



# Circular

Ref: 5/10

FEBRUARY 2010

## OUTLINE

- No further guidance on new requirements for pre-contracting with spill responders has been received from the Chinese authorities since the Club's last circular.
- The implementation or enforcement of the pre-contracting requirements is expected to be postponed until details of approved contractors and response capabilities have been made public and an opportunity given to operators to comply.
- The Managers and CMS will continue to monitor the situation. Members will be kept advised of any material developments.

## TO THE MEMBERS

Dear Sirs

### **REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON THE PREVENTION AND CONTROL OF MARINE POLLUTION FROM SHIPS**

#### **Background**

This is a further update to the Association's circulars numbered 12/09 and 15/09, issued in November 2009 and January 2010 respectively, regarding new Regulations on the Prevention and Control of Marine Pollution from Ships promulgated by the People's Republic of China State Council on 9th September 2009 and due to take effect from 1st March 2010.

The new regulation has been officially translated as "Regulations on Administration of Prevention and Control of Pollution to the Marine Environment by Vessels" and the English language version can be found on the website of the State Council at [www.english.gov.cn/official/2009-09/30/content\\_1430838.htm](http://www.english.gov.cn/official/2009-09/30/content_1430838.htm).

#### **Requirements on pre-contracting with OSROs**

The Association's previous circulars drew attention to a requirement for ships carrying hazardous and polluting cargo in bulk, and all other ships of 10,000 tons or more, to pre-contract with an approved spill response company prior to calling at any Chinese port. Since January, the Managers have continued to monitor the situation closely, in the hope that the MSA or other authorities in China would provide a timetable for publication of a list of approved spill response contractors and of their response capabilities, so that shipowners could begin a process of selecting who to use and of negotiating rates and acceptable contract terms.

As of the date of preparing this circular (12th February) no such information has been forthcoming. Although there have been reports that an informal list of approved contractors exists, the MSA has not confirmed this, and it therefore presently remains impossible for owners to take preparatory steps with any confidence.

A half day seminar was hosted by the Shanghai MSA on February 2nd, at which it was confirmed by an MSA representative that clean-up companies would be organised into 4 levels of capability, but that no list of approvals was yet available.

In view of the short time now remaining to the original implementation date, it seems that there will either be a postponement in the implementation of the response contractor requirements, or that at the very least there will be relaxed enforcement of that part of the new law requiring pre-contracting until such time as a classification of approved OSRO capabilities has been published, together with details of the levels of response capability to be utilised in particular places.

### **China Marine Services Company Ltd (CMS)**

Our last circular drew attention to the practical issues that may arise from the contracting requirement, including language (especially if the OSRO is small and restricted to communication in Chinese) and including the need to ensure contractual terms are mutually acceptable to owners/operators, the contractors, the MSA, and the P&I clubs. Details were also provided of a company with special experience of marine pollution matters in China - China Marine Services Ltd (CMS) - who are able to provide general advice.

Since our January circular, CMS has been answering Members' enquiries and has issued several newsletters reporting on the background to the new legislation. These can be found through the CMS website [here](#).

The Association will continue to monitor the situation closely - and will of course keep Members promptly informed in the event of any change in status. In the meantime, enquiries on the new Regulations and on practical matters of immediate concern to Members can be sent to the CMS Consultant Team led by Mr Chen Keyu, General Manager, ([consultant@cmsonline.net](mailto:consultant@cmsonline.net)) copied to Dr Chao Wu ([chao.wu@thomasmiller.com](mailto:chao.wu@thomasmiller.com)), Legal Director of the Managers' London Agents.

Yours faithfully

**THOMAS MILLER (BERMUDA) LTD.**

### **CONTACT**

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