments, but all of them are branches of a single legal entity. Any VAT paid by a government department would be paid to that government's Ministry of Finance. If the 1992 Fund was to pay VAT to the government as part of compensation of its department's claim, the central government would have in effect received the same VAT twice. It would therefore be double compensation.

6.1.10 Since April 2013, there have been discussions in the 1992 Fund's governing bodies as to whether the 1992 Fund's policy of the matter of VAT claims by the government should be revised.

6.1.11 Following a debate on the issue at its October 2013 session, the 1992 Fund Administrative Council decided that given its complexity, the issue of whether VAT paid by governments in the response to an oil pollution incident should be reimbursed to them by the IOPC Funds, should be studied further. The Director was instructed to study the matter and report back to the October 2014 session.

6.1.12 The report, together with additional legal opinions from a number of lawyers from a wide geographical cross section of Member States, as to whether VAT paid by governments in response to an oil pollution incident, should be reimbursed by the IOPC Fund, was submitted for the 1992 Fund Administrative Council's consideration in October 2014. In that session, the matter was debated in depth by the Administrative Council. At the end of the debate, it was decided that the issue needed further consideration and discussion, and that such discussion should be held at the next session of the Assembly.

6.1.13 The issue of compensation for VAT by central governments was, however, not discussed at the April 2015 sessions of the 1992 Fund governing bodies, so no opportunity has arisen for Member States to comment further on the issues at stake. The Secretariat has issued a document on this subject (IOPC/OCT15/4/4), which is expected to be discussed at the October 2015 sessions of the governing bodies.

6.1.14 Although the amount of VAT awarded by the Court to the two Korean Government agencies is small (£590 and £770 respectively), the 1992 Fund has provisionally appealed these two decisions since, as mentioned in paragraph 6.1.5 above, and based on the initial legal advice provided by the Fund's Korean lawyer, the recovery of VAT by the Government was not in accordance with Korean law. The subsequent advice from the 1992 Fund's Korean lawyer appears to indicate that in the case in object the situation might be considered differently.

6.1.15 The Director is of the view that since the governing bodies have not yet taken a decision with regard to the recovery of VAT by government agencies, the 1992 Fund should maintain the two appeals to allow Member States more time to consider this question and also to find out what is the position taken by the Court of Appeal of Korea on the issue. The appeals are expected to be heard before the

spring 2016 sessions of the governing bodies when the 1992 Fund will report the outcome of the litigation.

7 Action to be taken

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.

* * *

ANNEX

BACKGROUND INFORMATION - HEBEI SPIRIT

1 Incident

1.1 On 7 December 2007, the Hong Kong-registered tanker *Hebei Spirit* (146 848 GT) was struck by the crane barge Samsung Nº1 while at anchor about five nautical miles off Taean on the west coast of the Republic of Korea. The crane barge was being towed by two tugs (Samsung Nº5 and Samho T3) when the tow line broke. Weather conditions were poor and it was reported that the crane barge had drifted into the tanker, puncturing three of its port cargo tanks.

1.2 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 took four days to complete. In the meantime, the crew of the *Hebei Spirit* tried to limit the quantity of cargo spilled through holes in the damaged tanks by making it list and transferring cargo between tanks. However, as the tanker was almost fully laden, the possibilities for such actions were limited. As a result of the collision a total of 10 900 tonnes of oil (a mix of Iranian Heavy, Upper Zakum and Kuwait Export) escaped into the sea.

1.3 The *Hebei Spirit* is owned by Hebei Spirit Shipping Company Limited. It is insured by China Shipowners Mutual Insurance Association (China P&I) and Assuranceföreningen Skuld (Gjensidig) (Skuld Club) and managed by V-Ships Limited. The crane barge and the two tugs are owned and/or operated by Samsung Corporation and its subsidiary Samsung Heavy Industries (SHI) which belong to the Samsung Group, the Republic of Korea's largest industrial conglomerate.

2 Impact

2.1 Large parts of the Republic of Korea's western coast were affected to varying degrees. The 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, was 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 was affected along the west coast of the Republic of Korea. A considerable number of commercial vessels were also contaminated.

2.2 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 produce. The Korean Government financed the removal operations of the most affected oyster farms in two bays in the Taean peninsula. The removal operations were completed in early August 2008.

2.3 The oil also impacted amenity beaches and other areas of the Taean National Park.

3 Response operations

3.1 The Korea National Coast Guard Agency, a department of the Ministry of Maritime Affairs and Fisheries (MOMAF), has overall responsibility for marine pollution response in the waters under the jurisdiction of the Republic of Korea. By the first quarter of 2008, responsibility for overseeing onshore clean up had been passed on to the affected local governments.

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 were used to transport manpower and materials to offshore islands in support of clean-up operations until later in the year.

3.3 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 numerous locations along the western coast of the Republic of Korea.

Local villagers, army and navy cadets and volunteers from all over the Republic of Korea also participated in the clean-up operations.

