



# An Introduction to China Marine Oil Pollution Laws and SPRO Contract

**Helen Huang – Senior Claims Executive from Thomas Miller’s Hong Kong office provides an introduction to China’s marine oil pollution laws with a discussion on the relevant International Conventions, China’s domestic laws and Ship Pollution Response Organisations (SPROs).**

## International Conventions

China ratified the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC) in 1999 and the 2001 Bunkers Convention at the end of 2008.

China 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), although the latter applies to the Hong Kong Special Administrative Region. The Chinese Oil Pollution Compensation Fund (the COPC Fund) was established in 2012. The COPC Fund is maintained by contributions from oil cargo owners in China. A levy of RMB 0.3 per ton is applied against cargoes of persistent oil substances and is collected from receivers of persistent oil in Chinese waters. “Persistent oil” includes crude oil, fuel oil, heavy diesel oil, lubricating oil and other persistent hydrocarbon mineral oil. All claims against the COPC Fund must first have been pursued through the local courts against the responsible ship (or her insurer or guarantor). The COPC Fund responds to damages awarded by the court that cannot be recovered from the ship, such as when an owner is insolvent, when the responsible ship cannot be identified, or when the damages claimed exceed any limitation or exemption available to the owner. A limit of RMB 30 million applies

for any one incident with a proportionate apportionment of all claims should the damages exceed this limit.

## China Domestic Laws

The Regulation of the People’s Republic of China on the Prevention and Control of Marine Pollution from Ships (the Regulation) was implemented in 2010 pursuant to the Marine Environment Protection Law of the People’s Republic of China (MEPL). The MEPL imposes strict liability on polluters. The Regulation is considered to be the cornerstone of China’s environmental law. It sets out the applicable legal principles and outlines the Chinese marine pollution law system. However, neither the MEPL nor the Regulation deals with compensation issues.

Another important legislation is the China Maritime Code (CMC), which came into force in 1993. The CMC adopts the regime of the Convention on Limitation of Liability for Maritime Claims 1976. The CMC is currently under review. It is anticipated that its limitation will be increased and that a new chapter on compensation for ship pollution damage will be added.

In addition to the above laws, the Ministry of Transport (MoT) (the designated authority for dealing with ships oil pollution matters) and the Maritime Safety

Administration (MSA), (the sole subsidiary of the MoT), have implemented ample administrative rules in relation to the enforcement of the Regulation.

In 2011 the Supreme Court published the Rules on 'Issues concerning the Trial of Disputes over Compensation for Vessel-induced Oil Pollution Damage' (the Supreme Court Interpretation Rules). These Rules, although not law, are widely followed in judicial practice.

### Pre-contracting with SPRO

In accordance with the Regulation, all ships carrying pollution and hazardous cargoes in bulk and other ships above 10,000gt must pre-contract with an approved Ship Pollution Response Organization (SPRO). Since 2015, MSA has abolished the SPRO qualification approval process and ceased to publish any list of qualified SPROs. Shipowners are therefore obliged to undertake checks to ensure that the SPROs they contract with have the necessary approval and have met the necessary requirements. This has caused practical difficulties as the qualifications and capabilities of SPROs change and occasionally, SPROs cease to operate or they merge with other SPROs.

There are four levels of SPROs, depending on their capacities. Shipowners are required to contract with corresponding (or higher) level SPROs in accordance with the table below:

The MSA SPRO model contract was published in September 2012. The current MSA model contract has two compulsory articles which cannot be changed – Articles 1 and 2. The parties are free to negotiate the remainder of the terms. The International Group (IG) has

developed recommended additional clauses and the IG Sample Agreement with the footer: "IG Sample Agreement dated 20th November 2014". Many SPROs accept the IG sample Agreement wording if requested to do so by the owner. Every effort should be made for the SPRO to accept the IG sample wording in the first instance.

The IG Sample Agreement includes additional articles principally in relation to termination and insurance (i.e. Article 5 of the IG Sample Contract). Shipowners are recommended to check that the SPRO has a valid liability insurance in place (usually by requesting a copy of the insurance policy and premium payment receipts). It is recommended that in Article 8 the parties select the courts of China for the resolution of their disputes.

The SPRO contract should include two charges tables; i) for the SPRO's retainer/ standby fees and ii) the response tariffs. The retainer/standby fees to be charged by the SPRO are listed in Appendix II.1 of the IG Sample Agreement. These fees are in respect of the SPRO's standby service from the moment the ship enters the service zone until her departure. There is no law which governs how and when the SPRO can charge retainer fees. This is a matter for individual negotiation. The response tariffs are set out in Appendix II.2 of the IG Sample Agreement. The response tariffs are the costs which will be charged in the case of a spill. It is recommended that this clean-up response tariff should be reviewed and assessed by ITOFF.

**Should Members have any questions concerning any China SPRO contract, please liaise with your usual Club contact who would be pleased to assist you.**

### Table of Contracting Requirement

Vessel Service Area	Vessel carrying oil in bulk			Vessel carrying liquid hazardous cargo other than oil in bulk		Other vessel	
	OSRO Level	Within harbour	Entering into and exiting port	Performing cargo transfer at sea	Entering into and exiting port	Performing cargo transfer at sea	Entering into and exiting port
Class I		GT10,000 and above	Beyond 20 nautical miles	GT10,000 and above	Beyond 20 nautical miles	GT50,000 and above	Beyond 20 nautical miles
Class II	GT2,000 (incl. GT2,000) to GT10,000	Below GT10,000	Within 20 nautical miles	Below GT10,000	Within 20 nautical miles	GT30,000 (incl. GT30,000) to GT50,000	Within 20 nautical miles
Class III	GT600 (incl. GT6000) to GT2,000					GT20,000 (incl. GT20,000) to GT30,000	
Class IV	Below GT600					GT10,000 (incl. GT10,000) to GT20,000	

The requirements do not apply to: LNG vessels below 10,000GT; nor Ships which carry petroleum products below 10,000GT, nor Ships which carry other liquid cargoes below 10,000GT while on a ballast voyage