



International Oil Pollution
Compensation Funds

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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:	<p>On 7 December 2007, the <i>Hebei Spirit</i> (146 848 GT) was struck by the crane barge <i>Samsung N°1</i> while at anchor about five miles off Taean on the west coast of the Republic of Korea. About 10 900 tonnes of crude oil escaped into the sea from the <i>Hebei Spirit</i>. The three southerly provinces on the west coast of the Republic of Korea were affected to various degrees.</p> <p><i>Limitation proceedings by the shipowner of the Hebei Spirit</i></p> <p>All 127 483 claims submitted in limitation proceedings brought by the shipowner have now been finalised, and the total amount awarded by the Court is KRW 432.9 billion (£295 million)^{<1>}.</p> <p>In November 2018, the Seosan Court determined the Limitation Fund to be deposited at KRW 230.9 billion (£157 million), of which KRW 139.4 billion (£95 million) represented the principal and KRW 91.5 billion (£62 million) interest.</p>
Recent developments:	<p><i>Balancing payments to the Skuld Club</i></p> <p>Following an initial advance payment to the Skuld Club of KRW 22 billion (£15 million), on account of the amount ultimately due to it, the Executive Committee authorised the Director in April 2019 to make an additional payment to the Skuld Club of KRW 22 billion (£14.8 million), setting aside a balance of KRW 3.4 billion (£2.4 million) to be paid when the legal proceedings have been concluded. This additional payment was made in April 2019.</p> <p><i>Bilateral agreement between the 1992 Fund and the Government of the Republic of Korea</i></p> <p>In April 2019, the Director signed a bilateral agreement with the Government of the Republic of Korea by which the 1992 Fund would transfer the remaining</p>

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The exchange rate used in this document as at 30 June 2019 is £1 = KRW 1 469.5252, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

amount available for compensation i.e. KRW 27 486 198 196 (£18.3 million) to the Government for it to use to pay all remaining claims.

Claims situation

The Skuld Club has paid KRW 186.8 billion^{<2>} (£127 million) in compensation. The 1992 Fund has paid a total of KRW 134.8 billion (£87.3 million) in compensation to the Government of the Republic of Korea.

Limitation proceedings by the shipowner of the Hebei Spirit

In August 2019, the Supreme Court rejected the appeal brought by the last remaining 36 objectors to the distribution of the Limitation Fund established by the shipowner of the *Hebei Spirit*. All legal proceedings are, therefore, finalised and the Limitation Fund has been distributed.

Recourse action against the bareboat charterer of the Marine Spread

In March 2009, the Seoul Central District Court rendered the order for the commencement of the limitation proceeding of the bareboat charterer of the Marine Spread (the crane barge, the two tugs and the anchor boat), Samsung Heavy Industries Co., Ltd (SHI), and set the Limitation Fund at KRW 5.6 billion (£3.8 million) including legal interest. SHI deposited this amount in the Seoul Central District Court (SHI Limitation Court). The SHI Limitation Court decided to wait to distribute the Limitation Fund until after the assessment decision was issued by the Seosan Court.

In July 2019, the 1992 Fund submitted a claim in the limitation proceedings for the amount paid by the 1992 Fund in compensation, i.e. KRW 134 787 509 429 (£87.3 million), plus any interest accrued as per Korean law.

Relevant documents:

The online *Hebei Spirit* incident report can be found via the Incidents section of the IOPC Funds' website.

Action to be taken:

1992 Fund Executive Committee

Information to be noted.

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The Skuld Club had based its provisional calculation of the limitation amount on the exchange rate at 30 November 2008, the date on which the Letter of Undertaking was deposited into the Seosan Court. The Seosan Court established the Limitation Fund on 13 November 2018. On that date, the amount of the Limitation Fund was fixed by the Seosan Court at KRW 139 376 902 000 plus interest.

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	People's Republic of China
Gross tonnage	146 848 GT
P&I insurer	China Shipowners Mutual Insurance Association (China P&I)/ Assuranceforeningen Skuld (Gjensidig) (Skuld Club)
CLC limit	SDR 89.77 million or KRW 139.4 billion
STOPIA/TOPIA applicable	No
CLC + Fund limit	SDR 203 million or KRW 321.6 billion
Legal proceedings	(i) Limitation proceedings concerning the liability of the shipowner of the <i>Hebei Spirit</i> (section 4.1); (ii) Limitation proceedings concerning the liability of the bareboat charterer of the Marine Spread, Samsung C&T Corporation and SHI (section 4.2); (iii) Two lawsuits by an oyster and ark shell culturist in Taeon, following a request for a retrial (paragraph 5.1); (iv) Thirty-six objection proceedings to the Limitation Court decision (paragraphs 4.2.2–4.2.3); (v) Legal proceedings against the 1992 Fund (paragraph 5.2).

