INTERNATIONAL OIL POLLUTION COMPENSATION FUNDS

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1992 Fund Assembly	**92A18**	
1992 Fund Executive Committee	**92EC59**	•
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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*. *Level of payments* In June 2008 the 1992 Fund Executive Committee decided, in view of the uncertainty as to the total amount of the admissible claims, to set the level of payments to 35% of the established claims. This decision was maintained at subsequent meetings of the Executive Committee. *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. On 15 January 2013 the Limitation Court issued its judgement, awarding some KRW 736 074 million (£453 million).
Recent developments:	*Claims situation* As at 20 August 2013, 128 403 claims totalling KRW 2 775 billion (£1 629 million)[<1>] have been submitted. All but 14 of the claims submitted have been assessed. Of these claims 41 213 have been assessed at KRW 180 176 million (£117 million) and 87 336 were rejected for various reasons, primarily due to lack of supporting documentation or evidence of loss. The Skuld Club has paid KRW 171 858 million (£101 million). As at 20 August 2013 further payments are pending.

[<1>] The exchange rate used in this document (as at 1 August 2013) is £1 = KRW 1703.43.

Limitation proceedings by the owner of the Hebei Spirit

As at 20 August 2013, some 70 000 claimants have filed objections against the Limitation Court's decision on the liability of the owners of the *Hebei Spirit* in the Seosan Court. The 1992 Fund has filed some 63 000 objections. The Court started its preliminary hearings in July 2013.

Time bar

On 7 December 2013 it will be the six year anniversary of the date of the incident. As at 20 August 2013, four legal actions against the 1992 Fund have been commenced by 53 claimants, one of which has recently been discontinued. In addition, more than 70 000 claimants have filed objections against the Limitation Court judgement on the liability of the *Hebei Spirit* owners in the Seosan Court. However, any decision of the limitation proceedings would only be directly enforceable upon the shipowner, since the liability being decided is that of the owner/insurer.

The Secretariat and the 1992 Fund's Korean lawyers have held consultations with the Korean Government in order to explore practical ways, compatible with Korean law, to ensure that the claimants do not lose their right to receive compensation from the 1992 Fund due to their claims becoming time-barred.

Level of payment

In view of the amount awarded by the Limitation Court and of the significant number of objections to the Court's decision, the Director proposes maintaining the level of payments at 35% so as to avoid an overpayment situation. The Director also proposes that this level of payments is reviewed at the next session of the Executive Committee.

Action to be taken: 1992 Fund Executive Committee

Decide whether to maintain the level of payments at 35%.

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) [<2>]
STOPIA/TOPIA applicable	No
CLC + Fund limit	KRW 321 619 million (£197.9 million)

[<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 of 6 November 2008, the date on which the Letter of Undertaking was deposited into the Limitation Court.

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 (£376 million).
Legal proceedings	1. Limitation proceedings on the liability of the *Hebei Spirit* owners. 2. Lawsuit by one clean-up company against the owners and insurers of the *Hebei Spirit* and the 1992 Fund. 3. Lawsuit by one shipowner against the owners of the *Hebei Spirit* and the 1992 Fund. 4. Lawsuit by one claimants' committee against the *Hebei Spirit* owner and the 1992 Fund. 5. Lawsuit by a number of fishermen and fish sellers against the 1992 Fund and the Republic of Korea (now discontinued). 6. Lawsuit by one clean-up company against the Republic of Korea. 7. Lawsuit by one aeroplane operating company against the Republic of Korea. 8. Lawsuit by three clean-up companies against the Republic of Korea.

2 Background information

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

3 Claims for compensation

3.1 The table below provides a detailed update of the claims submitted as at 20 August 2013 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	12	824
Fisheries and mariculture	110 332	1 605 338	38 010	72 322	47 962	29 456	44 967
Tourism and other economic damage	17 737	406 953	2 946	14 789	34 028	2 768	32 997
SLQ claims	62	611 817	23	38	16 989	0	0
Total	**128 403**	**2 775 286 (£1 629 million)**	41 213	87 176	**198 740 (£117 million)**	**32 420**	**171 858 (£101 million)**
			128 389				

3.2 As at 20 August 2013, all but 14 claims have been assessed. Of these, 41 213 claims have been assessed at positive amounts. The Skuld Club has paid KRW 171 858 million in compensation to 32 420 claimants. A total of 9 937 claimants have received offers for compensation by the Club and the 1992 Fund but they have not responded. The last remaining claims are claims for interest and two claims which were submitted after the decision of the Limitation Court. Since interest under Korean law is to be determined by the national courts, the claims for interest shall not be assessed.

