



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: On 7 December 2007, the *Hebei Spirit* (146 848 GT) was struck by the crane barge *Samsung N°1* while at anchor about five miles off Taean on the west coast of the Republic of Korea. About 10 900 tonnes of crude oil escaped into the sea from the *Hebei Spirit*. The three southerly provinces on the west coast of the Republic of Korea were affected to various degrees.

Claims situation

The amount available for compensation for the *Hebei Spirit* incident under the 1992 Civil Liability and Fund Conventions, KRW 321.6 billion (£216 million)^{<1>}, has been paid in full. The Skuld Club has paid KRW 186.8 billion^{<2>} (£126 million) in compensation. The 1992 Fund has paid 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

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 (£291 million).

In November 2018, the Seosan Court determined the limitation fund to be deposited at KRW 230.9 billion (£156 million), of which KRW 139.4 billion (£94 million) represented the principal and KRW 91.5 billion (£62 million) interest.

The limitation fund was deposited in court in August 2019 and was distributed in September 2019, bringing the limitation proceedings to a close.

<1> The exchange rate used in this document as at 30 June 2020 2020 is £1 = KRW 1 486.2478, except in respect of payments made by the 1992 Fund where the conversion has been made at the rate on the date of payment.

<2> 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.

Bilateral agreement between the 1992 Fund and the Government of the Republic of Korea

In April 2019, the Director signed a bilateral agreement with the Government of the Republic of Korea by which the 1992 Fund transferred the remaining amount available for compensation i.e. KRW 27 486 198 196 (£18.3 million) to the Government for it to use when paying all the remaining claims.

Recourse action against the bareboat charterer of the Samsung N°1, the two tugs and the anchor boat (known as the Marine Spread)

In March 2009, the Seoul Central District Court rendered an order for the commencement of the limitation proceedings of the bareboat charterer of the Marine Spread involved in the collision, Samsung Heavy Industries Co., Ltd (SHI), and set the limitation fund at KRW 5.6 billion (£3.8 million). 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 134.8 billion (£87.3 million), plus any interest accrued as per Korean law.

Balancing payments to the Skuld Club

In view of the overpayments made by the Skuld Club due to the different exchange rates used, the 1992 Fund has reimbursed a total of KRW 44 billion (£29.8 million) to the Skuld Club. The balance of KRW 3.4 billion (£2.3 million) was set aside to be paid when the legal proceedings had been concluded.

Recent developments:

Balancing payments to the Skuld Club

Since the legal proceedings of the *Hebei Spirit* have now been finalised, the balance of the overpayments made by the Skuld Club due to the difference exchange rates used, totalling KRW 3.4 billion (£2.3 million) was paid in July 2020. The final reconciliation of costs is still ongoing and will be completed in the near future.

Recourse action against the bareboat charterer of the Marine Spread

At a hearing in July 2020, the SHI Limitation Court commenced the examination of the claims. Further hearings are to take place in the summer of 2020.

Lessons learned from the Hebei Spirit incident

In October 2019, the Director informed the Executive Committee that, as per IOPC Funds' practice, it was his intention to hold a meeting with all those involved in the handling of the claims arising from the *Hebei Spirit* incident to discuss the case and the lessons to be learned from it, to enable the IOPC Funds to deal with claims more efficiently in the future.

The meeting was scheduled to take place in Seoul in May 2020, with the participation of the Government of the Republic of Korea, the Skuld Club and the experts involved in the assessment of the claims, as well as a number of central and

	local government agencies involved in the incident. However, due to the global COVID-19 situation and the restrictions placed on travel, the meeting has been postponed <i>sine die</i> . The Director will update the Executive Committee as to when it will be possible to reschedule the meeting at a subsequent session of the governing bodies.
Relevant documents:	The online <i>Hebei Spirit</i> incident report can be found via the Incidents section of the IOPC Funds' website.
Action to be taken:	<u>1992 Fund Executive Committee</u> Information to be noted.

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)/ Assuranceföreningen 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) legal proceedings against the 1992 Fund (section 5).

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 (£2 844 million) were submitted in the limitation proceedings. On 15 January 2013, the Seosan Court rendered its judgment, awarding KRW 738 billion. 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.

