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COMPENSATION  
FUND 1971

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Agenda item 3

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## INCIDENTS INVOLVING THE 1971 FUND

### THREE KOREAN INCIDENTS

*Keumdong N°5, Sea Prince and Yeo Myung*

Note by the Director

**Summary:**

*Keumdong N°5*: Nearly all claims have been settled out of court. Two fishing co-operatives are pursuing their claims in court for a total of Won 22 965 million (£10.0 million).

*Sea Prince*: The majority of fishery and tourism claims have been settled out of court. The limitation Court has accepted the assessments made by the Fund's experts for the unsettled fishery and tourism claims. The Court rejected claims filed by the shipowner for post-spill environmental studies and additional clean-up.

*Yeo Myung*: Nearly all claims have been settled out of court.

**Action to be taken:** Information to be noted.

- 1 *Keumdong N°5*  
(Republic of Korea, 27 September 1993)

- 1.1 The incident

- 1.1.1 The Korean barge *Keumdong N°5* (481 GRT) collided with another vessel near Yosu on the southern coast of the Republic of Korea. As a result an estimated 1 280 tonnes of heavy fuel oil were spilled from the *Keumdong N°5*. The oil quickly spread over a wide area due to strong tidal currents and affected mainly the north-west coast of Namhae Island.

1.1.2 The *Keumdong N°5* was entered in the Standard Steamship Owners' Protection and Indemnity Association (Bermuda) Ltd (Standard Club).

## 1.2 Clean-up operations

The Korean Marine Police carried out clean-up operations at sea, using its own vessels as well as ships belonging to a Port Authority and fishing boats. Clean-up contractors were engaged for the onshore clean-up operations, and a labour force of over 4 000 villagers, policemen and army personnel was employed.

## 1.3 Claims for compensation

1.3.1 Claims relating to the cost of clean-up operations were settled at an aggregate amount of Won 5 600 million (£2.5 million) and were paid by the Standard Club by September 1994<sup><1></sup>. The total amount paid by the Standard Club by far exceeds the limitation amount applicable to the *Keumdong N°5*, Won 77 million (£53 000). The 1971 Fund has made advance payments to the Standard Club totalling US\$6 million (£4 million) in respect of these subrogated claims.

1.3.2 The incident affected fishing activities and the aquaculture industry in the area. Claims for compensation were submitted by the Kwang Yang Bay Oil Pollution Accident Compensation Federation, representing 11 fishery co-operatives with some 6 000 members in all. The total amount of the claims presented was Won 93 132 million (£41 million). The Federation indicated that it would present further claims in the region of Won 90 000 million.

1.3.3 During the period July 1995 - September 1996 agreements were reached on most of the claims presented by the Kwang Yang Bay Federation. The amounts agreed totalled Won 6 163 million (£4.2 million), compared with a total amount claimed of Won 48 047 million (£33 million). These claims have been paid in full for the agreed amounts.

1.3.4 The Yosu fishery co-operative left the Kwang Yang Bay Federation and took legal action against the 1971 Fund in May 1996. Claims have been filed in court totalling Won 17 162 million (£7.5 million) for damage to the common fishery grounds. These claims relate to types of damage similar to those of the claims of the Namhae co-operative. In addition, claims have been submitted by over 900 individual fishermen belonging to this co-operative, who are fishing boat owners, set net fishing licence holders or onshore fish culture facility operators. These claims total Won 1 643 million (£700 000).

1.3.5 The experts engaged by the 1971 Fund and the Standard Club have assessed the losses allegedly suffered by all the claimants of the Yosu co-operative at Won 810 million (£354 000). The reasons for the great difference between the amount claimed and the amount assessed are as follows. The experts considered that the alleged productivity of the common fishery grounds was exaggerated and inconsistent with official records and field observations, and that the interruption of business was significantly shorter than that alleged by the claimants. The loss of earnings claimed by the fishing boat and set net operators was considered too high in the light of an analysis of information provided by the claimants concerning their normal fishing activity, and certain claims related to losses suffered outside the area affected by the oil. The operators of the fish culture facilities have not provided evidence that the alleged losses were caused by the oil spill.