2 Background information

The background to this incident is summarised above and provided in more detail in the online *Hebei Spirit* incident report.

3 Claims for compensation

- 3.1 A total of 127 483 claims for KRW 4 227 billion (£2 876 million) has been submitted in the limitation proceedings. On 15 January 2013, the Seosan Court rendered its judgment, awarding KRW 738 billion in respect of 63 213 claims and rejecting 64 270 claims. A large number of objections were filed in the Seosan Court by the claimants, the Skuld Club and the 1992 Fund.
- 3.2 All the claims submitted in the limitation proceedings have now been finalised and 59 597 claims were awarded a total of KRW 432.9 billion (£295 million). A total of 67 886 claims were rejected.
- 3.3 The Skuld Club had paid KRW 186.8 billion (£127 million) in compensation. The 1992 Fund has paid a total of KRW 134.8 billion (£87.3 million) in compensation to the Government of the Republic of Korea, of which KRW 67.3 billion (£41.5 million) was paid in respect of subrogated claims at a level of payments of 60%, KRW 40 billion (£27.5 million) was paid as an advance payment, and KRW 27.5 billion (£18.3 million) was paid as a balancing payment after the signing of the bilateral agreement with the Government.

Payment made to the Skuld Club

- 3.4 The total compensation payable for the *Hebei Spirit* incident under the 1992 Conventions (SDR 203 million) was fixed in March 2008 at KRW 321.6 billion. The 1992 Civil Liability Convention (1992 CLC) limitation amount (SDR 89.77 million) was fixed at KRW 139 376 902 000 by the Seosan Court in November 2018, at the exchange rate of SDR 1 = KRW 1 552.60.
- 3.5 Before the decision by the Seosan Court on the limitation amount, the Skuld Club had made interim payments of some KRW 186.8 billion, based on a Cooperation Agreement signed in July 2008 between the shipowner, the Skuld Club and the Government of the Republic of Korea. In accordance with the Cooperation Agreement, the Skuld Club had undertaken to pay claimants 100% of their claims as assessed by the 1992 Fund and the Skuld Club up to the Club's limit. The Government undertook that, were the Seosan Court to subsequently require the Skuld Club to deposit the limitation amount in court, the Government would deposit it.
- 3.6 In order to commence making payments pending the decision on the exchange rate by the Seosan Court, the Skuld Club had converted SDR 89.77 million into KRW 186.8 billion using the exchange rate in November 2008, when it deposited a Letter of Undertaking to the Seosan Court. For reasons associated with the 2008 financial crisis, this exchange rate was much higher than the rate subsequently applied by the Seosan Court in 2018.
- 3.7 In April 2017, the Executive Committee authorised the Director to make an advance payment to the Skuld Club totalling KRW 22 billion (£15 million), i.e. 50% of the estimated balance between the amount paid by the Skuld Club based on the rate used by the Club and the rate used by the 1992 Fund, on account of the amount ultimately due to the Club and pending the decision of the Seosan Court regarding the rate to be applied. This amount was paid in May 2017.
- 3.8 In view of the exchange rate determined by the Seosan Court in November 2018, the overpayments made by the Skuld Club were determined to be some KRW 47.5 billion. In view of the amount already paid by the 1992 Fund in May 2017, the amount due from the 1992 Fund to the Club was KRW 25.4 billion.
- 3.9 However, 36 claimants raised objections to the amount awarded to the Skuld Club in the distribution table, alleging that the Club had either made erroneous compensation or had failed to take appropriate measures to preserve the right of subrogation. As a consequence, the Executive Committee authorised the Director to make an additional payment of KRW 22 billion (£14.8 million) to the Skuld Club on account of the amount due, setting aside a balance of KRW 3.4 billion (£2.4 million). The table below explains the calculation:

	Amount (KRW)
CLC limit (as determined by the Limitation Court)	139 376 902 000
Skuld Club's interim payments	186 831 480 571
Amount overpaid by Skuld Club	47 454 578 571
Payment already made by the 1992 Fund to Skuld Club	22 000 000 000
Additional payment to be made by the 1992 Fund to the Skuld Club	22 000 000 000
Balance	3 454 578 571

- 3.10 A payment of KRW 22 billion (£14.9 million) was therefore made to the Skuld Club in April 2019. The balance will be paid once all proceedings have been finalised and a final reconciliation is made.