4 Legal issues

4.1 Limitation proceedings of the owners of the *Hebei Spirit*

4.1.1 The Limitation Court had received 127 483 claims totalling KRW 4 227 billion (£2 481 million). As a matter of Korean law, no further claims could be registered nor could changes to the amount claimed be accepted.

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 736 billion (£432 million) and rejecting 64 270 claims. Twelve claims were withdrawn before the Court decision and were not included in the assessment. 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*, 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. A summary of the Court's decision and the main issues of admissibility raised by the Court's judgement are presented in Annex II of this document.

4.1.3 Under Korean law, in the limitation proceedings, the assessment decision by the Limitation Court can be objected to a Court of First Instance. Therefore, the process up to the assessment decision in the limitation proceedings can be considered as a pre-stage of the overall process. Any decision of the Court of First Instance in Seosan (Seosan Court) may be appealed in the Court of Appeal in Daejeon High Court (Appeal Court) and, in certain circumstances, a decision of the Appeal Court may be appealed in 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. Therefore 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.

4.1.5 In accordance to 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 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.

4.1.6 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 has consolidated them into some 90 cases. In the same month, the Seosan Court commenced preliminary hearings for three of these cases. The next preliminary hearing has been set for September 2013.

4.1.7 In May 2013 the National Assembly of the Republic of Korea passed a number of amendments to the Special Law which, *inter alia*, 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. A decision by the Seosan Court is therefore expected by the end of May 2014.

4.2 Civil proceedings

Legal proceedings by a clean-up company against the Club and the 1992 Fund

4.2.1 A clean-up company commenced legal proceedings against the Club and the 1992 Fund. The company had previously submitted a claim which had been assessed and a payment totalling KRW 233 158 549 (£136 900) had been made by the Skuld Club.

4.2.2 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:

(a) 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

(b) in any event, the company's reasonable costs had already been paid by the Club.

4.2.3 The clean-up company appealed against the judgement to the Court of Appeal.

4.2.4 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.

4.2.5 The 1992 Fund expressed the view that, since it is not clear whether the increased assessment of the costs of the local authority refer 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.

4.2.6 In its judgement 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 has appealed the judgement to the Supreme Court.

4.2.7 A judgement by the Supreme Court is expected in 2014.

Civil proceedings by the owner of a vessel against the owner of the Hebei Spirit, the Club and the 1992 Fund

4.2.8 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 1992 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 (£59 000) 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. The claimant had also submitted a claim in the Limitation Proceedings.

4.2.9 In January 2013 the vessel's owner withdrew its lawsuit against the 1992 Fund, although they maintained the lawsuit against the *Hebei Spirit* owners.

4.2.10 In March 2013 the vessel's owner informed the Court that they had requested the Seosan Court, which was in charge of the limitation proceedings, to consolidate both sets of proceedings. On that basis, the claimant requested the Court to stay the proceedings until the present case was handed over to the Seosan Court.

4.2.11 The next hearing of the Court has been set for the end of August 2013.

Civil proceedings by a claimants' committee against the Hebei Spirit owners and the 1992 Fund

4.2.12 In April 2013 a claimants' committee filed a lawsuit against the *Hebei Spirit* owner and the 1992 Fund, requesting them to pay a total of KRW 109 956 900 (£64 600) in compensation for two claims which the committee had subrogated from two individuals, together with interest. The amount claimed corresponds to the amount assessed by the Club and the 1992 Fund for two of the claims submitted by the two claimants in the claims office, although it differs substantially from the amount for which the persons had submitted claims in the limitation court. One of the two claims for which the proceedings were commenced had previously been the object of a lawsuit against the 1992 Fund, which had been discontinued in September 2011. At that time, the claimant had reserved her right to file again a lawsuit against the 1992 Fund once the current limitation proceedings had been finalised.