3.4 The removal of the bulk oil was completed by the end of March 2008. The major part of secondary clean-up operations, involving, among other techniques, surf washing, flushing and hot water high-pressure treatment, were completed by the end of June 2008. Some clean-up operations in remote areas continued until October 2008.

4 Applicability of the Conventions

4.1 The Republic of Korea is a Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention but, at the time of the spill, had not ratified the Supplementary Fund Protocol.

4.2 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 89.77 million SDR. The total amount available for compensation under the 1992 CLC and the 1992 Fund Convention is 203 million SDR.

5 Level of payments

5.1 At its March 2008 session, the 1992 Fund Executive Committee authorised the Director to settle claims arising from this incident to the extent that they did not give rise to questions of principle not previously decided by the Executive Committee. The Executive Committee also decided that the conversion of 203 million SDR into Korean Won would be made on the basis of the value of that currency against the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 40th session, ie 13 March 2008, at the rate of 1 SDR = KRW 1 584.330, giving a total amount available for compensation of KRW 321 618 990 000.

5.2 At the same session, the 1992 Fund Executive Committee noted that, based on a preliminary estimation by the Fund's experts, the total amount of the losses arising as a result of the *Hebei Spirit* incident was likely to exceed the amount available under the 1992 Civil Liability and Fund Conventions. In view of the uncertainty as to the total amount of the losses, the 1992 Fund Executive Committee decided that payments should for the time being be limited to 60% of the established damages.

5.3 In June 2008, the Executive Committee took note of new information which indicated that the extent of the damage was likely to be greater than initially estimated in March 2008. At that session, the 1992 Fund Executive Committee decided that, in view of the increased uncertainty as to the total amount of the potential claims and the need to ensure equal treatment of all claimants, payments made by the 1992 Fund should, for the time being, be limited to 35% of the established damages.

5.4 The 1992 Fund Executive Committee decided to maintain the level of payments at 35% of the established damages at its subsequent sessions in October 2008, March, June and October 2009 and June and October 2010.

5.5 In March 2011, the 1992 Fund Executive Committee authorised the Director to increase the level of payments to 100% of the established claims, subject to a number of safeguards being in place before the 1992 Fund commenced making payments. It was decided that if these safeguards were not provided, the level of payments should be maintained at 35% of the established losses and that this should be reviewed at the next session of the Executive Committee.

5.6 In August 2011, the Korean Government informed the Director that, in view of the significant administrative burden that the safeguards determined by the Executive Committee at its March 2011 session would place on the Korean Government, it did not intend to set up the guarantee as determined by the Executive Committee, with the understanding that this would likely result in the 1992 Fund not increasing the level of payments to 100% of the established claims.

5.7 At each of its sessions from October 2011 to April 2015 the 1992 Fund Executive Committee decided to maintain the level of payments at 35% and to review the level of payments at its next session.

6 Actions by Government

Special Law for the support of the victims of the Hebei Spirit incident

6.1 At the June 2008 session of the 1992 Fund Executive Committee, the Korean Government informed the 1992 Fund that a special law for the 'Support of affected inhabitants and the restoration of the marine environment in respect of the *Hebei Spirit* oil pollution incident' was approved by the National Assembly in March 2008. Under the provisions of the Special Law, the Korean Government was authorised to make payments in full to claimants based on the assessments made by the Skuld Club and the 1992 Fund within 14 days of the date they submitted proof of assessment to the Government.

6.2 The Korean Government also informed the 1992 Fund that under the Special Law, if the Fund and the Skuld Club paid claimants compensation on a pro-rata basis, the Korean Government would pay the claimants the remaining percentage so that all claimants would receive 100% of the assessment. The Special Law entered into force on 15 June 2008.

6.3 As at October 2013, the Korean Government had made payments totalling KRW 37 674 million in respect of 697 claims in the clean-up, tourism and fisheries and aquaculture sectors based on assessments provided by the Skuld Club and the 1992 Fund, and submitted subrogated claims against the Skuld Club and the Fund. The Skuld Club had paid the Government KRW 32 992 million in respect of 662 of these claims.

6.4 Under the Special Law the Korean Government has 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 1992 Fund but have not received an offer of compensation within six months. As at 31 October 2013, the Korean Government had granted 21 286 loans totalling KRW 50 673 million.

Decision of the Korean Government to 'stand last in the queue'

6.5 At the June 2008 session of the 1992 Fund Executive Committee, the Korean Government informed the Executive 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.

6.6 In August 2011, the Secretariat carried out an investigation into the claims submitted by the Korean authorities and identified 71 such claims submitted by 34 separate government agencies and local authorities, totalling some KRW 444 800 million. The claims corresponded to selected costs incurred by the Government and local authorities in respect of clean up and preventive measures, environmental studies, restoration, marketing campaigns, tax relief and other expenses incurred in dealing with the pollution.

6.7 The 1992 Fund and the Skuld Club are in frequent contact with the Korean Government to maintain a coordinated system for the exchange of information regarding compensation in order to avoid duplication of payments.