1.3.6 An arkshell fishery co-operative brought legal action against the 1971 Fund in respect of a claim for Won 4 160 million (£1.8 million). This claim relates to damage allegedly caused during 1994 to the arkshell cultivation farms of its members. The co-operative has reserved its right to increase the amount later for damage not yet quantified which would allegedly be suffered after 1994. This claim has been rejected by the 1971 Fund because there was no evidence that the alleged damage was caused by oil pollution.

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<1> In this document, the conversion of currencies has been made on the basis of the rate of exchange at 9 October 1998, except in respect of amounts paid by the 1971 Fund where conversion has been made at the rate on the date of payment.

1.3.7 A table showing the situation as at 12 October 1998 in respect of the fishery claims is set out below.

	Amount claimed (million)		Amount agreed (million)	
	Won	£	Won	£
Claims settled out of court	97 351	66	6 163	4
Claims rejected by 1971 Fund and not pursued in court (two fishery co-operatives)	6 464	5	-	-
	103 815	71	6 163	4

1.3.8 The claims pending in court can be summarised as follows:

Claimant	Originally claimed amounts (million Won)	Amounts claimed in court (million Won)
Yosu fishery co-operative	18 430	18 805
Arkshell fishery co-operative	25 197	4 160
Total	43 627 (£19.1 million)	22 965 (£10.0 million)

1.3.9 The experts engaged by the 1971 Fund and the Standard Club have assessed the claims pending in court at less than Won 1 500 million (£660 000).

1.3.10 Several court hearings have been held, and at a hearing in June 1998 the court requested counsel for Yosu FCU to provide further documentation in support of their claims. The hearings have now been closed and the Court is expected to render its judgement at the end of 1998 or early in 1999. In the meantime the 1971 Fund will continue to try to reach settlements out of court.

1.3.11 Investigations carried out in September 1997 showed that, contrary to what was thought to be the case, a number of fishing boats belonging to the Yosu fishery co-operative had in fact been contaminated. The cost of cleaning these boats, which formed a minor part of the co-operative's claim, was assessed by the 1971 Fund's experts at Won 7 million (£3 000), compared with the amount claimed of Won 46 million (£20 000).

#### 1.4 Limitation proceedings

The shipowner made an application to the competent district court that limitation proceedings should be opened. The Standard Club paid the limitation amount plus interest, corresponding to Won 77 million (£33 000), in cash to the Court in December 1994. The Court prepared a table setting out the distribution of the limitation fund to the various claimants. The limitation fund was distributed to the claimants, and the limitation proceedings were completed in August 1995.

## 2 Sea Prince (Republic of Korea, 23 July 1995)

### 2.1 The incident

2.1.1 The Cypriot tanker *Sea Prince* (144 567 GRT), part-laden with some 85 000 tonnes of Arabian crude oil, grounded off Sorido island near Yosu (Republic of Korea). Explosions and fire damaged the engine room and accommodation area.

2.1.2 Some 5 000 tonnes of oil were spilled as a result of the grounding. Most of the oil was carried eastward by currents and some oil eventually affected shorelines along the south and east coasts of the Korean peninsula. Small quantities of oil also reached the Japanese islands of Oki.

2.1.3 A Japanese salvage company was engaged by the shipowner to salve the ship and the remaining cargo, under a salvage contract (Lloyds Open Form 95). The salvor transhipped some 80 000 tonnes of oil into barges, leaving some 950 tonnes on board. The remaining oil in the cargo tanks was dosed with dispersants to ensure rapid dispersal into the water column if the oil were to be lost during subsequent salvage operations or bad weather. Further investigation revealed that the vessel had suffered serious structural damage, and the technical experts agreed, on the basis of information supplied by the salvor, that there was an unacceptable risk that the ship would break up during refloating. In view of this the salvage contract under Lloyds Open Form 95 was terminated and a contract was signed with another salvage company for the removal of the ship. The *Sea Prince* was successfully refloated and was towed out of Korean waters.

2.1.4 The *Sea Prince* was entered with the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited (UK Club).

2.1.5 As regards the cause of the incident, the clean-up operations and previous claims handling, reference is made to documents FUND/EXC.44/9, 71FUND/EXC.55/6, 71FUND/EXC.57/5, 71FUND/EXC.58/4 and 71FUND/EXC.58/4/Add.1.

