



## INCIDENTS INVOLVING THE 1992 FUND

### SOLAR 1

#### Note by the Director

<b>Objective of document:</b>	To inform the Executive Committee of the latest developments regarding this incident.
<b>Summary of the incident so far:</b>	<p>The Philippines registered tanker <i>Solar 1</i> sank in 630 metres of water, some ten nautical miles south of Guimaras Island, Republic of the Philippines. The oil had a significant impact on fisheries, aquaculture and tourism businesses, leading to considerable financial hardship for some individuals, especially fisherfolk.</p> <p>Some 32 447 claims have been received. Payments totalling PHP 955 million (£12.8 million)<sup>&lt;1&gt;</sup> have been made in respect of 26 209<sup>&lt;2&gt;</sup> claims, mainly in the fisheries sector.</p> <p>The incident was the first involving a vessel entered in the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006 under which the shipowner/insurer has voluntarily agreed to increase the limitation amount applicable to the vessel under the 1992 Civil Liability Convention to 20 million SDR (£19.5 million).</p>
<b>Recent developments:</b>	Work continues in the assessment and payment of claims for the costs of shoreline clean up, property damage and economic losses mainly in the mariculture and tourism sectors. The latest claims situation is set out in the document (section 6).
<b>Action to be taken:</b>	Information to be noted.

<sup><1></sup> In this document conversion of currencies has been made on the basis of the exchange rate as at 22 May 2009 (£1 = PHP 74.2212), (£1 = 1.0253 SDR) and (£1 = US\$1.5717) except in respect of payments made by the 1992 Fund, where the conversion has been made at the rate of exchange on the date of payment.

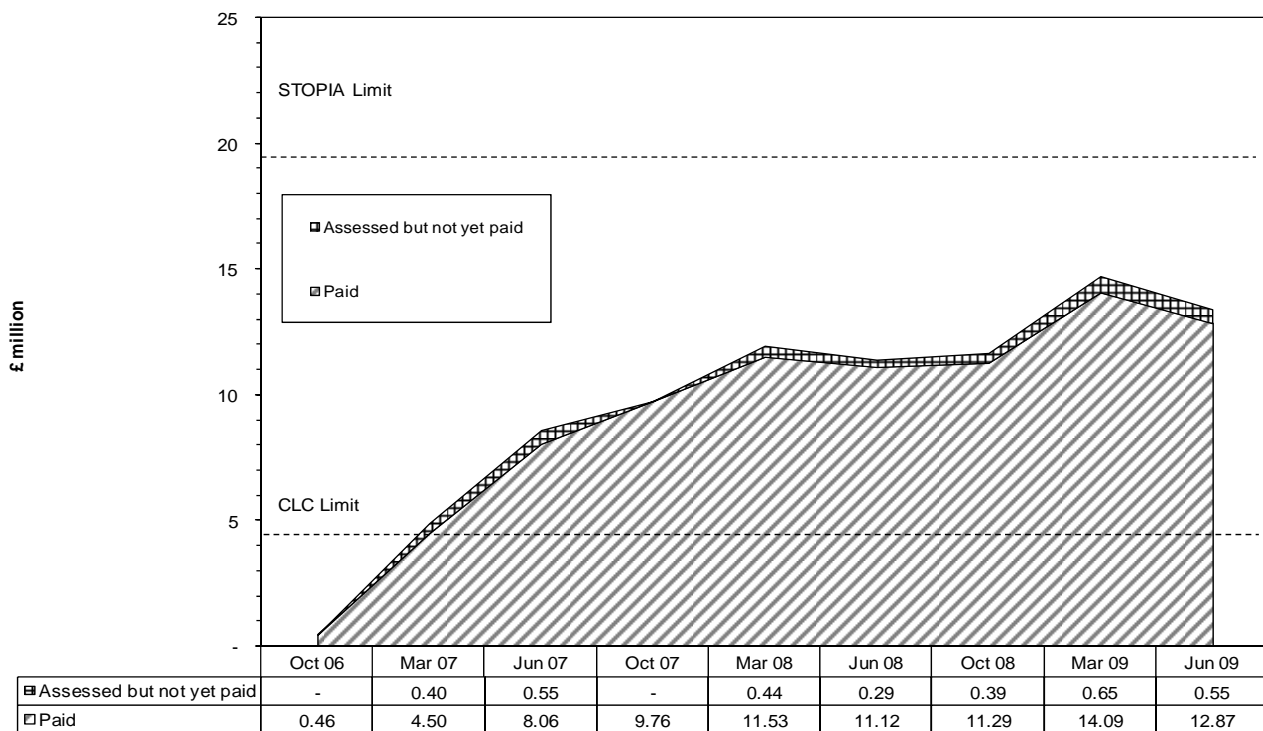
<sup><2></sup> A number of payments approved and instructed previously had to be withdrawn, as they were not collected by the claimants.