6.8 First Cooperation Agreement between the Korean Government, the shipowner and the Skuld Club

In January 2008, discussions took place on compensation issues which resulted in the First Cooperation Agreement concluded between the shipowner, Skuld Club, the Korean Government and Korea Marine Pollution Response Corporation (KMPRC). The 1992 Fund was consulted during the negotiations but was not a party to the Agreement. In accordance with the Agreement, in exchange for the Club's expedited payment to large numbers of individuals engaged by clean-up contractors as labour in shoreline response operations, the Korean Government undertook to facilitate cooperation with the experts appointed by the Club and the 1992 Fund, and KMPRC undertook to request the release of the *Hebei Spirit* from arrest.

6.9 Second Cooperation Agreement between the Korean Government, the shipowner and the Skuld Club

6.9.1 The Skuld Club also entered into discussions with the Korean Government in order to resolve its concern that Korean courts dealing with the limitation proceedings might not fully take into account payments made by the Skuld Club and that the Club would therefore run the risk of paying compensation in excess of the limitation amount.

6.9.2 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, which had incorporated part of the functions of MOMAF). Under this Agreement, the Skuld Club undertook to pay claimants 100% of the assessed amounts up to the shipowner's limit of liability under the 1992 CLC, namely 89.77 million SDR. In return, to ensure that all claimants would receive compensation in full, the Korean Government undertook to pay in full all claims as assessed by the Club and Fund once the 1992 CLC and 1992 Fund Convention limits were reached as well as all amounts awarded by judgments under the 1992 CLC and 1992 Fund Convention in excess of the limit. The Korean Government further undertook to deposit the amount already paid out by the Skuld Club to claimants in court should the Limitation Court order a deposit of the limitation fund.

7 Investigation into the cause of the incident

7.1 Investigation in the Republic of Korea

7.1.1 An investigation into the cause of the incident was initiated soon after the incident by the Incheon District Maritime Safety Tribunal in the Republic of Korea.

7.1.2 In September 2008, in a decision rendered by the Incheon Tribunal, both the two tugs and the *Hebei Spirit* were considered at fault for causing the collision. The Tribunal found that the master and the duty officer of the *Hebei Spirit* were also partly liable for the collision between the crane barge and the *Hebei Spirit*. A number of defendants, including SHI, the masters of the tugboats and the master and duty officer of the *Hebei Spirit* appealed against the decision to the Central Maritime Safety Tribunal.

7.1.3 In December 2008 the Central Maritime Safety Tribunal delivered its decision. The decision of the Central Tribunal was similar to that of the Incheon Tribunal in that the two tugs were found mainly responsible and the master and the duty officer of the *Hebei Spirit* were also found partly liable for the collision between the crane barge and the *Hebei Spirit*.

7.2 Investigation in China

An investigation into the cause of the incident was also carried out by the ship's flag State administration in China. The investigation found that the decision by the operator of the tugboats and of the crane barge (the Marine Spread), to undertake 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 and other ships in the vicinity resulted in insufficient time being given to the *Hebei Spirit* to take all 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.

8 Claims for compensation

8.1 One hundred and twenty-seven thousand four hundred and eighty-three claims totalling KRW 4 023 billion were submitted to the limitation proceedings and the Limitation Court appointed a court administrator to deal with them. As a matter of Korean law and practice, no further claims can be registered nor changes be made to the amounts claimed. A total of 9 937 claimants have received offers for compensation by the Club and the 1992 Fund but they have not responded.

8.2 The 1992 Fund and the Skuld Club opened a claims handling office (*Hebei Spirit* Centre) in Seoul to assist claimants in the presentation of their claims for compensation and 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.

8.3 The table below provides the status of the claims submitted to the *Hebei Spirit* Centre as at October 2014 by category of claims.

Category of claim	**Number of claims**	**Claimed amount (KRW million)**	**Number of claims assessed**		**Assessed amount (KRW million)**	**Number of claims paid**	**Paid amount (KRW million)**
			More than 0	**Rejected**			
Clean up and preventive measures	252	148 834	218	23	98 907	184	93 070
Property damage	20	2 344	16	4	854	295	1 371
Fisheries and mariculture	110 332	1 605 338	38 010	72 322	47 962	29 456	58 644
Tourism and other economic damage	17 737	406 953	2 946	14 789	34 028	2 486	32 477
SLQ claims	62	611 817	23	38	16 989	-	-
Total	**128 403**	**2 775 286**	41 213	87 176	**198 740**	**32 421**	**185 562**
			128 389				

9 Criminal proceedings

9.1 In January 2008, the Public Prosecutor of the Seosan Branch of the Daejeon District Court (Seosan Court) brought criminal charges against the masters of the crane barge and the two tugs. The masters of the two tugs were arrested. Criminal proceedings were also brought against the master and chief officer of the *Hebei Spirit* who were not arrested, but were not permitted to leave the Republic of Korea.