### 2.2 Level of payments

2.2.1 In view of the fact that the aggregate amount of the claims presented or indicated greatly exceeded the maximum amount available under the 1969 Civil Liability Convention and the 1971 Fund Convention, the Executive Committee decided, at its 46th session, that the 1971 Fund's payments should for the time being be limited to 25% of the established damage suffered by each claimant (document FUND/EXC.46/12, paragraph 4.3.3). At its 47th session, the Committee decided to increase the payment to 40% since there had been a significant reduction in the fishermen's claims (document FUND/EXC.47/14, paragraph 3.6.3).

2.2.2 At its 53rd session, the Executive Committee decided to authorise the Director to pay all settled claims in full (to the extent they had not already been paid), provided that all or most of the outstanding claims in the fishery and tourism sectors were settled on the basis of ITOPF's method of assessment, that any uncertainty be eliminated as to the level of the shipowner's claim relating to the cost of the measures associated with the work carried out under the contract for the removal of the ship and related operations, and that the Director was convinced that the aggregate amount of all claims arising out of this incident would fall below 60 million SDR (£51 million) (document 71FUND/EXC.53/12, paragraph 3.3.9).

2.2.3 By the beginning of March 1998, nearly all the outstanding claims in the fishery sector and all claims in the tourism sector had been settled on the basis of the method of assessment used by the 1971 Fund's experts, and the amount of the shipowner's claim for the costs of the measures to remove the ship and related operations had been clarified. In view of these developments, the Director decided in March 1998 that the 1971 Fund should pay all settled claims in full (to the extent that they had not already been paid).

### 2.3 Claims for compensation

2.3.1 Nearly all claims relating to clean-up operations were settled at Won 19 700 million (£8.4 million). These claims have been paid in full by the shipowner and the UK Club, who have presented subrogated claims to the 1971 Fund.

2.3.2 In August 1996, the 1971 Fund made an advance payment of £2 million to the UK Club in respect of its subrogated clean-up claims. This payment was, at the rate of exchange applicable at that time, less than 25% of the amounts for which the Club had presented sufficient supporting documentation.

2.3.3 The Japanese Maritime Safety Agency presented a claim for its clean-up operations at sea in the vicinity of the Oki islands for a total of ¥357 214 (£1 800). This claim was approved by the Director in August 1996 at the amount claimed and was paid in September 1996 by the UK Club.

2.3.4 In April 1998, the shipowner filed two additional claims with the limitation court, one for the cost of post-spill environmental studies for Won 1 140 million (£500 000) and the other for the costs associated with additional clean-up undertaken by the shipowner in early 1998 which totalled Won 135 million (£59 000). Both the studies and the clean-up related to the spills from both the *Sea Prince* and the *Honam Sapphire* incidents. The post-spill environmental studies involved the measurement of petroleum hydrocarbons in seawater, sediments and marine products. Although the studies were reported to be for the purpose of obtaining information which could be used for the restoration of areas polluted by the two incidents, the contracts between the shipowner and the Korea Maritime Institute and Seoul National University, the organisations which undertook the studies, clearly stated that the studies were not to be conducted so as to relate to any form of compensation arising out of the incidents.

2.3.5 The Director took the view that the post-spill environmental studies appeared to duplicate the work to sample and analyse seawater, sediments and marine products undertaken by the experts appointed by the UK Club and 1971 Fund in 1995 to assist with the assessment of claims for alleged damage to fisheries. He therefore rejected the claim for the cost of these studies.

2.3.6 On the basis of surveys carried out by the 1971 Fund's experts prior to and during the period of additional clean-up, these experts took the view that the operations were not technically justified. Although buried oil was found at most of the locations which were subjected to further cleaning, the quantities were small, the oil was hard to find and the contamination was sporadic. Not all the oil samples collected matched the oils spilled from the *Sea Prince* and *Honam Sapphire*. The experts concluded that the remaining oil did not pose any threat to fisheries and tourism nor represented an aesthetic problem. Furthermore, because of the difficulty of finding and getting access to the remaining oil, they considered that the clean-up would involve harsh, intrusive and seriously disruptive methods likely to cause more damage than the oil itself. In the light of the experts' opinion, the Director informed the shipowner that the 1971 Fund considered that the cost incurred for the additional clean-up did not qualify for compensation.