## 1 Summary of incident

Ship	<i>Solar 1</i>	
Date of incident	11.08.06	
Place of incident	Guimaras Straits, the Philippines	
Cause of incident	Sinking	
Quantity of oil spilled	Approximately 2 000 tonnes of industrial fuel oil	
Area affected	Guimaras Island and Iloilo Province, the Philippines	
Flag State of ship	Republic of the Philippines	
Gross tonnage (GT)	998 GT	
P&I insurer	Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club)	
CLC Limit	4 510 000 SDR (£4.4 million)	
STOPIA/TOPIA applicable	Yes - STOPIA limit 20 million SDR (£19.5 million)	
Compensation:	Assessed but not yet paid (£ million)	Paid (£ million)
Fisheries	0.21	2.60
Miscellaneous	0.00	0.04
Property damage	0.02	0.05
Tourism	0.00	0.06
Clean-up	0.32	10.12
<b>TOTAL</b>	<b>0.55</b>	<b>12.87</b>
Notes	<p>Claimed amounts have not been included in this table since that information is only available for some claims. Further claims may be received.</p> <p>Amounts paid in Pounds sterling fluctuate with the exchange rate PHP/£ at the time the payment was made.</p>	

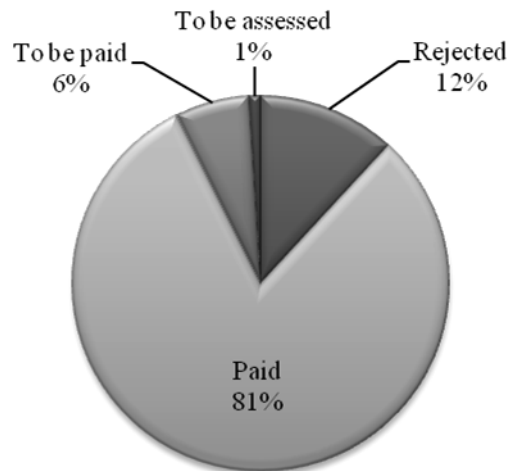
## 2 Development of claims handling

### 2.1



2.2 Please refer to section 6.1 for details

Number of claims presented



### 3 **The incident**

3.1 On 11 August 2006 the Philippines registered tanker *Solar 1* (998 GT), laden with a cargo of 2 081 tonnes of industrial fuel oil, sank in heavy weather in the Guimaras Straits, some ten nautical miles south of Guimaras Island, Republic of the Philippines.

3.2 At the time of the incident an unknown, but substantial quantity of oil was released from the vessel after it sank and the sunken wreck continued to release oil, albeit in ever decreasing quantities. Following an operation to remove the remaining oil from the wreck it was found that virtually the entire cargo had been spilled at the time of the incident.

3.3 The *Solar 1* was entered with the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' Club).

3.4 For further details of the incident reference is made to the Annual Report 2008, pages 109-114.

### 4 **The 1992 Conventions and STOPIA 2006**

4.1 The Philippines is a Party to the 1992 Civil Liability and Fund Conventions.

4.2 The limitation amount applicable to the *Solar 1* in accordance with the 1992 Civil Liability Convention (1992 CLC) was 4.51 million SDR (£4.4 million) but the owner of the *Solar 1* is party to the Small Tanker Owners Pollution Indemnification Agreement (STOPIA) 2006 whereby the limitation amount applicable to the tanker under that Convention is increased, on a voluntary basis, to 20 million SDR (£19.5 million). However, the 1992 Fund continues to be liable to compensate claimants if and to the extent that the total amount of admissible claims exceeds the limitation amount applicable to the *Solar 1* under the Convention. Under STOPIA 2006, the 1992 Fund has legally enforceable rights of indemnification from the shipowner of the difference between the limitation amount applicable to the tanker under the 1992 CLC and the total amount of admissible claims up to 20 million SDR (£19.5 million).

4.3 The Director and the Shipowners' Club agreed that the 1992 Fund should assume responsibility for compensation payments once the Club had paid compensation up to the limitation amount applicable to the *Solar 1* under the 1992 CLC and that the 1992 Fund would then seek regular reimbursements from the Club up to the STOPIA 2006 limit, payments to be made by the Club within two weeks of being invoiced by the Fund.

