



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

|                                  |                |   |
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| Agenda item: 3                   | IOPC/MAY14/3/5 |   |
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|                                  |                |   |
| 1992 Fund Assembly               | 92AES18        |   |
| 1992 Fund Executive Committee    | 92EC61         | • |
| 1971 Fund Administrative Council | 71AC32         |   |
| 1992 Fund Working Group 7        | 92WG7/3        |   |

## 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<sup>o</sup>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 (£411 million).

By 20 August 2013, some 87 000 claimants have filed objections against the Limitation Court's decision on the liability of the owner 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.

*Legal proceedings against the 1992 Fund*

By October 2013, only four legal actions against the 1992 Fund had been commenced by 53 claimants.

|                             |   |
|-----------------------------|---|
| <b>Recent developments:</b> | <p><i>Claims situation</i></p> <p>As at 12 March 2014, 128 403 claims totalling KRW 2 775 billion (£1 552 million)<sup>&lt;1&gt;</sup> have been submitted.</p> <p>All but 11 of the claims submitted have been assessed. Of these claims 41 217 have been assessed at KRW 198 842 million (£111 million) and 87 175 were rejected for various reasons, primarily due to lack of supporting documentation or evidence of loss.</p> <p>The Skuld Club has paid KRW 171 8884 million (£96 million). As at 12 March 2014 further payments are pending.</p> <p><i>Legal proceedings against the 1992 Fund</i></p> <p>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.</p> <p><i>Level of payment</i></p> <p>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.</p> <p><b>Action to be taken:</b> <u>1992 Fund Executive Committee</u></p> <p>Decide whether to maintain the level of payments at 35%.</p> |
|-----------------------------|---|

## 1 Summary of incident

|                         |  |
|-------------------------|--|
| Ship                    | <i>Hebei Spirit</i>  |
| Date of incident        | 07.12.2007   |
| Place of incident       | Taeon, 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)/<br>Assuranceföreningen Skuld (Gjensidig) (Skuld Club) |
| CLC limit               | 89.8 million SDR (approximately KRW 186.8 billion) <sup>&lt;2&gt;</sup>  |
| STOPIA/TOPIA applicable | No   |
| CLC + Fund limit        | KRW 321 619 million (£180 million)   |

<sup><1></sup> The exchange rate used in this document (as at 3 March 2014) is £1 = KRW 1789.02.

<sup><2></sup> The amount for which the owner of the *Hebei Spirit* are 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 (£342 million).   |
| Legal proceedings                | <ul style="list-style-type: none"> <li>(i) Limitation proceedings on the liability of the <i>Hebei Spirit</i> owner.</li> <li>(ii) Lawsuit by one clean-up company against the owner and insurer of the <i>Hebei Spirit</i> and the 1992 Fund.</li> <li>(iii) Lawsuit by one shipowner against the owner of the <i>Hebei Spirit</i> and the 1992 Fund.</li> <li>(iv) Lawsuit by one claimants' committee against the <i>Hebei Spirit</i> owner and the 1992 Fund.</li> <li>(v) Lawsuit by one aeroplane operating company against the Republic of Korea.</li> <li>(vi) Lawsuit by three clean-up companies against the Republic of Korea.</li> </ul> |

## 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 The table below provides a detailed update of the claims submitted as at 12 March 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                                     | 219                       | 22            | 98 907                                  | 184                   | 93 070                                 |
| Property damage                   | 7 040            | 2 344                                       | 356                       | 6 684         | 1 599                                   | 295                   | 1 371                                  |
| Fisheries and mariculture         | 110 332          | 1 605 338                                   | 38 010                    | 72 322        | 47 962                                  | 29 456                | 44 967                                 |
| Tourism and other economic damage | 10 718           | 407 665                                     | 2 607                     | 8 110         | 33 310                                  | 2 486                 | 32 477                                 |
| SLQ claims                        | 62               | 611 817                                     | 25                        | 37            | 17 064                                  | -                     | -                                      |
| <b>Total</b>                      | <b>128 404</b>   | <b>2 775 998</b><br><b>(£1 552 million)</b> | <b>41 217</b>             | <b>87 175</b> | <b>198 842</b><br><b>(£111 million)</b> | <b>32 421</b>         | <b>171 885</b><br><b>(£96 million)</b> |
|                                   |                  |   | <b>128 392</b>            |               |   |                       |  |

3.2 As at 12 March 2014, all but 11 claims have been assessed. Of these, 41 217 claims have been assessed at positive amounts. The Skuld Club has paid KRW 171 885 million in compensation to 32 421 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. Since interest under Korean law is to be determined by the national courts, the claims for interest shall not be assessed.