2.3.7 At the time of the Executive Committee's 58th session, all claims in the tourism sector and most of the claims in the fisheries sector had been settled and paid in full.

2.3.8 In June 1998, the 1971 Fund's technical experts reassessed a number of claims presented by the owners of onshore aquaria and hatcheries for stock losses, allegedly caused by the oil spilled from the *Sea Prince*. These claims, which totalled Won 4 734 million (£2.1 million), had been initially assessed at zero pending further evidence. Subsequent investigations by the experts indicated, however, that while there was no evidence of the alleged stock losses, the owners of the facilities had undertaken a number of prudent preventive measures at the time of the incident, such as monitoring their seawater intakes and cleaning or replacing filters. The experts assessed the costs of these measures at Won 76 million (£33 000). Settlements were reached with most of these claimants in August 1998 in accordance with the experts' assessment, and the settlement amounts were paid in October 1998.

2.3.9 In June 1998, the experts also completed the assessments of the last outstanding claims in the fisheries sector, which related to the alleged loss of earnings suffered by the owners of 159 fishing vessels who were members of Pusan Fishery Co-operative Association. The claims, which totalled

Won 72.7 million (£32 000), were assessed in respect of the owners of 135 vessels at Won 19.1 million (£8 400). Settlements were reached with these claimants in September 1998 for the assessed amounts. The claims by the owners of the remaining 24 vessels were considered inadmissible, since the owners had failed to submit valid licences.

2.3.10 As of 12 October 1998, the most important fishery claims for which settlement agreements had not been reached are those relating to common fishing grounds and set net fishing submitted by members of the Keoje Fishery Co-operative Association for a total of Won 3 218 million (1.4 million). These claims have been assessed by the 1971 Fund's experts at Won 117 million (£51 000).

2.3.11 The shipowner has presented a claim for Won 20 900 million (£9.2 million) relating to the cost of the measures associated with the work carried out under the contract for the removal of the ship and related operations. The shipowner has not yet presented sufficient documentation in support of this claim to enable the 1971 Fund to assess it.

2.3.12 The claims situation as at 12 October 1998 is shown in the tables set out below.

Claims settled		
Claims category	Amount originally claimed million Won	Settlement amounts million Won
Clean-up	21 544	19 919
Fishery claims	146 521	13 563
Tourism and agriculture	4 759	493
Total	172 824 (£76 million)	33 975 (£15 million)

Claims pending in court (other than shipowner's/UK Club's claims)		
	Amount originally claimed million Won	Amount claimed in court million Won
Fishery claim	1 739	95
Total	1 739 (£761 000)	95 (£42 000)

2.3.13 The shipowner and the UK Club have claimed indemnification under Article 5.1 of the 1971 Fund Convention for 5 667 000 SDR (£4.7 million)

#### 2.4 Limitation proceedings

2.4.1 The limitation amount applicable to the *Sea Prince* is 14 million SDR, corresponding to Won 26 600 million (£11.7 million), at the exchange rate applicable on 9 October 1998. The limitation fund has not yet been constituted, and the limitation amount in Won has therefore not yet been fixed.

2.4.2 In June 1998, the Court delivered an assessment decision accepting the assessments made by the 1971 Fund's experts for the unsettled fishery and non-fishery claims. The Court rejected the claims filed by the shipowner for post-spill environmental studies and additional clean-up. The shipowner has lodged opposition. The legal action taken by the 19 owners of caged fish facilities for Won 95 million (£42 000) was part of the limitation proceedings, but the claimants have filed a separate action against the 1971 Fund.

2.4.3 The other outstanding disputes arising from the limitation proceedings concern the shipowner's clean-up costs assessed by the Court at Won 204 million (£89 000) and the costs incurred by the UK P & I

Club associated with work carried out for the removal of the ship and related operations which were assessed by the Court at US\$27.8 million (£16.3 million) and ¥4 million (£19 400). The 1971 Fund has lodged objection to the Court's decisions concerning these items on the grounds of lack of supporting documentation.