4.2.13 In May 2013, the 1992 Fund argued in court 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 and that the claimants' committee needed to prove that it had indeed subrogated the right to receive compensation for these claims.

4.2.14 The first hearing is scheduled for the end of August 2013.

Civil proceedings by a group of fishermen and sellers of marine products against the 1992 Fund and the Republic of Korea

4.2.15 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 150 000 000 (£87 000). The claimants had also submitted their claims in the Limitation Proceedings.

4.2.16 In March 2011, the Court decided to adjourn the proceedings until the limitation proceedings by the owners of the *Hebei Spirit* were finalised.

4.2.17 In May 2013, following the decision by the Limitation Court, the claimants filed a request to discontinue the action.

Lawsuit by an aeroplane operating company against the Republic of Korea and Korea Marine Environment Management Corporation (KOEM)

4.2.18 In June 2011 an aeroplane operating company initiated a lawsuit in the Seoul Central District Court (Court of First Instance) against the Republic of Korea and KOEM. The 1992 Fund, who was notified of the lawsuit in November 2011, intervened in the lawsuit. The aeroplane company requested payment for the flights conducted to spray dispersants at sea during the clean-up operations as instructed by the Korean Government. The company had not submitted a claim in the limitation proceedings. The Korean Government however had submitted a claim in the limitation proceedings for the amount of the costs incurred by the company.

4.2.19 In August 2012 the Court delivered its judgement. In its judgement, the Court did not consider issues of admissibility or the technical reasonableness of the actions undertaken, but only focused on whether a valid contract was concluded between the claimant and the Republic of Korea. As a result, the Court decided that a verbal contract was validly concluded between the company and the Republic of Korea by which the Republic of Korea agreed to pay to the company for each flight for clean-up activities made by the company's aeroplanes. The Court therefore ordered the Republic of Korea to pay the company KRW 236 500 000 (£139 000) together with interest of 5% per annum from 27 December 2007 to 16 August 2012 and 20% per annum until the company was paid in full. The Court dismissed the rest of the claim.

4.2.20 In September 2012 the Korean Government appealed the judgement.

4.2.21 In May 2013, the Court of Appeal decided to appoint a court expert to assess the quantum of the claim. The Court requested both parties to submit further comments, if necessary, after the expert was appointed. No date has yet been set for the next hearing of the Court.

Civil proceedings by three clean-up companies against the Republic of Korea

4.2.22 In October 2010 three clean-up companies which had been involved in clean-up operations at the instruction of the Korean Coast Guard filed a lawsuit at the Busan District Court against the Republic of Korea, claiming costs for the aggregated amount of KRW 4 639 080 692 (£2.7 million), ie the difference between the amount assessed by the 1992 Fund and the amount originally claimed. The claimants had also submitted their claim in the limitation proceedings.

4.2.23 In May 2012 the Republic of Korea requested the Court to serve notice of the lawsuit upon the owner of the *Hebei Spirit*, the 1992 Fund and Samsung Heavy Industries, arguing that they would all be ultimately liable to pay for the costs being claimed and reserving the right to make a recourse claim against those three parties. In June 2012, the 1992 Fund intervened in the lawsuit. The 1992 Fund advised the Court at the hearings that the claimants had already been paid reasonably assessed compensation and had no more clean-up costs to be compensated.

4.2.24 In December 2012 the Court decided to stay the proceedings until the decision by the Limitation Court was issued. No date for the hearing has yet been set.

5 Time bar issues

5.1 On 7 December 2013 it will be the six year anniversary of the date of the incident. As at 20 August 2013, three legal actions have been commenced against the 1992 Fund. More than 70 000 claimants have filed objections against the Limitation Court judgement on the liability of the *Hebei Spirit* owners in the Seosan Court.

5.2 According to Korean law, the Limitation Court's judgement 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. Correspondingly, any decision in the limitation proceedings would only be directly enforceable upon the shipowner, since the liability being decided was that of the owner/insurer. However, although a decision on the quantum of claims taken by the limitation proceedings will have an impact on a subsequent civil action against the 1992 Fund, if actions against the 1992 Fund were commenced after 7 December 2013, such claims may be time-barred under the 1992 Fund Convention.