- 3.3 The Skuld Club had paid KRW 186.8 billion (£126 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 (CLC) limitation amount (SDR 89.77 million) was fixed at KRW 139.4 billion 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.
- 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. Due to the 2008 financial crisis, this exchange rate was much higher than the rate subsequently applied by the Seosan Court in 2018.
- 3.7 For that reason, in April 2017, the Executive Committee authorised the Director to make an advance payment to the Skuld Club totalling KRW 22 billion (£14.8 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. This amount was paid in May 2017.
- 3.8 In November 2018, the Seosan Court determined the exchange rate applicable to the *Hebei Spirit* limitation fund, fixing the amount to be distributed at KRW 139.4 billion. The overpayments made by the Skuld Club were thus determined to be some KRW 47.4 billion. Given 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 A number of claimants raised objections to the amount awarded to the Skuld Club in the distribution table. 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 (£2.3 million), to be paid once all legal proceedings have been finalised.
- 3.10 In November 2019, all legal proceedings related to the *Hebei Spirit* incident were finalised. As a consequence, the 1992 Fund could pay the balance of KRW 3.4 million (£2.3 million) to the Skuld Club. This payment was made in July 2020. The entirety of the overpayment by the Skuld Club has now been reimbursed.
- 3.11 A final reconciliation of costs is underway. The Director will report on the developments in a future session of the Executive Committee.

Payments made by the Government of the Republic of Korea

- 3.12 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 by the 1992 Fund

- 3.13 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.
- 3.14 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.
- 3.15 In April 2019, the Executive Committee authorised the Director to sign 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.
- 3.16 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).
- 3.17 In September 2019, the Government distributed the KRW 27 486 198 196 to claimants.

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.
- 4.1.2 As a result of the Courts' actions, all claims have been resolved and a total of KRW 432.9 billion (£291 million) have been awarded to 59 597 claims. A total of 67 886 claims were rejected.
- 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.

Establishment of the limitation fund by the shipowner of the Hebei Spirit

- 4.1.4 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 (£156 million), which included KRW 139.4 billion (£94 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.

- 4.1.5 In August 2019, the 1992 Fund assigned its right to receive distribution from the limitation fund to the Government of the Republic of Korea.
- 4.1.6 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.

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

People's Republic of China

- 4.2.1 In 2009, the shipowner and the insurers of the *Hebei Spirit* and the 1992 Fund each commenced recourse action against Samsung C&T Corporation and SHI, the shipowner 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.
- 4.2.2 After two years of proceedings, the shipowner and the insurer of the *Hebei Spirit* concluded a settlement agreement with Samsung C&T and SHI under which Samsung C&T and SHI paid the amount of USD 10 million to the shipowner of the *Hebei Spirit* and its insurers, and consequently, acquired the right to register a claim for the same amount in the SHI limitation proceedings in the Republic of Korea.
- 4.2.3 In January 2012, the Beijing Supreme Court dismissed the 1992 Fund's action against Samsung C&T and SHI, on the grounds that the Court of Ningbo was a *forum non conveniens* for this case and that a recourse action should be pursued in a court of the Republic of Korea.

Republic of Korea

- 4.2.4 In December 2008, the bareboat charterer of the Marine Spread, SHI, filed a petition in the Seoul Court requesting the SHI Limitation Court to issue an order granting SHI the right to limit its liability in the amount of SDR 2.3 million.
- 4.2.5 In March 2009, the SHI Limitation Court rendered an 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.
- 4.2.6 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.
- 4.2.7 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.

4.2.8 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 pursuant to the bilateral agreement made in April 2019; plus
- (2) any statutory interest accrued as per Korean law, i.e. 5% per annum from the dates when the 1992 Fund made reimbursements to the Government of the Republic of Korea, to the date of the first hearing of the SHI Limitation Court for the purpose of the examination of claims.

4.2.9 In July 2020, the SHI Limitation Court examined the claims submitted in the proceedings. At that hearing, it was found that, in addition to the 1992 Fund and the Government of the Republic of Korea, some 24 000 private claimants had also submitted claims. In addition, SHI confirmed that they had decided not to pursue their claim for the amount settled with the Skuld Club during the proceedings in China.

4.2.10 At the same hearing, the 1992 Fund submitted to the Court that, since all private claimants had already been fully compensated from the *Hebei Spirit* limitation proceedings, they were not entitled to also claim in the SHI proceedings, as all their rights to claim had been passed by subrogation to the 1992 Fund and the Government of the Republic of Korea, and therefore, were included in those claims. The next hearing of the SHI Limitation Court is scheduled for later in the summer.

5 Legal proceedings against the 1992 Fund

5.1 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 lawsuit since the same claims were being dealt with in the objection proceedings. All claims have now been dismissed by the Court or withdrawn from the proceedings by the claimants.

6 Director's considerations

6.1 The Director is 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.

6.2 The Director is working to recover the 1992 Fund's rightful share from the SHI limitation fund and will report on any developments at future sessions of the Executive Committee.

6.3 Once all claims arising out of a major incident have been finalised, 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, to enable the IOPC Funds to deal with claims more efficiently in the future.

6.4 The meeting for the *Hebei Spirit* incident was scheduled to take place in Seoul in May 2020. However, due to the global COVID-19 situation and the restrictions on travel, the meeting has been postponed *sine die*. The Director will update the Executive Committee as to when it will be possible to reschedule 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.
