



Circular

Ref: 15/09

JANUARY 2010

OUTLINE

- No further guidance on requirements for pre-contracting with OSROs has been received from the MSA since the Club's previous circular (12/09)
- Further guidance will be issued as soon as more information is available
- China Marine Services, a Thomas Miller joint venture service company in China, may be able to assist Members with practical matters of immediate concern

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 an update to the Association's circular numbered 12/09, issued in November 2009, regarding new Regulations on the Prevention and Control of Marine Pollution from Ships ("the Regulations") promulgated by the People's Republic of China State Council on 9th September 2009 and due to take effect from 1st March 2010.

The circular noted that the Regulations would bring into PRC law a compulsory insurance regime for all ships (except those that are both less than 1,000 gt and not carrying oil cargoes) to cover claims arising from pollution damage. It is expected that valid certificates of insurance issued pursuant to the 2001 Bunkers Convention and the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC) will be accepted as evidence of insurance for this purpose.

The circular also drew attention to a requirement for the "Operators" of all ships carrying hazardous and polluting cargo in bulk, and all other ships of 10,000 tons or more, to pre-contract with Oil Spill Response Organisations ("OSROs") approved by the China Maritime Safety Agency ("MSA"). It was understood that there would be more than one contractor in each port and that contractors would be organised in four levels of response capability, with additional implementing legislation to clarify the level required for any particular trade and size of vessel.

There were a number of issues identified in the circular to be clarified in connection with the OSRO requirements and during recent weeks the Association has received many requests for an update.

Requirements on pre-contracting with OSROs

The MSA was understood in November to be preparing a process for assessing contractors in the various Chinese ports, but the details of this process have not yet been confirmed..

In the period since issuing the circular, the Managers have been closely monitoring the situation and have met with the MSA and others to determine how best to facilitate compliance. However, as of the date of this circular no further information has been received from the MSA regarding their timetable for issuing a list of approved contractors, for classifying their response capabilities and for clarifying how the level of response capability will relate to specific ships.

It is therefore expected that the original effective date for the OSRO pre-contracting requirement, namely 1st March 2010, will be postponed. However, confirmation of this has not yet been provided by the MSA, and Members should be aware that rapid action may be needed if there is no postponement.

China Marine Services Company Ltd (CMS)

Practical issues that may arise from the contracting requirement include language (especially if the OSRO is small and restricted to communication in Chinese) and the need to ensure contractual terms are mutually acceptable to owners/operators, the contractors, the MSA, and the P&I clubs.

The Association's Managers are in discussion with various entities in China to find ways to assist Members in complying with the new Regulations. One such entity is China Marine Services Co. Ltd. ("CMS"), a joint venture between the China Classification Society Industrial Corporation ("CCSI") and Thomas Miller & Co. Ltd, first set up in 1999 to provide surveying and consultancy services of an international standard within the PRC to the maritime industry. Over the last 10 years, CMS has gained considerable expertise and experience in pollution matters in China and has become well known to the MSA and to Chinese oil spill contractors. As well as working for clubs and owners, it has also worked directly with the MSA on a number of recent oil pollution incidents, and developed good relations with the MSA in major ports. The Managers are accordingly hopeful that CMS may be able to assist owners/operators in respect of compliance issues.

CMS is monitoring developments and maintaining its close relations with the MSA and is believed to have good knowledge about progress towards implementing the Regulations, including the MSA's process of assessment of the contractors. Until this assessment is completed and the list of approved OSROs is published, however, the assistance by way of preparation that CMS can give to Members is obviously limited. However, 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) copied to Dr Chao Wu (chao.wu@thomasmiller.com), Legal Director of the Manager's London Agents..

The Managers will continue to monitor progress towards implementation of the Regulations and will be seeking information about other entities which may be able to assist Members in ensuring compliance. Further information and guidance will be issued to Members when available.

Yours faithfully

THOMAS MILLER (BERMUDA) LTD.

CONTACT

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