## **4 Limitation proceedings**

### **4.1 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 (£2 481 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 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* 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, 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 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. 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 for the Limitation Court's decision. Some 149 922 objections to the Limitation Court were filed in the Seosan Court (86 578 by the claimants and 63 163 by the Club/1992 Fund).
- 4.1.5 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. The Seosan Court further sorted these cases in to 'representative cases', ie cases in which the matters under objection were matters of principle, such as mortality, cut-off dates and calculation of future losses; and 'non-representative cases', where the matters under objections were not matters of principle. The Seosan Court has commenced preliminary hearings for all but two of the cases. At the same time, the Court has also sought to encourage out-of-court settlements by proposing mediation settlement to the parties in those 'non-representative' cases where matters of principle were not under discussion.
- 4.1.6 As a result of the Court's action, as at 12 March 2014, 14 597 objections have been withdrawn. A decision by the Seosan Court is expected by the end of May 2014.

## **5 Civil proceedings**

### **5.1 Legal proceedings against the 1992 Fund**

- 5.1.1 At the time of the October 2013 meeting of the Executive Committee, some 86 758 claimants had filed objections against the Limitation Court judgement 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 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 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 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 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 in the objection proceedings.
- 5.2 Legal proceedings by a clean-up company against the Club and the 1992 Fund
- 5.2.1 A clean-up company commenced legal proceedings against the Club and the 1992 Fund. The company had previously submitted a claim totalling KRW 889 427 355 (£497 200) for costs incurred in clean-up operations for the period 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 (£129 400). The Club and the 1992 Fund rejected the claim for costs for the remaining period, since the area in which the claimant operated was cleaned by mid-March 2008 and further operations were considered not technically reasonable. The company claimed in Court for the balance between the amount claimed and assessed, ie KRW 656 268 806 (£366 800).
- 5.2.2 In November 2011 the Court dismissed the company's lawsuit against the 1992 Fund. The clean-up company appealed against the judgement to the Court of Appeal.
- 5.2.3 In its judgement in 2013, the Court of Appeal dismissed the appeal. The claimant subsequently appealed the judgement to the Supreme Court.
- 5.2.4 A judgement by the Supreme Court is expected in 2014.
- 5.3 Civil proceedings by the owner of a vessel against the owner of the Hebei Spirit, the Club and the 1992 Fund
- 5.3.1 In February 2011, a vessel owner filed a lawsuit against the owner of the *Hebei Spirit* and the 1992 Fund for costs incurred cleaning their vessel which was allegedly polluted by the oil leaked by the *Hebei Spirit*, totalling KRW 99 878 861 (£55 800).
- 5.3.2 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*.
- 5.3.3 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.
- 5.4 Civil proceedings by a claimants' committee against the Hebei Spirit owner and the 1992 Fund
- 5.4.1 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.

- 5.4.2 In October 2013, the Court decided to stay the proceedings until the objection proceedings involving the claimants were finalised.
- 5.5 Lawsuit by an aeroplane operating company against the Republic of Korea and Korea Marine Environment Management Corporation (KOEM)
- 5.5.1 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, claiming costs for KRW 494 912 000 (£276 600). The 1992 Fund intervened in the lawsuit.
- 5.5.2 In August 2012 the Court delivered its judgement. In its judgement, the Court decided that a valid verbal contract had been concluded between the company and the Republic of Korea. In September 2012 the Korean Government appealed the judgement.
- 5.5.3 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.
- 5.6 Civil proceedings by three clean-up companies against the Republic of Korea
- 5.6.1 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.
- 5.6.2 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 for.
- 5.6.3 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.

## 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 but taking into account the claims for which the Korean authorities are 'standing last in the queue'.

|   | Amount<br>(KRW billion) | Amount<br>(£ million) | 1992 Fund's limit<br>(KRW 321.6 billion)<br>as a percentage of<br>the amount claimed/<br>awarded |
|---|-------------------------|-----------------------|--|
| Amount claimed in the limitation proceedings                  | 4 227                   | 2 363                 | 7.6%   |
| Amount claimed in the claims office                           | 2 775                   | 1 551                 | 11.6%  |
| Amount awarded by the Limitation Court                        | 736                     | 411                   | 43.8%  |
| Amount awarded by the Limitation Court (excluding SLQ claims) | 518                     | 290                   | 62.2%  |

- 6.3 The total amount of assessed claims so far is KRW 198 842 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 86 000 claimants have appealed the decision of the Limitation Court. Although the 1992 Fund has 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 significantly increase 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

### 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 N°1* 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 N°5* 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 Assurancéföreningen 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 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.
- 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 the 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 At each of its sessions from October 2011 to October 2013 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 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.
- 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 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’*

- 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.