## 5 Claims Handling Office in Iloilo

The Shipowners' Club and the Fund established a Claims Office in Iloilo to assist with the handling of claims. The office is being managed by the Club's correspondent in the Philippines.

## 6 Claims for compensation

6.1 The claims situation as at 22 May 2009 is summarised in the table below:

Category Name	Claims presented	Assessments		Total Paid		Rejected
		Number	Amount PHP	Number	Amount PHP	Number
<b>Capture Fishery</b>	27 812	27 731	205 022 738	25 804	190 059 972	600
<b>Mariculture</b>	769	763	3 381 311	28	2 568 194	460
<b>Miscellaneous</b>	169	18	2 846 882	1	2 846 881	17
<b>Property Damage</b>	3 260	3 214	5 025 404	293	3 584 562	2 463
<b>Tourism</b>	409	374	4 693 168	71	4 616 282	302
<b>Clean Up</b>	28	22	775 181 209	12	751 219 717	10
<b>Total</b>	<b>32 447</b>	<b>32 122</b>	<b>996 150 712</b> <b>(£13.4 million)</b>	<b>26 209</b>	<b>954 895 608</b> <b>(£12.8 million)</b>	<b>3 852</b>

6.2 It should be noted that many claimants did not indicate a claimed amount in their respective claim form. Therefore, the total claimed amount with respect to this incident cannot be established.

6.3 The Shipowners' Club and the 1992 Fund have received a further 132 642 claim forms, not included in the above table, mainly from fisherfolk and seaweed producers from Guimaras Island and in the Province of Iloilo. The majority of the claim forms were incomplete and a significant number were from people under the age of 18 years, which is the minimum age at which people are allowed to engage in fishing in the Philippines. After a detailed screening process which included comparison of the details on the claim forms with the electoral register, the Club and the Fund decided not to process these claims further.

### 6.4 Economic losses in the capture fisheries sector

6.4.1 The Shipowners' Club and the 1992 Fund received 27 812<sup><3></sup> claims from fisherfolk living in Guimaras Island and the coastal areas of Iloilo Province. In view of the fact that the claimants were not represented by any fishery association or co-operative that could act on their behalf, the Shipowners' Club and the 1992 Fund decided to pay each claimant individually. A total of 25 804 claimants have received PHP 190 059 972<sup><4></sup> (£2.5 million) in compensation. Six hundred of the claims submitted have been rejected.

6.4.2 In February 2007 a law firm in Manila submitted 1 211 claims totalling PHP 280.3 million (£3.7 million) from fisherfolk in Guimaras Island. The claims are based on the assumption that the effects of the spill would last 20 months. The Club and the Fund examined the documentation provided by the law firm on behalf of their clients. A total of 1 024 claims have been approved for a total of PHP 13 542 682 (£182 500) using the same principles as similar claims for the same activity. One hundred and seventy four claims have been rejected as these claimants had already agreed to a full and final settlement of their claim. Eleven claims have been submitted by claimants under the age of 18 who were not legally able to engage in fishing at the time of the incident and have been

<3> As some claimants submitted duplicate claims, the total number of claims presented is being consolidated.

<4> A number of payments approved and instructed previously had to be withdrawn, as they were not collected by the claimants.

rejected. Two claims have been submitted for loss of activity by fishpond operators. As for all other fishpond claimants the Club and the Fund have requested further documentation to confirm that these two claimants had beneficial use of the ponds at the time of the incident. The law firm contested the offer on behalf of their clients and provided new information which is being examined by the Club and Fund.

#### 6.5 Economic losses in the mariculture sector

6.5.1 The Club and the Fund have received 769 claims from seaweed farmers and fishpond operators for alleged damage to their crop as a result of the contamination.

6.5.2 Amongst these, the Club and the Fund have received 429 claims from fishpond operators and assessments have been carried out for all of these claims. Twenty-eight claims have been paid for a total of PHP 2 568 194 (£34 600). Most other claims have been rejected on the basis that the fishponds to which these claims related were not impacted by the contamination.

6.5.3 Three hundred and thirty seven claims submitted by seaweed farmers have been examined by experts engaged by the Club and the Fund. The experts have reviewed a number of documents including the purchase records for three seaweed growers and traders associations, covering the period before and after the incident. This confirmed that, at the time of the incident, a majority of claimants were part of one of these associations situated in the affected area of Guimaras. The Club and Fund have consequently approved 276 claims for a total of PHP 622 269 (£8 300). Some 170 claimants that are members of the largest association have accepted their respective proposed offers and will receive compensation in the near future. An additional 100 claimants from the two other associations have contested the offers made by the Club and Fund and a total of 61 claims have been rejected due to lack of evidence that they were engaged in seaweed production at the time of the incident.