5.3 The Secretariat and the 1992 Fund's Korean lawyers have held consultations with the Korean Government in order to explore practical ways, compatible with Korean law, to ensure that the claimants do not lose their right to receive compensation from the 1992 Fund due to their claims becoming time-barred.

6 Level of payments

6.1 The total amount available for compensation under the 1992 Fund Convention is 203 million SDR or KRW 321.6 billion.

6.2 The table below shows the amount available for compensation as a percentage of the amounts claimed in the limitation proceedings, amounts claimed in the claims office, and amounts awarded by the Limitation Court in the claims office but taking into account the claims for which the Korean authorities are 'standing last in the queue'.

	Amount (KRW billion)	**Amount (£ million)**	**Percentage of the 1992 Fund's limit (KRW 321.6 billion)**
Amount claimed in the limitation proceedings	4 227	2 481	7.6%
Amount claimed in the claims office	2 775	1 629	11.6%
Amount awarded by the Limitation Court	736	432	43.8%
Amount awarded by the Limitation Court (excluding SLQ claims)	518	304	62.2%

6.3 The total amount of assessed claims so far is KRW 198 740 billion. On the basis of the current level of assessed claims, it would be possible for the 1992 Fund to raise the level of payment to 100% of the established claims.

6.4 However, the total amount claimed in the limitation proceedings is KRW 4 227 billion. The amount available under the 1992 Conventions therefore corresponds to 7.6% of this amount.

6.5 The total amount of the claims submitted in the claims office is KRW 2 775 billion. Currently, the amount available under the 1992 Conventions corresponds to 11.6% of the total amount claimed.

6.6 Additionally, the amount assessed by the Limitation Court in its January 2013 decision is KRW 736 billion, including the assessment of claims for which the Korean Government has declared its intention to 'stand last in the queue'. The amount available under the 1992 Conventions would therefore correspond to 43.8% of the amount assessed by the Limitation Court.

6.7 Excluding the Limitation Court assessment of the claims for which the Korean Government is 'standing last in the queue', the amount available under the 1992 Conventions would only correspond to 62.2% of the amount assessed by the Court.

6.8 In the case of the *Hebei Spirit*, the assessment made by the Limitation Court greatly differs from the assessment made by the Club and Fund, and is based on a number of assumptions and calculations of losses, which the 1992 Fund has objected to.

6.9 The 1992 Fund's previous experience of incidents in Korea indicates that the Korean courts have tended to uphold the assessment of losses based on the 1992 Fund's criteria for admissibility of claims. However, it is now difficult to predict the impact of the Limitation Court's assessment on future court cases.

6.10 Furthermore, more than 70 000 claimants have appealed the decision of the Limitation Court. Although the 1992 Fund have not yet been informed of the total amount claimed in the appeals, considering the difference between the amount claimed in the limitation proceedings (KRW 4 023 billion) and the amount assessed by the Limitation Court (KRW 736 billion) and in view of the number of claims rejected by the Court, there is a risk that the Seosan Court may increase significantly the amount awarded by the Limitation Court.

6.11 In view of the disparity between the amounts claimed in the limitation proceedings and the amount awarded by the Limitation Court, the Director considers that it is premature to raise the level of payments, since it is not yet known what position will be taken by the Seosan Court.

6.12 The Director therefore recommends the 1992 Fund Executive Committee to maintain the level of payments at 35% of the amount of the loss or damage as assessed by the Club's and 1992 Fund's experts, and that this percentage should be reviewed at the next session of the 1992 Fund Executive Committee.

7 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%; and

(c) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

* * *

ANNEX I

BACKGROUND INFORMATION – HEBEI SPIRIT

1 Incident

1.1 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.

3.5 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.

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.

4.3 Level of payments

4.3.1 At its March 2008 session, the 1992 Fund Executive Committee authorised the Director to settle and pay claims arising from this incident to the extent that they did not give rise to questions of principle not previously decided by the 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 *vis-à-vis* 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.

4.3.2 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.

4.3.3 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.

4.3.4 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.

4.3.5 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 its next session of the Executive Committee.

4.3.6 In August 2011, the Korean Government informed the Acting 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.

4.3.7 In October 2011, April 2012 and October 2012 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.

4.4 Actions by the Korean Government

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

4.4.1 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.

4.4.2 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.

