



Circular

Ref: 15/11

DECEMBER 2011

OUTLINE

- The International Group understands that the 1 January 2012 deadline to contract with an approved spill response contractor will still be enforced
- A partial list of approved 'ship pollution response organisations' (SPROs) is available – see Annex I of this circular
- An International Group recommended contract for SPROs including supplemental clauses is attached in Annex II
- A recommended authorisation letter for appointing agents in China to sign the contract with SPROs on a Member's behalf is also attached – see Annex III
- The service proposals of two agents offering to assist Members to contract with SPROs are contained in Annex V
- An SPRO appropriate to ship type and size must be contracted. A guide to levels of SPRO is attached in Annex IV
- Charges proposed by SPROs vary widely and may be excessive compared to responders in other jurisdictions
- This circular refers to previous circulars 14/11, 7/11, 26/10, 14/10, 15/09 & 12/09.
- Annexes I-V are available to download from www.ukpandi.com

TO THE MEMBERS

Dear Sirs

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

We refer Members to previous circulars on the Regulations of the People's Republic of China (PRC) on the Prevention and Control of Marine Pollution from Ships ("the Regulations"), and the postponement of the requirement that owners/operators of (a) any ship carrying polluting and hazardous cargoes in bulk or (b) any other ship above 10,000 gt enter into a pollution clean up contract with a Maritime Safety Agency (MSA) approved pollution response company before the ship enters a PRC port.

Members were previously informed, pursuant to advice received from the MSA, that the MSA would publish lists of all approved contractors by the end of November. The International Group (IG) has maintained contact with the MSA and visited Beijing in November to meet with the MSA, various 'ship pollution response organisations' (SPROs), shipowners and other interested parties. Although the IG has continued to draw the MSA's attention to the difficulty which Members will face in complying with the Regulations if the enforcement date of 1 January 2012 is not put back, the IG's understanding remains that the requirement to contract with an approved SPRO will still be enforced in all Chinese ports from 1 January 2012 and there will be a very short period of time for owners/operators to contract with an approved spill responder. Although a full list of approved SPROs has still not been issued, a partial list of Level I SPROs has been published and is contained in Annex I to this circular. The IG understands that further lists of approved SPROs are likely to be issued very soon although the full lists of SPROs may not be issued until much closer to the end of this year.

In order to ensure that Members can negotiate and sign the necessary contracts as soon as the list of SPROs is issued, a recommended spill response contract and authorisation letter for agents to negotiate and sign the contract on behalf of overseas operators are contained in Annexes II and III of this Circular.

The lists of approved SPROs will appear on the China MSA website once they have been published by the MSA - www.msa.gov.cn - and the following dedicated MSA spill response website:

http://www.osp.cn/new/Index_news_disp.asp?nid=1088&Title=

The partial list of approved SPROs contained in Annex I has not yet been published by the MSA on these websites in English, but it is likely to be published in English soon.

Negotiation and signature of the Contract

Members have previously been advised that the term “operator” for the purposes of concluding and signing the contract with a SPRO is defined by the MSA as the owner, manager or actual operator of a ship. In respect of those operators not domiciled in China, the ship’s agent in port, local law firm or another legal entity located in mainland China (not Hong Kong, China or Macau, China) may negotiate and sign the contract on behalf of the operator if authorised by the operator to do so. The Master may also sign the contract, which may be necessary in certain circumstances, for example where speed is necessary, although an authorisation would still be necessary for the Master to sign on behalf of the operator.

The IG is also aware of maritime agency firms domiciled in China that are offering services to act as agents for overseas operators to negotiate and sign spill response contracts on their behalf. Further details of these agencies and the services that they are offering to provide shipowners have been added in Annex V. Members who wish to use those firms should contact them direct for further information.

Members domiciled in mainland China or with a local office in China must negotiate and sign the contracts direct with the SPROs. The IG understands that the spill response contract requirements apply only to ships calling at ports on the Chinese coastline and do not apply to ships calling solely at inland waterway ports in mainland China[1].

Members without a presence in China wishing to use an agent, are recommended to use the authorisation letter contained in Annex III to this circular (with identifier ‘IG LoA dated 6 December 2011’) to appoint agents in China to negotiate and sign the contracts on their behalf. A copy of the signed letter will be submitted to the MSA by the agent.

A copy of the signed contract will be submitted to the MSA by the SPRO and a copy is to be kept on board the ship at all times.

Approved SPROs are categorised by the MSA in accordance with their qualifications and response capabilities and will be assigned level 1, 2, 3 or 4 status, level 1 being the highest. Members have previously been advised that operators will need to contract with an approved SPRO in accordance with the size and type of ship as contained in Annex IV.

Every ship calling at a Chinese port from 1 January 2012 that falls within the size and type of ships listed in Annex IV will need to contract with a relevant level 1, 2, 3 or 4 SPRO for each call at port as appropriate. This will clearly be a sizable task for operators of ships calling regularly at Chinese ports or for operators with large fleets calling at Chinese ports during the course of the year, although this burden should be eased through the use of agents where acting on behalf of operators to negotiate and sign the contracts. It will also be possible to contract with a SPRO on an annual basis or to contract under the umbrella of one SPRO that has been approved in different ports (even though separate contracts would still be needed with the SPRO in each port).

Recommended Contract

The MSA issued a model contract on 20 May 2011 which operators must enter into with an MSA approved SPRO. The model contract may however be amended with revised or supplemental clauses for inclusion. The model contract issued by the MSA has been reviewed by the IG. The IG has drafted supplemental clauses for inclusion in this contract. These clauses relate to termination of work and insurance to be maintained by the operator and the SPRO. A copy of the IG's recommended contract with the proposed supplemental clauses (with identifier 'IG Sample Agreement dated 6 December 2011') is contained in Annex II.

Members have previously been advised of the terms of contracts which are required in other jurisdictions and those contracts that conform with the IG Guidelines on vessel response plans. The recommended contract contained in Annex II conforms with the IG Guidelines. Any Member requested to agree to a variation of the attached recommended contract is advised to check with the Club to ensure that such variations do not cause the contract to fall outside the scope of the IG Guidelines.

Charging Structures

The IG understands that different SPROs have established different fee structures; with different SPROs proposing to charge operators different levels of retainer fee (which do not fall within the scope of Club cover) for stand by purposes when the contracted ship enters the SPRO's service area, with response tariffs in the event of an incident while the ship is within the service area, and with options available on a per voyage or an annual basis.

A set of guidance retainer fees has already been issued by the China Association of Communication Enterprise Management (CACEM), which is an association of a number of SPROs in the various Chinese ports. Following analysis of these fees, the IG informed CACEM that their guidance retainer fees are wholly unrealistic and are significantly in excess of what could be considered as reasonable, particularly compared with retainer fees charged by spill responders in other jurisdictions.

Retainer fees and response tariffs should be charged on a reasonable basis. Members should ensure that response tariffs are incorporated into the contracts, and should contact their Club in the event that they have a concern regarding their reasonableness.

The IG understands that other SPROs are also seeking to establish associations or alliances to offer spill response services to cover the major Chinese ports.

If Members are in any doubt about the contract then it is recommended that they contact their Club before contracting with any SPRO.

All Clubs in the International Group of P&I Clubs have issued similar circulars. We have added in Annex V details of two agents offering to assist Members to contract with SPROs.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully

THOMAS MILLER (BERMUDA) LTD.

CONTACT

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