9.2 In June 2008, the Seosan Court delivered its judgment to the effect that:

(i) the master of one of the tugboats was sentenced to three years imprisonment and a fine of KRW 2 million;
(ii) the master of the other tugboat was sentenced to one year imprisonment;
(iii) the owners of the two tugboats (SHI) were sentenced to a fine of KRW 30 million;
(iv) the master of the crane barge was found not guilty; and
(v) the master and chief officer of the *Hebei Spirit* were also found not guilty.

9.3 The Public Prosecutor and the owners of the tugboats appealed against the judgment.

9.4 In December 2008, the Criminal Court of Appeal (Daejeon Court) rendered its judgment. In its judgment, the Court reduced the sentence against the masters of the two tugboats. The judgment overturned the not guilty judgments for the master of the crane barge and the master and chief officer of the *Hebei Spirit*. The owner of the *Hebei Spirit* was also given a fine of KRW 30 million and the master and chief officer of the *Hebei Spirit* were arrested. The *Hebei Spirit*'s interests appealed to the Supreme Court.

9.5 In April 2009, the Korean Supreme Court annulled the Court of Appeal's decision to arrest the crew members of the *Hebei Spirit* and they were allowed to leave the Republic of Korea. The Supreme Court, however, upheld the decision to arrest the masters of one of the towing tugs and of the crane barge and confirmed the fines imposed by the Court of Appeal.

9.6 In June 2009, the master and chief officer of the *Hebei Spirit* were released from arrest and left the Republic of Korea.

10 Limitation proceedings

10.1 Limitation proceedings by the bareboat charterer of the Marine Spread

10.1.1 In December 2008, the bareboat charterer of the Marine Spread (the crane barge, the two tugs and the anchor boat), SHI, filed a petition requesting the Seoul Central District Court to issue an order granting the right to limit its liability in the amount of 2.2 million SDR.

10.1.2 In March 2009, the Limitation Court rendered the order for the commencement of the limitation proceedings. The Court decided to grant SHI the right to limit its liability and set the limitation fund at KRW 5 600 million including legal interest. SHI deposited this amount in court. The Limitation Court also decided that claims against the limitation fund should be registered with the Court by 19 June 2009.

10.1.3 In June 2009 a number of claimants appealed to the Seoul Court of Appeal against the decision of the Limitation Court to grant to the bareboat charterer the right to limit its liability. On 20 January 2010, the Court of Appeal dismissed the appeal and confirmed the Limitation Court's decision. The claimants appealed to the Supreme Court. In April 2012 the Supreme Court dismissed the appeal.

10.2 Limitation proceedings by the owner of the *Hebei Spirit*

10.2.1 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).

10.2.2 In February 2009, the Limitation Court rendered an order for the commencement of the limitation proceedings. According to the Limitation Order, the persons who had claims against the owner of the *Hebei Spirit* had to register their claims by 8 May 2009, failing which the claimants would lose their rights against the limitation fund.

10.2.3 Also in February 2009 a number of claimants appealed to the Daejeon 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.

10.2.4 In November 2009 the Supreme Court dismissed an appeal made by a number of claimants against the decision of the Limitation Court. Consequently, the Limitation Court's decision for the commencement of the limitation proceedings for the owner of the *Hebei Spirit* became final.

10.2.5 One hundred and twenty-seven thousand four hundred and fifty-nine claims totalling KRW 4 091 billion were submitted to the Limitation Court. In 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 would complete the assessment of the claims.

10.2.6 In February 2011, the Court appointed a court expert to review the evidence filed by both sides with the intention of issuing a decision by the end of 2011.

10.2.7 On 27 August 2012 the Limitation Court held a hearing. At the hearing, the Court listed the claims which had been submitted. A total of 127 483 claims totalling KRW 4 023 billion had been submitted. As a matter of Korean Law and practice, no further claims would be registered nor would changes to the amount claimed be accepted.

10.2.8 In January 2013 a judgment was rendered by the Seosan District Court (Limitation Court) granting KRW 736 billion in compensation to victims of the *Hebei Spirit* incident. The amount decided by the Court is significantly less than the amount claimed in court (some KRW 4 227 billion) but nevertheless is significantly larger than the 1992 Fund's assessment of admissible claims of KRW 181 billion.

10.2.9 In accordance with Korean law, once proceedings started, claimants had two weeks to submit objections to the Limitation Court's decision. Some 149 714 objections to the Limitation Court's decision were filed in the Seosan Court within that deadline (86 578 by the claimants and 63 163 by the Club/1992 Fund). A number of objections were subsequently withdrawn.

10.2.10 The objections filed by the claimants were allocated to 126 cases and the objections filed by the Club/1992 Fund were allocated to 54 cases. By July 2013, the Seosan Court had consolidated them into some 90 cases. In the same month, the Seosan Court commenced preliminary hearings for three of these cases.

10.2.11 In May 2013 the National Assembly of the Republic of Korea passed a number of amendments to the Special Law which required the Seosan Court to take a decision on the Limitation Court decision within ten months of the date of entry into force of the amendments, and that a second or third appeal should be issued within five months of the previous decision. The amendments entered into force in July 2013.

