

## The People's Republic of China

Regulation on the Prevention and Control of Vessel-Induced Marine Pollution

Friday 30th December 2011

The Regulation, originally promulgated by the State Council on 9 September 2009, has been coming into effect by stages since 1 March, 2010. This legislation covers a wide range of issues regarding oil pollution including prevention, response and cleanup, as well as the establishment of a compulsory insurance regime. It will be applicable to Chinese territorial waters, including their exclusive economic zone. The Chinese Maritime Safety Administration (MSA), responsible for the supervision and administration of the prevention and control of marine pollution, is designated to enforce the Regulation.

### COMPULSORY INSURANCE REGIME

The Regulation requires all ships in Chinese waters, save for those under 1,000 GT and carrying non-oil cargoes, to maintain insurance or other financial security in respect of liability for pollution.

This is broadly in line with the requirement of the CLC 1992 and the Bunker Convention 2001, both of which have been ratified by China. Nevertheless, certification requirements go further as they apply to all oil tankers regardless of size. Valid Certificates issued pursuant to both conventions will be accepted as evidence of insurance.

### A LOCAL FUND

China remains one of the few states where CLC 92 is in force but not the Fund Convention 1992. This Regulation also makes a provision for the establishment of a domestic Ship Oil Compensation Fund to be funded by local receivers of persistent oil cargoes.

### COMPULSORY CLEAN UP CONTRACTS WITH RESPONSE ORGANISATIONS

The Regulation requires the operators of ships transporting polluting and hazardous cargoes in bulk and any other vessel above 10,000 GT to conclude a cleanup contract with a ship pollution response organisation (SPRO) approved by the

MSA before entering Chinese ports. The term operator has been defined by the MSA as including the owner, manager or actual operator of a ship. This particular requirement does not apply to Hong Kong and Macau.

Compliance was initially postponed, mainly to allow MSA to conclude approving contractors in the various Chinese ports and for further legislation regarding the response contracts to be issued. Appropriate legislation followed when China published the Measures for Implementation of Ship Oil Damage Liability Insurance (26 September 2010) and the Regulation on Emergency Preparedness and Response to Marine Pollution from Ships (27 January 2011).

Contractors have been approved based on their qualifications and response capabilities. These will be assigned levels ranging from 1 to 4, with level 1 being the highest. The level of SPRO to contract with will be determined by the ships' size and type. Despite the fact that a complete list of approved SPRO is not yet in place, the authorities remain determined for compliance to become effective as from 2012. In the mean time a partial list of Level 1 SPRO has already been made available by MSA.

Should an operator be unable to conclude a contract with a SPRO before arrival of a vessel the local MSA may permit entry of that vessel provided that a suitable explanation is provided. In these circumstances, a contract will need to be finalized before the vessel departs the port. Moreover, should SPROs for all 4 levels not be approved in one port, the vessel is required to contract with one of the approved ones. For immediate compliance issues, particularly when the vessel is en route to Chinese waters, clients are recommended to approach MSA for certainty on how to proceed.

### THE LETTER OF AUTHORISATION

At the time of contracting there are two relevant documents to bear in mind: an authorization letter and an agreement for ship pollution response (the contract).

For operators not domiciled in China, the agreement with the SPRO can be entered into by the entities located in mainland China, such as the ship's agents in port or a local law firm. There are numerous companies that also offer agency service when contracting with SPROs, amongst these Huatai (one of our local correspondents), CMS and Penavico. It is also possible for the Master to sign the contract when necessary, but it is only advisable for him to sign in exceptional circumstances.

Imperative is for whoever signs to be authorised by the operator to do so. Clients without a presence in China wishing to use an agent will be recommended to make use of authorization letter forms available in this respect.

Copies of relevant documents must be submitted to the MSA, with the agents submitting a copy of the agency agreement and the SPRO submitting a copy of the signed contract. A copy of the latter is to be kept on board the ship at all times.

## THE CONTRACT

The MSA has issued a model contract in May 2011 to be used with SPROs. Although the contract can't see its articles on rights and obligations altered, it does permit for other terms to be revised. The market has therefore considered it appropriate to review the standard wording to include clauses related to termination of work and insurance.

Moreover, China's Association of Communication Enterprise Management (CACEM) has issued a set of guidance for retainer fees. These are fees to be paid for SPROs to be on standby from the moment in which the ship enters the service zone, unless otherwise agreed. They are different from response fees which are to be charged in case of a spill. It is worth noting that retainer fees are not subject to client's standard cover with us, as these are operational expenses.

Furthermore, at the time of entering into a contract it is imperative that clients ensure that both fees are specified in the agreement. Clients should furthermore strive for reasonable fees being applied, being that latest known tariffs are on the high side.

Contracts with SPRO can be made per voyage or per year. The vessel's trading pattern is likely to determine which form clients opt for. Nevertheless, should at any time clients be unable to secure a contract on satisfactory terms then we would suggest for the contract to be agreed on a voyage basis. Also possible is to contract under the umbrella of one SPRO approved in different ports. In the latter case a separate contract would still be required with the SPRO in each port

Also worthy of mention is that before signing any agreement clients should request the SPRO for a copy of the Pollution Response Operational Plan in both English and Chinese, which is to be kept on board. The crew is required to be familiar with this document.

## CHARTERER'S POSITION

Although the definition of operators could be considered to include charterers, it is advisable for owners to have control of any cleanup operation and therefore enter into contracts directly. Clients are also to be mindful of the fact that compliance with this new regulation may not have been anticipated at the time of entering into existing charter parties. Even though it is the vessel that should customarily comply with port requirements, provided charterer's instructions are valid, it is preferable to timely inform owners if it is expected the vessel will be required to trade to China.

As a final point we must say that this matter continues to develop at a fast pace and it is therefore essential for clients trading in Chinese waters to keep themselves properly informed on the latest available information.

**For any queries on this topic, please do not hesitate to contact our Support Desk:**

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