3 Yeo Myung  
(Republic of Korea, 3 August 1995)

3.1 The incident

3.1.1 The Korean tanker *Yeo Myung* (138 GRT), laden with some 440 tonnes of heavy fuel oil, collided with a tug which was towing a sand barge off Maemul Island, near Koeje Island (Republic of Korea).

3.1.2 Two of the tanker's cargo tanks were breached, and about 40 tonnes of oil were spilled. The oil drifted in a north-easterly direction and stranded at a number of locations on Koeje Island from 4 - 8 August 1995. Many of these locations had been previously oiled as a result of the spill from the *Sea Prince* incident which occurred on 23 July 1995, the clean-up of which was in progress when the *Yeo Myung* incident took place. Rocks, breakwaters and harbour walls were stained and some beaches were polluted. The main tourist beaches on Koeje Island were not affected by the spill.

3.1.3 The *Yeo Myung* was entered in the North of England Protection and Indemnity Association Limited (North of England P & I Club).

3.1.4 As regards the cause of the incident, the clean-up operations and previous claims handling, reference is made to documents FUND/EXC.44/12, 71FUND/EXC.55/6, 71FUND/EXC.57/5 and 71FUND/EXC.58/4.

3.2 Level of payments

On the basis of the assessment made by the 1971 Fund's experts, the Executive Committee, at its 46th session, endorsed the Director's decision that the established claims could be paid in full by the 1971 Fund (document FUND/EXC.46/12, paragraph 4.4.2).

3.3 Claims for compensation

3.3.1 Claims for clean-up operations totalling Won 760 million (£526 000) were settled at Won 684 million (£457 000). The claims were paid partly by the North of England Club and partly by the 1971 Fund.

3.3.2 At the time of the Executive Committee's 58th session, all claims in the tourism sector and most of the claims in the fishery sector had been settled and paid in full by the 1971 Fund.

3.3.3 In June 1998, the 1971 Fund's experts reassessed a number of claims totalling Won 698 million (£310 000) presented by the owners of onshore aquaria and hatcheries for stock losses, allegedly caused by the oil spilled from the *Yeo Myung*. The same owners submitted claims for similar amounts in respect of the *Sea Prince* incident. The claims had been initially assessed at zero pending further evidence. Subsequent investigations by the Fund's experts indicated that while there was no evidence of the alleged stock losses, the owners of the facilities had undertaken a number of prudent preventive measures at the time of the incident, such as monitoring their seawater intakes and cleaning or replacing filters. The Fund's experts assessed the costs of these measures at Won 7.4 million (£3 200). Settlements were reached with all these claimants in September 1998.

3.3.4 As of 12 October 1998, the only remaining fishery claims for which settlements had not been reached were three claims relating to common fishing grounds and one claim in respect of fish cage culture. These claims, which total Won 2 232 million (£1 million), were assessed by the Fund's experts at Won 79 million (£35 000).

3.3.5 The claims situation as at 12 October 1998 is shown in the tables set out below.

<b>Claims settled</b>			
Claims category	Amount originally claimed million Won	Amount assessed by the Fund's experts million Won	Amount agreed million Won
Fishery	19 234	455	455
Tourism	2 592	269	269
Clean-up	760	684	684
<b>Total</b>	<b>22 586</b> (£9.9 million)	<b>1 408</b> (£616 000)	<b>1 408</b> (£616 000)

<b>Claims pending</b>		
Claims category	Amount originally claimed million Won	Amount assessed by the Fund's experts million Won
Fishery	2 232	79
<b>Total</b>	<b>2 232</b> (£977 000)	<b>79</b> (£35 000)

#### 3.4 Limitation proceedings and investigation into the cause of the incident

3.4.1 The shipowner commenced limitation proceedings at the competent district court. The limitation fund was established by the North of England P & I Club by payment of the limitation amount of Won 21 million (£9 200) to the Court.

3.4.2 In August 1996, 13 groups of claimants, including the shipowner, lodged claims in the Court relating to clean-up operations, fishery activities and businesses in the tourism sector for a total amount of Won 6 994 million (£36.1 million). At a hearing held on 12 October 1998, the 1971 Fund informed the Court that settlement negotiations were in the final stage, and the next hearing was set for 14 December 1998.

#### 4 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such instructions as it may deem appropriate in respect of the *Keumdong N°5*, *Sea Prince* and *Yeo Myung* incidents.