10.2.12 The Seosan Court has proposed mediation settlement to the parties in cases where matters of principle are not under discussion. Recommendations for reconciliation on a total of 44 628 cases have been agreed by the parties. As a result of the Court's action, 15 224 objections have been withdrawn.

10.2.13 The Court of Seosan has issued 14 judgments in respect of 4 776 claims.

Judgment on the claim by a water park and spa owner

10.2.14 In April 2014, the Seosan Court issued a judgment on the claim by a water park and spa business owner. The claimant filed a claim in the amount of KRW14 754 389 000. Since the claimant did not prove that he had suffered a loss as a consequence of the spill, the Limitation Court rejected the claim. The Seosan Court upheld the Limitation Court's decision. The claimant has not appealed the judgment and this decision is now final.

Five judgments on the claims by 4 658 individuals in Seocheon-gun and Danjin

10.2.15 In May 2014 the Court of Seosan issued five judgments in respect of claims by 4 658 claimants in Seocheon-gun and Danjin. In its judgment, the Court upheld the decision of the Limitation Court and rejected the claims, since it found that the level of oil pollution was minimal and therefore it could not have affected the area and caused the alleged damages. All the claimants have appealed the judgment.

Two judgments on the claims by 111 individuals in Seocheon-gun

10.2.16 In July 2014 the Court of Seosan issued two judgments in respect of claims by 111 claimants in Seocheon-gun and Danjin. In its judgment in respect of the claims by 110 of the claimants, the Court upheld the decision of the Limitation Court and rejected the claims on the grounds that the claimants had failed to prove that they actually handgathered for living in the alleged areas. In one of the cases, the Court found that the oil pollution had not affected the alleged area of operations to cause the alleged damages. All the claimants have appealed the judgment.

Judgment on the claim by a fish seller

10.2.17 In July 2014, the Seosan Court issued a judgment on the case of one fish seller who alleged losses due to lack of supply of oysters as a consequence of the incident. The claim, totalling KRW 12 069 420, consisted of economic losses in the amount of KRW 10 972 200 plus damage assessment fees in the amount of KRW 1 097 220. The Limitation Court rejected the claim as the claimant had failed to

provide sufficient information in support of his claim. The Seosan Court argued that, as the claimant had submitted to the Court additional information on his link with suppliers who were found to have been affected by the contamination, it was likely that the claimant had suffered a loss. The Seosan Court did not uphold the decision of the Limitation Court and awarded to the claimant the full amount of alleged losses, totalling KRW 10 972 200.

10.2.18 The 1992 Fund has appealed the judgment, since, though the claimant may have proved that he purchased part of his supply from businesses that were affected by the incident, the information he had provided in support of the claim did not show that he had suffered a loss or that the loss was the same amount as claimed.

Judgment on the claim by a number of handgatherers and retail businesses

10.2.19 In July 2014, the Seosan Court issued a judgment on the claims submitted by one compensation committee on behalf of 247 handgatherers and fish retail business entrepreneurs. The Limitation Court had rejected their claim on the grounds that the items of claim had no causal relationship with the incident and/or were time-barred. In its judgment, the Court of Seosan upheld the decision of the Limitation Court and rejected the claim. All the claimants have appealed the judgment.

Judgment on the claim by a claimants' committee

10.2.20 In July 2014, the Seosan Court issued a judgment on the claim submitted by a claimants' committee seeking compensation of its own costs such as the fees allegedly paid to a surveyor. The Seosan Court judged that the Limitation Court rejecting the claim was reasonable as no causal relationship was found between the claimed costs and the incident. The claimant has appealed the judgment.

Judgment on the claim by one individual alleging health problems following the incident

10.2.21 In August 2014, the Court of Seosan rendered a judgment on the case of a claimant alleging to have suffered a number of ailments since having participated to the clean-up operations of the *Hebei Spirit* incident. The Seosan Court upheld the decision of the Limitation Court and decided that the claimant had failed to prove the causal relationship between the oil pollution and the conditions he had developed. The Claimant has appealed the judgment.

Judgment on the claim by a shrimp and sea cucumber farm owner

10.2.22 In August 2014, the Court of Seosan rendered a judgment on the case of a claimant alleging to have suffered a loss in the amount of KRW 1 734 716 000 in respect of the mortality of shrimps and sea cucumbers in his farm caused by oil contamination in the waters caused by the *Hebei Spirit* incident. The Limitation Court rejected the claim as the claimant could not prove the mortalities actually occurred due to the spilled oil. The Seosan Court upheld the decision of the Limitation Court. The claimant has appealed the judgment.

Judgment on the claim by a flatfish farm owner

10.2.23 In August 2014, the Court of Seosan rendered a judgment on the case of a claimant alleging to have suffered a loss in the amount of KRW173 553 000 in respect of loss of market confidence suffered as a consequence of the spill. The Limitation Court rejected the claim since the claimant could not prove that the losses actually occurred due to the contamination. The Seosan Court upheld the decision of the Limitation Court. The claimant has not appealed the judgment.