4.4.3 As at October 2012, the Korean Government had made payments totalling KRW 37 550 million in respect of 695 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.

4.4.4 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 21 September 2012, the Korean Government had granted 21 295 loans totalling KRW 50 685 million.

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

4.4.5 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.

4.4.6 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.

4.4.7 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.

5 Cooperation Agreements between the Korean Government, the shipowner and the Skuld Club

5.1 First Cooperation Agreement

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.

5.2 Second Cooperation Agreement

5.2.1 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.

5.2.2 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 judgements 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.

6 Claims for compensation

As of October 2012, 128 400 individual claims totalling KRW 2 611 billion, had been registered. Some 128 311 claims had been assessed at a total of KRW 179.9 billion, out of which 83 946 claims had been rejected. The Skuld Club had made payments totalling KRW 167.2 billion in respect of 37 108 claims, and the remaining claims were being assessed or additional information was being requested from the claimants.

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*.

7.1.4 The owners of the two tugs and the owner of the *Hebei Spirit* appealed to the Supreme Court against the decision of the Central Maritime Safety Tribunal. As of October 2012, the decision of the Supreme Court was still pending.

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 Legal proceedings

8.1 Criminal proceedings

8.1.1 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.

8.1.2 In June 2008, the Seosan Court delivered its judgement 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.

8.1.3 The Public Prosecutor and the owners of the tugboats appealed against the judgement.

8.1.4 In December 2008, the Criminal Court of Appeal (Daejeon Court) rendered its judgement. In its judgement, the Court reduced the sentence against the masters of the two tugboats. The judgement overturned the non-guilty judgements 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* interests appealed to the Supreme Court.

8.1.5 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.

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

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

8.2.1 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).

8.2.2 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.

8.2.3 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.

8.2.4 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.

8.2.5 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.

8.2.6 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.

8.2.7 As of 27 August 2012, 127 483 claims totalling KRW 4 023 billion had been submitted in the Limitation Court, representing an increase of nine claims and KRW 64 billion since April 2012. On 27 August 2012 the Limitation Court held a hearing. At the hearing, the Court listed the claims which 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. The Court is expected to issue its decision regarding the distribution of the *Hebei Spirit* limitation fund in December 2012. The Fund's lawyers are following the proceedings.

8.3 Limitation proceedings by the bareboat charterer of the Marine Spread

8.3.1 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.

8.3.2 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.

8.3.3 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. As of October 2012, the appeal was still pending.

8.4 Civil Proceedings

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

8.4.1 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.

8.4.2 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.

8.4.3 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 344 177 512 and offered settlement to the claimant in April 2011.

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

8.4.5 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.

8.4.6 In January 2012, the Court of Appeal issued a judgement 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 of October 2012, the case was pending at the Supreme Court.

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

8.4.7 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.

8.4.8 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.

8.4.9 The contractor claimed in Court for the balance between the amount claimed and 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.

8.4.10 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.

8.4.11 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.

8.4.12 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:

(a) 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
(b) in any event, the company's reasonable costs were KRW 233 158 549 and this amount had already been paid by the Club.

8.4.13 The clean-up company appealed against the judgement to the Court of Appeal. Further hearings took place in October 2012, at which further information was requested. The next hearing of the Court was scheduled for 20 November 2012.

Claim by a group of fishermen and sellers of marine products

8.4.14 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.

8.4.15 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.

Claim by the owner of a vessel

8.4.16 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.

8.4.17 The vessel owner has since submitted the claim to the Club and the 1992 Fund for assessment. The Court decided to stay the proceedings until the Club and the Fund have assessed the claim.

Claim by the owner of an abalone farm

8.4.18 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.

8.4.19 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.

8.4.20 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.

8.4.21 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.

8.4.22 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.

8.4.23 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.

8.4.24 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.

8.4.25 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.

8.4.26 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 judgement or settlement on a 50/50 basis.

8.4.27 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.

8.4.28 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.

8.4.29 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.

8.4.30 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.

8.4.31 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.

8.4.32 In December 2011 the Supreme Court dismissed the 1992 Fund's application for retrial on the grounds of *forum non-conveniens*.

8.4.33 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.

8.4.34 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 judgement or settlement on a 50/50 basis, the 1992 Fund has 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.