6.5.4 Claims submitted by an abalone producer, a lobster farmer and an association of fishermen have been examined by the Club and the Fund and have been rejected on the grounds that there was not a sufficiently close link of causation between the contamination and the claimants' losses.

#### 6.6 Miscellaneous claims

6.6.1 The Shipowners' Club and the 1992 Fund have received some 169 claims for economic losses by convenience stores and costs incurred by several municipal authorities allegedly in connection with the spill. The majority of these remaining claims have now been examined by the experts and are in the process of being reviewed by the Club and Fund.

#### 6.7 Property damage

6.7.1 The Shipowners' Club and the 1992 Fund received some 3 260 claims for damage to fishing gear, fishing boats and beach front properties.

6.7.2 In respect of the 3 190 claims for damage to fishing gear and fishing boats, compensation payments were made to some 285 claimants for a total of PHP 3 486 852 (£39 000). A further 458 claimants have been offered compensation totalling PHP 1 440 842 (£19 500) but the claimants have not yet replied to the Fund's offer. Some 2 447 claims have been rejected due to lack of evidence of the damage claimed.

6.7.3 As regards the claims received from 70 owners of beach front properties in the Municipality of Nueva Valencia, eight of these claimants have received compensation for PHP 97 710 (£1 300). Many of these property claims related to the removal of sand during the shoreline clean-up operations. During subsequent site inspections it was reported that on beaches where sand had been removed, the sand had been replaced by natural accretion. Sixteen of these claims have been rejected and the remaining 46 claims are being examined.

## 6.8 Tourism

The Club and the Fund have received some 409 claims in the tourism sector from owners of small resorts, tour boat operators and various service providers (eg tour guides). Seventy one claims have been settled and paid for a total of PHP 4 616 282 (£62 200). Three hundred and two claims have been rejected because the claimants had not proved to have suffered losses as a result of the pollution. The remaining claims are being examined.

## 6.9 Clean up and preventive measures

6.9.1 The Shipowners' Club and the 1992 Fund received some 28 claims in relation to clean up and preventive measures. Twelve compensation payments were made in respect of nine claims, for a total of PHP 751 219 717 (£10.1 million). Details of some of these claims are provided in the following paragraphs.

6.9.2 Petron Corporation has submitted claims totalling PHP 224 million (£3 million) for the costs of shoreline clean up. The claims have been provisionally assessed at PHP 128 883 775 (£1.7 million) and the assessed amount has been paid to Petron. Further details were requested from Petron in order to complete the assessment of its claims. Petron subsequently supplied further information in support of its claims, which has been examined by the experts and discussed with the Club and the Fund. A finalised assessment is expected shortly.

6.9.3 The Philippine Coastguard submitted a claim for PHP 440 million (£5.9 million) in respect of its role in the response to the spill for both at sea and shoreline cleaning. The claim did not have sufficient supporting information to allow the Fund to carry out an assessment. The Fund has written to the Coastguard several times requesting detailed supporting information in respect of their claim. A claim was also submitted by the Coastguard in respect of its involvement in the oil removal operation for an amount of PHP 38 718 229 (£522 000). Pending some clarifications requested from the Coastguard, the claim has been provisionally assessed at PHP 14 111 939 (£190 000) and a payment for that amount has been offered to the Coastguard. The offer and the request for information were reiterated in response to a recent request for claims status information from the Philippine Coastguard.

## 7 Director's considerations

7.1 This is the first incident to which STOPIA 2006 applies and the 1992 Fund is receiving regular reimbursements from the Shipowner's Club. It remains difficult to predict whether the amount of compensation payable in respect of this incident will exceed the STOPIA 2006 limit of 20 million SDR (£19.5 million). As the three year time bar for the incident is approaching in August this year, the situation is expected to be much clearer by the next Executive Committee in October 2009.

7.2 In some past incidents, the Fund has made an effort to minimise the chance of claimants not being aware of the impending time bar. The Secretariat has the intention to discuss this matter with the Philippine authorities as to the best approach in this particular case.

## 8 Action to be taken by the Executive Committee

The Committee is invited:

(a) to take note of the information contained in this document; and

(b) to give such instructions in respect of the handling of this incident as it may deem appropriate.

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