10.2.24 As at April 2015, as a result of the Seosan Court proposing mediation settlements to the parties in cases where matters of principle were not under discussion, some 80 500 claims had been resolved by judgments or mediation, or had been withdrawn. The Seosan Court had issued 41 judgments in respect of 29 478 claims, the majority of which had been appealed.

11 Civil proceedings

11.1 Claim by a clean-up company against the Republic of Korea

11.1.1 In July 2008, following the *Hebei Spirit* incident, a clean-up company which had been involved in clean-up operations at the instruction of the Incheon Coast Guard took action in the Incheon District Court (Court of First Instance) against the Republic of Korea, claiming costs for KRW 727 578 150. The clean-up company argued that it had entered into a service contract with the Republic of Korea. It argued that even if the Court held that no such service contract existed, the clean-up company should nevertheless be compensated by the State, who should have borne the clean-up costs in any event, and who would otherwise gain unjust enrichment were it not to pay the company's costs.

11.1.2 In early 2010, the Court of First Instance decided that there was no service contract between the company and the Republic of Korea but accepted that the latter was still liable to compensate the company for the clean-up costs. The Court ordered the Republic of Korea to pay a sum of KRW 674 683 401 as reasonable compensation. Both parties appealed against the decision of the Court.

11.1.3 In July 2010, after two preliminary hearings, the Court of Appeal ordered a mediation session to explore a possibility of settlement between the parties. The 1992 Fund intervened in the proceedings as an interested party and participated in the mediation. At the mediation hearing, the Appeal Court Mediator requested the plaintiff to submit the claim for clean-up costs to the Club and the 1992 Fund for an assessment. The plaintiff submitted a claim to the Club and 1992 Fund in September 2010. The Club and 1992 Fund assessed the claim at KRW 304 177 512 and offered settlement to the claimant in April 2011.

11.1.4 The Court held a number of hearings in summer 2011 where an amicable settlement was discussed between the Government and the plaintiff without success.

11.1.5 In September 2011, the Court suggested that the plaintiff should receive the amount assessed by the Club and 1992 Fund and decided that once the assessed amount had been paid, it would consider whether to continue the mediation for the remainder of their claim for clean-up costs.

11.1.6 In January 2012, the Court of Appeal issued a judgment to the effect that, whilst the assessment made by the Club and the 1992 Fund was considered reasonable, the amount recognised by the Court was KRW 318 450 947. The amount assessed by the Club and the 1992 Fund totalled KRW 304 177 512, which was paid to the plaintiff in September 2011. The Court ordered the Korean Government to pay the clean-up company the difference plus interest, equivalent to KRW 24 429 768. Both parties appealed to the Supreme Court. As at April 2015, the case was pending at the Supreme Court.

11.2 Claim by a clean-up company against the Club and the 1992 Fund

11.2.1 In November 2010, a contractor who was engaged in clean-up operations after the *Hebei Spirit* incident filed a claim against the owners and insurers of the *Hebei Spirit* and the 1992 Fund in the Seoul Central District Court.

11.2.2 The contractor had submitted a claim totalling KRW 889 427 355 for costs incurred in clean-up operations from January to June 2008. The Club and the 1992 Fund assessed the claim for the period January to March 2008 at KRW 233 158 549. The Club and the 1992 Fund rejected the claim for costs for part of March 2008 and the remaining period, since the area in which the claimant operated was cleaned by mid-March 2008 and therefore further clean-up operations were considered not technically reasonable.

11.2.3 The contractor claimed in court for the balance between the amount claimed and the amount assessed, ie KRW 656 268 806. In January 2011, the 1992 Fund's lawyers filed an answer in court on behalf of the 1992 Fund stating the 1992 Fund's position that it would not be liable unless, and until, it was proved that the amount of the shipowner's liability was insufficient to fully cover the loss arising from the *Hebei Spirit* incident.

11.2.4 Court hearings were held in summer 2011 where the Court considered primarily whether to proceed with or stay the current proceedings until the limitation proceedings at Seosan Court were finalised.

11.2.5 The contractor argued that the work carried out after March 2008 was technically reasonable. The 1992 Fund filed a submission to rebut the contractor's attempt to challenge the Club and the 1992 Fund's assessment. In its submission, the Fund stressed that its experts had visited the affected area several times from early February to late March 2008 and found that further clean-up work was technically not required. The contractor was at the time recommended not to continue further work and also reminded that no compensation would be available from the international compensation regime for technically unreasonable work.

11.2.6 In November 2011, the Court dismissed the company's lawsuit against the 1992 Fund. The Court ruled that the claim against the 1992 Fund was groundless since:

(i) unless and until the total amount of oil pollution claims was confirmed, the claim against the 1992 Fund could not be specified and the 1992 Fund's liability could therefore not be determined; and
(ii) in any event, the company's reasonable costs were KRW 233 158 549 and this amount had already been paid by the Club.

