



Circular

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OUTLINE

- China's first comprehensive system of marine pollution regulations take effect from 1st March 2010.
- The Maritime Safety Administration (MSA) is the enforcing agency for the Regulations supervising and administering prevention and control of marine pollution by ship operations.
- Before entering Chinese ports, ships carrying polluting hazardous cargo and all other ships over 10,000 gross tons must pre-contract with approved pollution response companies.
- Compulsory insurance is required to meet Chinese Maritime Code or 1992 CLC and Bunkers Convention where applicable.

TO THE MEMBERS

Dear Sirs

Regulations of the People's Republic of China on the Prevention and Control of Marine Pollution from Ships

Background

On 1st March 2010, the Regulations of the People's Republic of China (PRC) on the Prevention and Control of Marine Pollution from Ships ("the Regulations") (promulgated by the PRC State Council on 9th September 2009) will take effect. The aim of the Regulations is to establish comprehensive rules governing oil pollution prevention, response and clean up within PRC waters.

The intention of this circular is to summarise the key provisions of the Regulations. The International Group (IG) understands that the PRC's Maritime Safety Agency (MSA) is drafting further implementing legislation to give effect to a number of the provisions contained in the Regulations, which includes the requirement to contract with approved pollution response companies and the requirement to maintain insurance or other financial security to cover liabilities arising from oil pollution damage. The IG will continue to engage with the MSA in this regard and, as appropriate, will issue further circulars.

Overview

The Regulations cover a wide range of issues, such as the discharge and reception of oil pollutants; dumping of waste and permissions for dumping; oil pollution response planning; oil spill clean-up arrangements; reporting and emergency handling of pollution incidents; investigation and compensation of pollution incidents; supervision of the loading, lightening and discharging of the polluting hazardous cargoes; and penalties for contravening any of the Regulations' requirements.

The Regulations also introduce into PRC law a compulsory insurance regime for all ships (except those that are less than 1,000 gt and not carrying oil cargoes) to cover claims arising from oil pollution damage. This would also seem to provide the necessary implementing legislation to give effect to the insurance provisions of the 2001 Bunkers Convention (which the PRC ratified at the end of 2008) and the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC) (which the PRC ratified some years ago). The Regulations also make provision for the establishment of a domestic Ship Oil Pollution Compensation Fund, to be funded by contributions from receivers of persistent oil cargoes

(or their agents) which have been transported by sea to a Chinese port. In this regard, it is noted that the PRC is not a State party to the 1992 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1992 IOPC Fund).

The MSA will be the designated authority for enforcing the Regulations and is therefore the responsible agency for the specific supervision and administration of prevention and control of the marine pollution by ships and relevant ship operation activities. Overall responsibility will rest with the Beijing MSA, with regional MSAs having local authority (as required).

Scope

The Regulations cover any ship-sourced pollution and any ship-related operation that causes or may cause pollution damage in the internal waters, territorial waters and the contiguous zones, exclusive economic zone and continental shelf of the PRC and all other sea areas under the jurisdiction of the PRC (wherever the pollution occurs).

Requirement to contract with an approved local clean up contractor

The Regulations require the operators of any ship carrying polluting and hazardous cargoes in bulk and any other vessel above 10,000 gt to conclude a pollution clean up contract with an MSA approved pollution response company before entering a PRC port. "Operators" is not defined in the Regulation but the IG will seek clarification and advice from the MSA in this respect.

It is the International Group's understanding that these clean up contractors will bear responsibility for conducting clean up operations in the event of an incident, under the MSA's supervision, and with the intervention of the MSA if the capabilities of the contractor are exceeded. It is understood that there will be more than one contractor in each of the Chinese ports.

The MSA is currently in the process of assessing the contractors in the various Chinese ports and further legislation will be issued in the near future. The IG is engaged with the MSA in this regard and will provide a further update to Members pending any further clarification that is obtained.

The IG understands that there will be four levels of contractors that will be designated having the capability to respond to a spill depending on the size and extent of the spill itself. The additional implementing legislation will clarify which contractors, in terms of levels, operators will need to contract with depending on their type of trade and size of vessel.

Although the MSA has undertaken to complete the inspection process of responders within 30 working days from the date of receiving their application for approval, there is clearly a short time period within which operators will have to conclude such contracts prior to 1st March 2010. The IG understands that an extension may be given to the entry into force date of these provisions in the Regulations on concluding response contracts but, in the event that such an extension is not forthcoming, every effort will be made to ensure that Members are in compliance by 1st March 2010.

Generally, breach of the Regulations carries a series of possible fines, ranging from RMB 10,000 to RMB 300,000 depending on the facts.

Clean up costs

In respect of compensation for costs incurred in the event of an incident, the Regulations seem to provide that priority shall be given to the costs of response organised by the Government. Before commencing her next voyage, any vessel involved in an incident where response action has been taken by the MSA is required to pay the MSA's costs or provide a relevant financial guarantee. The form of the guarantee to be provided is still to be clarified. The Regulations also provide that the MSA may detain the vessel while investigating any such incident.

On board emergency response plans

The Regulations require shipowners, operators or managers to maintain emergency response plans for the prevention and control of marine pollution. It is understood that a Shipboard Oil Pollution Emergency Plan (SOPEP) will be sufficient to meet this requirement.

Insurance and Liability Issues

The PRC is a State party to the 1992 CLC and the 2001 Bunkers Convention. The liability provisions in the Regulations largely mirror those contained in those Conventions, which provide for strict liability of the owner for pollution damage arising from the carriage of persistent oil by sea (1992 CLC) and strict liability of the shipowner (defined as including the registered owners, bareboat charterers, managers and operators) for pollution damage caused by spills of bunker oil (2001 Bunkers Convention).

All vessels trading within PRC territorial waters, with the exception of those below 1,000 gt that are carrying non-oil cargoes, will be required to maintain insurance or other financial security cover to satisfy the requirements of the Chinese Maritime Code or the 1992 CLC and 2001 Bunkers Convention where applicable.

The MSA will determine and publish a list of competent insurance providers that will be qualified to provide the necessary insurance cover, in much the same manner as has been the case since 2007.

Reporting

Any pollution arising from an incident, or likely to arise, within the territorial waters of the PRC or beyond the territorial waters of the PRC under the PRC's jurisdiction must be reported to the local MSA. The accident report must contain the following information:

1. The ship's name, nationality, call sign or number;
2. The name and address of the owners, operators or managers of the ship;
3. The time, place, weather and sea condition of the accident;
4. Preliminary determination of the cause of the accident;
5. The type, quantity, stowage, location of the pollutant substance of the ship;
6. The degree of the pollution;
7. The pollution control, disposal measures adopted and to be adopted and the situation of the control of the pollution and the salvage requirements;
8. Any other required information.

The International Group will continue to monitor both the implementation of the Regulations and the development of further legislation designed to give effect to a number of the Regulation provisions, and will continue to engage with the MSA in this regard. A further update to Members will be provided in due course.

A similar circular is being sent by other members of the International Group of P&I Clubs.

Yours faithfully

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CONTACT

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