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ANNEX II

SUMMARY OF THE ADJUSTMENT DECISION OF THE HEBEI SPIRIT LIMITATION COURT

1 Introduction

1.1 In January 2013, the Limitation Court issued its decision regarding the distribution of the *Hebei Spirit* limitation fund. In its decision the Court rejected 64 270 claims and assessed the remaining claims at a total of KRW 736 074 million. This amount represents only approximately 17% of the amount claimed and 25% of claims registered with the *Hebei Spirit* claims office (*Hebei Spirit* Centre (HSC)), but it is still some four times larger than the amount which had been approved by the Club and the 1992 Fund.

1.2 The Court's decision was issued in three parts, covering private claims, both with and without representation ('private claims'), and government claims ('SLQ' claims). The Court's assessment of both parts dealing with private claims was largely similar, while the Court took a different approach to the latter group.

1.3 The Court decision appears to have been based on the report prepared by the Court expert nominated by the Court, which totalled 730 pages and 130 000 pages of individual assessments. However, the total amount assessed by the expert as arising from the *Hebei Spirit* incident totalled KRW 546 billion. The Court therefore appears to have increased the expert's assessment in all categories of claims, in particular with regard to claims submitted by government agencies and local authorities, which the court expert had calculated at approximately KRW 40 billion, whilst the Court assessed these claims at over KRW 217 billion. The reasons for the difference between the Court and the expert's assessments are being investigated by the 1992 Fund's experts.

1.4 The table below provides an approximate estimate of the assessment of the Limitation Court by category (see paragraphs 1.8-1.9 below). It is important to note that the Court has not provided a breakdown of the assessment by category, nor an indication of the category of the individual claims it had assessed or whether these claims were submitted to Court in the same category as those submitted to the Club and Fund (see paragraph 1.8 below). Therefore, the table should be considered as indicative only.

Claim Category	Amount claimed in HSC	Amount approved by Club and Fund	Amount assessed by Court Expert (approximate)	Amount assessed by Court	Difference between Club and Fund's and Court's assessments
	KRW million	KRW million	KRW million	KRW million	KRW million
Capture fisheries and Aquaculture	1 605 338	47 978	366 000	367 433	319 455
Clean up	148 924	93 408	100 000	104 673	11 262
Tourism and Miscellaneous	406 801	34 021	40 000	46 094	11 219
Property damage	2 344	854			
SLQ	611 727	4 576	40 000	217 874	213 298
Total	**2 775 134**	**180 837**	**546 000**	**736 074**	**555 237**

1.5 In accordance with Korean law, all interested parties had two weeks from the notification of the judgement to object to the decision of the Limitation Court.

1.6 In early February 2013, within the two week deadline, the 1992 Fund appealed the Court's assessment of 63 163 claims which gave rise to issues of principle. The owners and insurers of the *Hebei Spirit*

also objected to the assessment of a number of claims. It is understood that 86 578 individual claimants have also objected to the judgement.

1.7 The 1992 Fund has appealed the claims on a number of points of order and of principle.

1.8 It is first to be noted that it has been extremely difficult to match the claims in Court with the claims submitted to the Club and the 1992 Fund. In a significant proportion of the cases, the same persons have submitted claims not only for different amounts but also under different categories. The Club and Fund's experts have not been given access to the claim documentation submitted in Court, if any, and therefore the process required to match the two groups of claims has been painstakingly slow.

1.9 Furthermore, it is to be noted that a number of claims have been assessed not on the basis of evidence provided by the claimants or available to the Court, but on the basis of abstract models. This is particularly evident in the case of the assessment of claims in the fisheries sector where the court expert team members who assessed the fisheries losses were found to have been involved in the preparation of the claims by a number of fisheries claimants and had in fact used the same methodology in both the preparation and assessment of claims.

1.10 Finally, with regard to claims by government agencies, both central and local, the Court have accepted a number of claims for costs incurred well after the period that the Court itself considers admissible for losses, and for costs incurred in activities which are well beyond those considered reasonable under the 1992 Fund's admissibility criteria.

1.11 The paragraphs below summarise the main similarities and points of difference between the 1992 Fund's assessment and the Court's assessment of claims by private individuals and government (SLQ) claims and explain the reasons for the difference between the assessment by the 1992 Fund and that made by the Limitation Court.