11.2.7 The clean-up company appealed against the judgment to the Court of Appeal. Further hearings took place in October 2012, at which further information was requested.

11.2.8 In a hearing in January 2013, the Court of Appeal noted that the Limitation Court had considered the 1992 Fund's assessment of the claim as reasonable. However, the claimant argued that since the local authority that paid for villagers' costs in the same area where the company was employed, was awarded 25% of the villagers' costs for the period of operations beyond what was considered reasonable by the 1992 Fund, the claimant should also be awarded the same percentage of the claimed amount.

11.2.9 The 1992 Fund expressed the view that, since it was not clear whether the increased assessment of the costs of the local authority referred specifically to the villagers' costs incurred for work in the exact location of the clean-up company and since the Limitation Court had confirmed the reasonableness of the 1992 Fund's assessment, the assessment of the local authority's costs by the Limitation Court should not be considered in determining the reasonableness of the claimant's operation.

11.2.10 In its judgment in March 2013, the Court of Appeal dismissed the appeal. The Court also made it clear that all the legal costs incurred after the appeal was filed should be borne by the claimant. The claimant appealed the judgment to the Supreme Court. A judgment by the Supreme Court is expected soon.

11.3 Claim by a group of fishermen and sellers of marine products

11.3.1 In December 2010, a group of some 50 residents in two villages in the area affected by the *Hebei Spirit* incident filed a lawsuit against the 1992 Fund and the Republic of Korea. The 50 claimants, all engaged in fishery activities or selling marine products, requested compensation totalling KRW 150 million. It is unclear on what basis this claim has been presented.

11.3.2 At its first hearing in March 2011, the Court decided to adjourn the proceedings until the limitation proceedings by the owners of the *Hebei Spirit* had been finalised.

11.4 Claim by the owner of a vessel

11.4.1 In February 2011, a vessel owner filed a lawsuit against the owners of the *Hebei Spirit* and the 1992 Fund. At the time the vessel owner had not submitted a claim to the Fund although a claim was presented in the *Hebei Spirit* limitation proceedings. The vessel owner argued that their vessel was polluted by the oil leaked by the *Hebei Spirit* and that they had incurred cleaning costs. The vessel owner claimed KRW 99 878 861 and interest of 5% per annum from 11 December 2007, reserving their right to increase the claim amount to cover the loss of income during the period of cleaning

work. The 1992 Fund argued that it would not be liable unless, and until, it was proved that the amount of the owner's liability was insufficient to fully cover the loss arising from the *Hebei Spirit* incident.

11.4.2 In January 2013, the vessel's owner withdrew its lawsuit against the 1992 Fund, although they maintained the lawsuit against the owner of the *Hebei Spirit*. In October 2013, the case was transferred to the Seosan Court and then consolidated to the existing objection proceedings initiated by the owner of the vessel.

11.4.3 In July 2014, the Seosan Court issued a reconciliation recommendation by which the compensation amount payable to the vessel owner was assessed to be KRW 65 448 924 including interest of KRW 16 056 063. None of the parties objected the reconciliation, which therefore became final.

11.5 Claim by the owner of an abalone farm

11.5.1 In March 2011, the former owner of an abalone farm filed a lawsuit against the 1992 Fund in court. He alleged in his claim that he had sold his farm in August 2007 and that the buyer had agreed to pay the purchase price with the proceeds from the sale of the first crop of abalone, which he failed to do due to the *Hebei Spirit* incident. The new owner had claimed compensation for the lost crop from the Club and the 1992 Fund, and to secure his claim for the outstanding price of the farm, the former owner obtained a Court Order in 2010 to transfer the compensation obtained by the new owner to him. The former owner requested the Court to order the 1992 Fund to pay KRW 121 million, together with interest.

11.5.2 In May 2011, the 1992 Fund's position in Court was that it would not be liable unless, and until, it was proved that the amount of the owner's liability was insufficient to fully cover the loss arising from the *Hebei Spirit* incident.

11.5.3 In September 2011, the former farm owner discontinued his lawsuit against the 1992 Fund, reserving his right to file a lawsuit again against the Fund once the current limitation proceedings had been finalised.

12 Recourse actions

12.1 Recourse action by the 1992 Fund against Samsung C&T Corporation (Samsung C&T) and SHI

12.1.1 The owner and insurer of the *Hebei Spirit* commenced a recourse action in January 2009 against Samsung C&T and SHI, the owner and operator/bareboat charterer of the Marine Spread, in the Court of Ningbo in the People's Republic of China, combined with an attachment of SHI's shares in shipyards in the People's Republic of China as security.

12.1.2 In January 2009, the Director decided that in order to protect the interests of the 1992 Fund, the Fund should also commence its own recourse action against Samsung C&T and SHI in the Court of Ningbo in the People's Republic of China, combined with an attachment of SHI's shares in the shipyards in the People's Republic of China as security.