#### 4.5 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.

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

4.6.1 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.

4.6.2 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.

### 5 Investigation into the cause of the incident

#### 5.1 Investigation in the Republic of Korea

5.1.1 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.

5.1.2 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.

5.1.3 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*.

#### 5.2 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.

## 6 Claims for compensation

As at October 2013, 127 483 claims totalling KRW 4 023 billion had been submitted to the limitation proceedings and the Limitation Court had appointed a court administrator to deal with them. As a matter of Korean law and practice, no further claims would be registered nor would changes be made to the amounts claimed. A total of 9 937 claimants had received offers for compensation by the Club and the 1992 Fund but they had not responded. The table below provides the status of the claims submitted as at October 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                         |
| <b>Total</b>                      | <b>128 403</b>   | <b>2 775 286</b>             | <b>41 213</b>             | <b>87 176</b> | <b>198 740</b>                | <b>32 420</b>         | <b>171 858</b>            |
|                                   |                  |                              | <b>128 389</b>            |               |                               |                       |                           |

## 7 Criminal proceedings

7.1 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.

7.2 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.

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

7.4 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 not 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*'s interests appealed to the Supreme Court.

7.5 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.

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

## **8 Limitation proceedings**

### **8.1 The owner of the *Hebei Spirit***

8.1.1 In February 2008, the owner of the *Hebei Spirit* made an application to commence limitation proceedings before the Seosan Branch of the Daejeon District Court (Limitation Court).

8.1.2 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.

8.1.3 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.

8.1.4 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.

8.1.5 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.

8.1.6 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.

8.1.7 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.

8.1.8 In January 2013 a judgement 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.

8.1.9 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.

8.1.10 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.

8.1.11 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. As at October 2013, a decision by the Seosan Court was expected by the end of May 2014. The Court was still considering the appeals.

## 8.2 The bareboat charterer of the Marine Spread

8.2.1 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.

8.2.2 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.

8.2.3 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.

## 9 Civil proceedings

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

9.1.1 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.

9.1.2 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.

9.1.3 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.

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

9.1.5 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.

- 9.1.6 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 at October 2013, the case was pending at the Supreme Court.
- 9.2 Claim by a clean-up company against the Club and the 1992 Fund
- 9.2.1 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.
- 9.2.2 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.
- 9.2.3 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.
- 9.2.4 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.
- 9.2.5 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.
- 9.2.6 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:
- (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.
- 9.2.7 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.
- 9.2.8 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.

- 9.2.9 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.
- 9.2.10 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 appealed the judgement to the Supreme Court. A judgement by the Supreme Court is expected in 2014.
- 9.3 Claim by a group of fishermen and sellers of marine products
- 9.3.1 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.
- 9.3.2 At its first hearing in March 2011, the Court decided to adjourn the proceedings until the limitation proceedings by the owner of the *Hebei Spirit* had been finalised.
- 9.4 Claim by the owner of a vessel
- 9.4.1 In February 2011, a vessel owner filed a lawsuit against the owner 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.
- 9.4.2 The vessel owner then 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 had assessed the claim.
- 9.5 Claim by the owner of an abalone farm
- 9.5.1 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.
- 9.5.2 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.
- 9.5.3 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.



- 9.6 Recourse action by the 1992 Fund against Samsung C&T Corporation (Samsung C&T) and SHI
- 9.6.1 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.
- 9.6.2 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.
- 9.6.3 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.
- 9.6.4 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.
- 9.6.5 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.
- 9.6.6 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 judgement or settlement on a 50/50 basis.
- 9.6.7 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.
- 9.6.8 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.
- 9.6.9 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.
- 9.6.10 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.
- 9.6.11 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.
- 9.6.12 In December 2011 the Supreme Court dismissed the 1992 Fund's application for retrial on the grounds of *forum non-conveniens*.
- 9.6.13 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.

9.6.14 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 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.

## **10 Other issues**

### **10.1 Time bar**

10.1.1 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.

10.1.2 As at 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 Court judgement. 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.

10.1.3 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.

10.1.4 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.

10.1.5 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. As at October 2013 it is expected that all claimants who had not yet settled their claims would commence an action against the 1992 Fund by December 2013. The Korean Government has already started actions against the 1992 Fund and is expected to file all actions in court for all its claims by the end of November 2013.

### **10.2 Decision of Samsung**

It is understood that in October 2013 Samsung, the owner of the *Marine Spread*, decided to provide additional compensation of some KRW 360 billion (\$340 million) to the victims of the spill.