2 Claims from private individuals

2.1 Claims Manual

2.1.1 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*, 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.

2.1.2 Furthermore, although the Court has accepted the 1992 Fund's approach in a number of cases, namely some categories of claims such as taxi drivers, fish sauce manufacturers and, in general terms, large unlicensed business, it has nonetheless applied a non-consistent approach to the assessment of claims. In particular, with respect to the need for the claimants to prove their losses, the Court has confirmed in principle that a claimant was bound to prove his or her losses. However, it then proceeded to assess losses of large categories of claims on the basis of abstract models, without any reference to existing data or information.

2.2 Admissibility of licensed claims

The Court considered that businesses operating in breach of the national laws regarding licensing would not be admissible for compensation. It therefore agreed with the 1992 Fund's view that claims by unlicensed aquaculture facilities should not be admissible for compensation. However, the Court made a distinction between licensed activities, such as aquaculture farms, and permitted activities, such as eel and other set-net fisheries and took the view that, although activities carried out without a permit are technically illegal, the degree of illegality of unpermitted activities was the less serious of unlicensed activities and, as a consequence, allowed those claims. Equally, in the tourism and service industry, although broadly applying the same approach to illegal activities as the 1992 Fund, the Court still accepted unlicensed claims provided the related businesses were smaller than a pre-determined size.

2.3 Link of causation and second degree claims

2.3.1 The Court prefaced its judgement by stating that the claimants had to prove that there was a link of causation between the incident and the alleged damages. To this end, it considered that most of the fishery-related and tourism related activities in the affected areas would by default be admissible for compensation.

2.3.2 In taking this decision, the Court ignored the 1992 Fund's position that claims submitted by businesses which provided goods or services to tourism-related business would be too remote to be admissible for compensation and consequently admitted claims by a number of service activities which the 1992 Fund rejected as second degree claims.

2.4 Period of losses

2.4.1 The Court considered the admissible period for accepting losses arising out of the *Hebei Spirit* incident and, similarly to the approach taken by the 1992 Fund, made a distinction between different economic sectors and between different types of claims.

2.4.2 For a number of clean-up claims, mostly from local authorities, the Court accepted longer periods of admissibility to cover the cost of local labourers hired by the communities well beyond the date the 1992 Fund considered it technically reasonable to continue clean-up operations. It is worth noting that the costs incurred by the clean-up companies involved in such operations were assessed for the same period as that assessed by the 1992 Fund.

2.4.3 For tourism claims, the Court accepted the period of losses as assessed by the 1992 Fund, ie until September 2008, in all areas except Taean-gun. In the latter area, the Court allowed a period of losses until December 2008 on the basis of statistics provided by local authorities. The 1992 Fund has analysed a number of different official statistics for the tourism sector and found them to be often inconsistent with each other. Each new statistic presented by the government authorities was analysed and the results of the analysis reported to the Executive Committee (see, *inter alia*, the analysis contained in document IOPC/OCT09/3/8/1, section 3).

2.4.4 With regard to claims in the fisheries and aquaculture sector, the Court generally accepted the government's fishing bans for the calculation of the losses, with the exception of claims by some fishing boats, which the Court assimilated to claims by business in the tourism sector. These claims were therefore allowed a longer period of admissible losses, until December 2008. Further analysis of the Court's approach to the issue of the government fisheries restrictions is provided in section 2.5.

2.4.5 Despite the decision mentioned above, the Court allowed for an even longer period of losses for claims made by fishing boats, on the basis that the boats had a tourism component as they would occasionally carry tourists for angling fishery tours. In the case of the fishing boats, the Court allowed for a similar period of losses as that of tourism claims, which extends well beyond the period of the government-imposed fisheries restrictions, ie until December 2008 for claims originating from the Taean area and until September 2008 for claims from all other areas.