12.1.3 In January 2009, the Ningbo Maritime Court accepted the two recourse actions filed by the owner/Skuld Club and the 1992 Fund. The total amount claimed in each action was RMB 1 367 million or US$ 200 million. The Court also accepted the two applications for attachment of SHI's shares in the shipyards and issued orders accordingly.

12.1.4 In relation to the attachment of SHI's shares, the 1992 Fund arranged for the deposit of the required countersecurity, corresponding to 10% of the amount claimed by a letter of undertaking issued by the Skuld Club.

12.1.5 At its session in March 2009, the 1992 Fund Executive Committee endorsed the decision taken by the Director in January 2009 to commence recourse action against Samsung C&T and SHI in the Ningbo Maritime Court in China at the same time as the owner and the insurer of the *Hebei Spirit*. The Executive Committee also decided that the 1992 Fund should continue the recourse action.

12.1.6 The 1992 Fund then signed an agreement with the ship's interests in connection with the recourse action under which the 1992 Fund and the ship's interests would continue their actions separately, sharing the costs of the recourse actions and the proceeds of any recovery by court judgment or settlement on a 50/50 basis.

12.1.7 Service of proceedings on both Samsung C&T and SHI was effected in September 2009 but both 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 were lodged on behalf of the 1992 Fund.

12.1.8 In September 2010, the Ningbo Maritime Court dismissed the applications. In October 2010, Samsung C&T and SHI lodged an appeal against the decision of the Ningbo Maritime Court.

12.1.9 In February 2011, the Court of Appeal issued its decision. In the decision the Court of Appeal accepted the appeal by Samsung C&T and SHI that the Court of Ningbo was a 'forum non-conveniens' and that a recourse action should be pursued in a Korean Court.

12.1.10 In March 2011, both the 1992 Fund and the owner and insurers of the *Hebei Spirit* lodged separate applications for retrial with the Supreme Court in Beijing. The Supreme Court agreed to hear the applications and the Court documents were served on Samsung C&T and SHI. The Court ordered an adjournment of any application to set aside the attachment order pending the hearing of the application for a retrial.

12.1.11 In July 2011, the Supreme Court held a reconciliation hearing with the parties, with the aim of exploring a possible settlement of their dispute. The 1992 Fund took part in the hearing. In December 2011 the Supreme Court dismissed the 1992 Fund's application for retrial on the grounds of forum non-conveniens.

12.1.12 In December 2011 the owner and the insurer of the *Hebei Spirit* concluded a settlement agreement under which Samsung C&T and SHI would pay the amount of US$10 million to the shipowner and its insurer.

12.1.13 As the 1992 Fund had concluded an agreement with the owner and the insurer of the *Hebei Spirit* under which the 1992 Fund and the ship's interests would share the legal costs of the recourse actions and the proceeds of any recovery under a court judgment or settlement on a 50/50 basis, the 1992 Fund recovered US$5 million from the Skuld Club in accordance with this agreement. In accordance with the agreement, the 1992 Fund will reimburse the Skuld Club and the China P&I Club for each share of the legal costs incurred in bringing the recourse action.

13 Other issues

13.1 Time bar

13.1.1 The six-year anniversary of the date of the incident fell on 7 December 2013. In accordance with Articles 6 and 7.6 of the 1992 Fund Convention and its application under Korean law, in order for the victims to preserve their right to claim compensation from the 1992 Fund, they must bring a legal action against the 1992 Fund within three years from the date of the damage or six years from the date of the incident.

13.1.2 By October 2013 four legal actions against the 1992 Fund had been commenced by 53 claimants, one of which had recently been discontinued. More than 70 000 claimants had filed objections against the Limitation judgment. Under Korean law, any decision of the limitation proceedings would only be directly enforceable upon the shipowner and, whilst the 1992 Fund would be bound by the facts and findings established in those proceedings, the decision would not be enforceable against the 1992 Fund.

13.1.3 The Director held consultations with the Korean Government in order to explore practical ways, compatible with Korean law, to ensure that the claimants did not lose their right to receive compensation from the 1992 Fund due to their claims becoming time-barred. In order to clarify the

interpretation of Articles 6 and 7.6 of the 1992 Fund Convention and its application under Korean law, the Director and the Korean Government agreed to jointly appoint a former Supreme Court Judge to issue an opinion on the matter and to abide by his opinion.

13.1.4 The former Supreme Court Judge supported the Director's view that in order for the victims to preserve their right to claim compensation from the 1992 Fund, they should bring a legal action against the 1992 Fund within three years from the date of the damage or six years from the date of the incident.

13.1.5 The Korean Government held consultations with the representatives of private claimants and the local authorities in order to inform them that, if no settlement was reached before December 2013, they needed to file an action in court against the 1992 Fund.

13.1.6 By 7 December 2013, 117 504 claimants had filed legal actions against the 1992 Fund in the Seosan Court and had therefore protected their right against the 1992 Fund. The Court decided not to progress the separate lawsuits for the time being, since the same claims were being dealt with in the objection proceedings.