Payments made by the Government of the Republic of Korea

- 3.11 A Special Law for the support of the affected inhabitants and the restoration of the marine environment in respect of the *Hebei Spirit* incident was approved by the National Assembly of the Republic of Korea in March 2008 and entered into force in June 2008. Under the provisions of the Special Law and on the basis of the Cooperation Agreement, the Government of the Republic of Korea was authorised to make payments in full to claimants based on the assessments made by the Skuld Club and the 1992 Fund. The Government has been making payments of compensation to the claimants at 100% of the assessed amounts in accordance with the Special Law and has become subrogated to the rights of the claimants against the Skuld Club and 1992 Fund.

Payments made to the Government of the Republic of Korea

- 3.12 As at October 2017, the 1992 Fund had made payments totalling KRW 67.3 billion (£41.5 million) to the Government of the Republic of Korea at a level of payments of 60% of the established losses in respect of its subrogated claims.
- 3.13 In October 2017, the Executive Committee authorised the Director to make an advance payment of KRW 40 billion (£27.5 million) to the Government to speed up the payment process, thereby allowing the Government to allocate the available funds to claimants more quickly. The payment required the Government to release the 1992 Fund in respect of that amount and to issue the relevant receipt and release document. The payment was made in November 2017.
- 3.14 In April 2019, the Executive Committee authorised the Director to pursue a bilateral agreement with the Government which would allow the 1992 Fund to pay the Government the remaining amount available for compensation and would provide the safeguards the 1992 Fund would need to be protected from further actions in the Courts against the 1992 Fund.
- 3.15 In late April 2019, the Director signed a bilateral agreement with the Government and the 1992 Fund paid the remaining compensation, i.e. KRW 27 486 198 196 (£18.3 million).

4 Limitation proceedings**4.1 Proceedings in the Limitation Court by the shipowner of the *Hebei Spirit***

- 4.1.1 A total of 127 483 claims had been submitted in the limitation proceedings. On 15 January 2013, the Seosan Court rendered its judgment, assessing the losses arising out of the *Hebei Spirit* incident at a total of KRW 738 billion in respect of 63 213 claims and rejecting 64 270 claims. Some 150 367 objections were filed in the Seosan Court (87 204 by the claimants and 63 163 by the Club and the 1992 Fund).
- 4.1.2 As a result of the Courts' actions, all claims have been resolved, and a total of KRW 432.9 billion (£295 million) have been awarded to the claimants.
- 4.1.3 A summary of the judgments rendered by the Seosan Court, the Appeal Court and the Supreme Court can be found in the online *Hebei Spirit* incident report, which can be accessed via the Incidents section of the IOPC Funds' website.

4.2 Establishment of the Limitation Fund by the shipowner of the *Hebei Spirit*

- 4.2.1 In November 2018, the Seosan Court established the *Hebei Spirit* Limitation Fund and issued a distribution table for this incident, fixing the limitation amount at KRW 230.9 billion (£157 million), which included KRW 139.4 billion (£95 million) of principal and KRW 91.5 billion (£62 million) of

interest, at the exchange rate of SDR 1 = KRW 1 552.60. The Government, on the basis of the Second Cooperation Agreement signed with the Skuld Club, deposited KRW 230.9 billion as requested by the Seosan Court.

- 4.2.2 By December 2018, the Seosan Court received 36 objections to the amount awarded to the Skuld Club's subrogated claim and two objections to the amount of two claims which were subject to retrial (paragraph 5.1 below). In their objections, the 36 claimants alleged that the amount paid in compensation by the Skuld Club towards their claims, totalling KRW 336 738 714 (£232 240) should not form part of the subrogated claim made by the Skuld Club but rather be added to their claims. In January 2019, the Seosan Court rejected all the objections. All 36 fishing boat claimants filed appeals to the Appeal Court. In April 2019, the Appeal Court rejected all the appeals. The 36 claimants appealed to the Supreme Court.
- 4.2.3 In August 2019, the Supreme Court rejected the appeal of all 36 claimants. This judgment is final and therefore all legal proceedings related to the Limitation Fund are now finalised.
- 4.2.4 In August 2019, the 1992 Fund assigned its right to receive distribution from the Limitation Fund to the Government of the Republic of Korea.
- 4.2.5 In September 2019, the distribution of the *Hebei Spirit* Limitation Fund was completed, and the Seosan Court announced the conclusion of the limitation proceedings, which are now officially closed.