2.5 Fishing bans

2.5.1 The Court considered that the losses in the fisheries sector should be assessed for the entire duration of the government's fishing bans, on the basis that fishermen could not return to fish without breaking the law and that, in its view, there was no data to deem that the government's bans were imposed without technical and scientific grounds. Although the 1992 Fund had never disputed the reasonableness of the imposition of the bans, the 1992 Fund had considered that the bans were unreasonably maintained for a longer period than necessary, based on the information provided by the government itself and based on the knowledge the government possessed at the time the decision to maintain the ban was taken (see document IOPC/OCT09/3/8/1, section 2 and document IOPC/OCT10/3/10, section 9). The Limitation Court appears not to have considered whether the length of the fishing bans should be considered reasonable.

2.5.2 Furthermore, the Court awarded compensation on the assumption that a fishing ban would have caused the complete interruption of the fishing activities. However, on the basis of the documents submitted to the 1992 Fund by the claimants themselves, it is clear that fisheries activities, although briefly suspended during the period when the fishing boats were used for clean-up operations and during the time when the local villagers were employed in onshore clean-up activities, were resumed fairly quickly and were never completely interrupted. The Court has however ignored this evidence and has calculated the claims on the basis of 100% interruption.

2.6 Mortality

2.6.1 In assessing the losses in the fisheries sector, the Court accepted as 'fact substantiated' that there was resource mortality that could be imputed to the *Hebei Spirit*. The court expert calculated the losses due to mortality based on a model used by the claimants' experts, which was based on a number of unverified assumptions, the first of which was that there was in fact a mortality of fishery resources due to the contamination.

2.6.2 On the basis of the finding of the government agencies' studies conducted after the spill, the actual level of oil pollution was already almost at background levels from January 2008 and it disappeared completely between February and April in all areas. These conclusions strongly indicate that any mortality of fisheries resources would not be necessarily due to the contamination.

2.6.3 Furthermore, no report of fish mortality was received from highly affected areas after the spill, nor was any evidence of mortality submitted to either the Club and the Fund or the authorities. This and the fact that fishing mortality was only reported in areas far from heavily-affected regions again strongly indicate that the link between the mortality and the contamination would be, at the very least, remote.

2.6.4 In the absence of evidence of any mortality linked to the contamination, the court expert calculated mortality related losses on the basis of a dynamic modelling method, rather than using the average method recommended both by the Claims Manual and most importantly by the Korean Fisheries Law.

2.6.5 The dynamic modelling method is normally used for the analysis of the marine animal population rather than to estimate damages or losses to fishery animals. This method was used by the claimants' representatives, who were part of the same organisation which had summited claims of behalf of the fisheries claimants. The reason why the 1992 Fund had previously found the method inadequate was that, to be used properly, it necessitated actual data to substitute various parameters in the equations of the model, such as rate of recruit, growth, mortality and fishing for short neck clam or oyster in the areas to which the model would be applied. As no such data was available for the affected areas, the court expert used data derived from scientific literature available to the expert, which they contended would reflect the actual production rates of the affected areas.

3 Claims by central and local government authorities

3.1 The judgement by the Limitation Court with regard to claims submitted by central and local government authorities for costs incurred in clean up operations and other expenses is shorter than the other two summaries above, totalling nine pages plus appendix. In the judgement, the Court rejected a number of claims for activities which it considered to be unrelated to the *Hebei Spirit* incident as well as any claims for costs incurred beyond 2012. However, the Court considered admissible a number of claims which had been rejected by the 1992 Fund as they related to:

- litigation costs in lawsuits initiated by third parties against the Korean Government;
- costs for promotional events which occurred after the end of the affected period as recognised by the Court in its assessment of the private claims and until 2012;
- costs for activities for the promotion of the fisheries efforts in the area, which appear to relate to on-going programs and/or improvement of existing conditions rather than reinstatement of original conditions; and
- costs for improvements of public areas, including building new reception facilities, street lights, offices for local authorities and repaving of roads, which constitute betterment and therefore are outside the scope of the Conventions.

3.2 In conclusion, the Fund has appealed the judgement of the Limitation Court in respect of 63 163 claims since there are matters of principle involved. Some 86 578 individual claimants have also appealed. The Fund's lawyers continue to review the judgement and hope to identify and reduce the number of appeals before the first hearing of the Court of Appeal commences. This task is however made difficult by the short time available, the large numbers of claims and the issue of matching claims in court and claims filed at the *Hebei Spirit* Centre.

3.3 It is expected that the Court of Appeal will render its judgement before the end of 2013.