



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/APR19/3/3/1	
<b>Date</b>	19 March 2019	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES23	
<b>1992 Fund Executive Committee</b>	92EC72	●
<b>Supplementary Fund Assembly</b>	SAES7	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### HEBEI SPIRIT

#### Note by the Secretariat

<b>Objective of document:</b>	Further information is provided in respect of recent developments arising from this incident.
<b>Action to be taken:</b>	<u>1992 Fund Executive Committee</u>  Decide whether to authorise the Director to enter into a bilateral agreement with the Government of the Republic of Korea by which the 1992 Fund will pay the balance available for compensation, i.e. KRW 27 486 198 196, to the Government of the Republic of Korea in exchange for a hold harmless agreement from the Government.

#### 1 Recent developments

- 1.1 The Director and the Government of the Republic of Korea have been discussing the possibility of reaching an agreement by which the 1992 Fund would pay the remaining amount available for compensation to the Government for it to pay all remaining claims.

##### *Payments made to the Government of the Republic of Korea*

- 1.2 As provided in document [IOPC/APR19/3/3](#), the 1992 Fund has paid a total of KRW 107.3 billion (£69 million) to the Government of the Republic of Korea. The 1992 Fund has some KRW 27.5 billion (£19 million) available to pay compensation for the outstanding claims, as shown in the table below:

	<b>Amount (KRW)</b>
Amount available for compensation	321 618 990 000
Amount paid by the Skuld Club	186 831 480 571
Amount paid by the Government and subrogated against the 1992 Fund	191 634 267 401
Amount paid by the 1992 Fund	107 301 311 233
<b>Balance ('Fund Balance')</b>	<b>27 486 198 196</b>

- 1.3 In the recent discussions with the Government of the Republic of Korea, the Director agreed the terms of a bilateral agreement with the Government under which the 1992 Fund will pay to the Government the Fund Balance calculated by deducting (i) KRW 186 831 480 571 which is the sum paid by the shipowner's insurer; (ii) KRW 67 301 311 233 which is the 1992 Fund's interim payment to the Republic of Korea; and (iii) KRW 40 000 000 000 which is the advance payment made by the 1992 Fund to the Republic of Korea, from the total compensation available under the 1992 Fund Convention in the sum of KRW 321 618 990 000.

- 1.4 The Government shall pay any sums awarded against claimants by judgments by the Courts in the Republic of Korea, any payment orders, mediations and settlements.
- 1.5 The 1992 Fund will make payment of the Fund Balance (KRW 27.5 billion (£19 million)) within seven days of the date of the agreement, in return for which, the Government shall provide the 1992 Fund with a hold harmless agreement so that the Government shall pay any sums awarded against the 1992 Fund by court judgments, payment orders, mediations and settlements.

## **2 Director's considerations**

- 2.1 The Courts have rendered decisions in respect of 127 481 claims, and a total of KRW 432.9 billion (£299 million) has been awarded to the claimants. There are a few claims still unresolved, but the amount of compensation due in respect of almost all cases has now been determined by the Courts.
- 2.2 The amount available for compensation in respect of the *Hebei Spirit* incident (KRW 321.6 billion) will not be sufficient to pay all claims in full. The Government has stepped in and paid all claims in full and has recovered from the 1992 Fund the amounts paid at 60% of the established losses.
- 2.3 The Director is pleased with the result of the discussions with the Government of the Republic of Korea since it allows the 1992 Fund to pay the Government the compensation available so that victims of the spill in the Republic of Korea can be paid in full, while providing the safeguards the 1992 Fund needs to be protected from judgments by the Courts in the Republic of Korea against the 1992 Fund.
- 2.4 Once the Fund Balance is paid, the 1992 Fund will have no more money available to pay compensation, and it will be the Government that will take over any further payments of compensation.
- 2.5 The level of payments, currently established by the Executive Committee at 60% to protect the 1992 Fund against an overpayment situation, will be 100% since all victims will be paid in full except for the Government who will receive what is left from the 1992 Fund. The liability and compensation regime under the 1992 Civil Liability and Fund Conventions would have been able to compensate victims of this spill, including the Government, at about 74% (KRW 321.6 billion/KRW 432.9 billion) of their losses. This level of payments would be lower if interests were to be taken into account.
- 2.6 With this agreement this case is not closed since there are a few unresolved claims. The 1992 Fund will continue working in cooperation with the Government of the Republic of Korea until all litigation comes to an end and all claims are paid in full. The Secretariat will also continue to inform the 1992 Fund Executive Committee on how the case develops but the 1992 Fund will not make any further compensation payments.
- 2.7 The Director is extremely grateful for the close cooperation and assistance provided to the 1992 Fund by the Government of the Republic of Korea in resolving this major incident.

## **3 Action to be taken**

### 1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to decide whether to authorise the Director to enter into a bilateral agreement with the Government of the Republic of Korea by which the 1992 Fund will pay the balance available for compensation, i.e. KRW 27 486 198 196, to the Government of the Republic of Korea in exchange for a hold harmless agreement from the Government.

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