4.3 Recourse action against the bareboat charterer of the Marine Spread (SHI)

People's Republic of China

- 4.3.1 In 2009, the owner and insurers of the *Hebei Spirit* and the 1992 Fund commenced recourse action against Samsung C&T Corporation and SHI, the owner and operator/bareboat charterer of the towing tugs, the anchor boat and the crane barge, in the Court of Ningbo in the People's Republic of China. After two years of proceedings, in 2011 the Supreme Court of the People's Republic of China confirmed the lower courts' decisions that the Court of Ningbo was a *forum non conveniens* and that a recourse action should be pursued in a court of the Republic of Korea.

Republic of Korea

- 4.3.2 In December 2008, the bareboat charterer of the Marine Spread (the crane barge, the two tugs and the anchor boat), SHI, filed a petition in the Seoul Court requesting the SHI Limitation Court to issue an order granting the right to limit its liability in the amount of SDR 2 307 776.
- 4.3.3 In March 2009, the SHI Limitation Court rendered the order for the commencement of the limitation proceedings. The SHI Limitation Court decided to grant SHI the right to limit its liability and set the Limitation Fund at KRW 5.6 billion (£3.8 million) including legal interest. Samsung C&T Corporation was designated in the order as a beneficiary under the limitation proceedings for SHI. SHI deposited this amount in Court. The SHI Limitation Court also decided that claims against the Limitation Fund should be registered with the Court by 19 June 2009.
- 4.3.4 In June 2009 a number of claimants appealed to the Seoul High Court against the decision of the SHI Limitation Court to grant SHI the right to limit its liability. In January 2010, the Seoul High Court

dismissed the appeal and confirmed the SHI Limitation Court's decision. The claimants appealed to the Supreme Court. In April 2012, the Supreme Court dismissed the appeal.

- 4.3.5 After the Supreme Court's dismissal, the SHI Limitation Court decided to adjourn the hearings for investigation of the registered claims until after the assessment decision was issued by the Seosan Court, in view of the fact that a large number of claims were submitted in both courts, and that a similar assessment process was already ongoing in the *Hebei Spirit* limitation proceedings.
- 4.3.6 In July 2019, the 1992 Fund submitted the following claim in the limitation proceedings:
- (1) The amount paid in compensation for this incident, i.e. KRW 134 787 509 429 (£87.3 million), corresponding to the KRW 67 301 311 233 (£41.5 million), which the 1992 Fund already paid to the Government of the Republic of Korea in compensation, plus KRW 40 billion (£27.5 million) which the 1992 Fund paid to the Government as an advance payment and KRW 27 486 198 196 (£18.3 million) paid upon the bilateral agreement in April 2019; plus
 - (2) Any statutory interest accrued as per Korean law, i.e. 5% per annum from the dates when SHI is exempted as a result of the 1992 Fund's payment of compensation until the day/period of the initial investigation as part of the proceedings for limiting the liability of the shipowner in this case.

5 Legal proceedings

Retrial of two claims

- 5.1 In May 2019, the Supreme court rejected the application for retrial of two claims made by the owner of two aquaculture facilities. These claims are now final.

Legal proceedings against the 1992 Fund

- 5.2 A total of 117 504 claimants had filed legal actions against the 1992 Fund in the Seosan Court to protect their rights against the 1992 Fund. The Seosan Court decided not to progress the separate lawsuits for the time being since the same claims were being dealt with in the objection proceedings. Fourteen claims have been withdrawn from these proceedings. The remaining lawsuits are still pending but, according to the 1992 Fund's lawyers, it is expected that they will be dismissed by the Court around the end of the year.

6 Director's considerations

- 6.1 The Director is pleased with the recent developments in this case, which have seen the 1992 Fund paying all the compensation available for this incident to the victims of this incident after entering into a bilateral agreement with the Government of the Republic of Korea.
- 6.2 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.
- 6.3 The Director now intends to recover the Fund's right share from the SHI Limitation Fund and will report on any developments at future sessions of the Executive Committee.
- 6.4 Once all claims arising out of a major incident have been assessed, it is the IOPC Funds' practice to hold a meeting with all those involved in the handling of the claims to discuss the case and what lessons can be learned, so as to enable the IOPC Funds to deal with claims more efficiently in the future. Therefore, the Director intends to hold such a meeting with the Government, the Skuld Club

and the experts involved in the assessment of the claims, sometime in 2020. The Director would then submit a report of the meeting at a subsequent session of the governing bodies.

7 Action to be taken

1992 Fund Executive Committee

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