

UK P&I CLUB 

Legal Briefing

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MARINE POLLUTION

Chinese marine pollution laws

UK P&I CLUB
IS MANAGED
BY **THOMAS
MILLER**



About us

This briefing is one of a continuing series which aims to share the legal expertise within the Club with our Members

A significant proportion of the expertise in the Managers' offices around the world consists of lawyers who can advise Members on general P&I related legal, contractual and documentary issues.

These lawyers participate in a virtual team, writing on topical and relevant legal issues under the leadership of our Legal Director Chao Wu.

As part of Thomas Miller that virtual team can also call on executives who support the UK Defence Club and the experience and expertise that serves the largest defence mutual in the world, with over 3,500 owned and time chartered ships entered.

If you have any enquiries regarding the issues covered in this briefing please contact the team via Chao Wu and we will be pleased to respond to your query. The team also welcomes suggestions from Members for P&I related legal topics and problems which would benefit from explanation by one of these briefings.

Chao Wu

Legal Director



Chao has a doctorate in law and is based in London as Legal Director, where she is responsible for giving general legal advice, including guidance on the legal aspects of P&I Club documentation, and on the legal aspects of cover for Members' contractual arrangements. She represents the Club on various subcommittees and working groups of the International Group of P&I Clubs. Chao speaks Mandarin, French and Shanghainese.

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Chinese marine pollution laws

The Regulation of the People's Republic of China on the Prevention and Control of Marine Pollution from Ships (the Regulation) was implemented on 1st March 2010. It is considered to be the cornerstone of the Chinese marine pollution law system

The Regulation is constituted pursuant to the Marine Environment Protection Law of the People's Republic of China (MEPL) and sets out the principles and outline of the Chinese marine pollution legal system.

It is believed that under the framework set out in the Regulation, there are at least two supplementary regulations concerning shipowners being drafted by the Ministry of Transport and the Maritime Safety Administration (MSA).¹ In addition, there is a supplementary regulation on the management of the ship oil pollution compensation fund being drafted jointly by Ministry of Finance and Ministry of Transport, and another rule on judicial guidance on compensation for oil pollution damages and limitation of liability being drafted by the Chinese Supreme Court supplementing the existing regime of limitation of liability provided in the China Maritime Code. China is also a member State to the 1992 Civil Liability Convention and the 2001 Bunkers Convention.

Overview

The Regulation covers 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 polluting hazardous cargoes; and penalties for contravening any of the Regulation's requirements.

Shipowners/operators must develop emergency response plans to prevent and control pollution incidents. It is understood that the ship's existing SOPEP (Shipboard Oil Pollution Emergency Plan) as required by MARPOL will suffice.

The Regulation also introduces into Chinese law a compulsory insurance regime for all ships (except those that are less than 1,000gt 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 China ratified at the end of 2008) and the 1992 International Convention on Civil Liability for Oil Pollution Damage (1992 CLC) (which China ratified in 1999).

The Regulation also makes provision for the establishment of a domestic Ship Oil Pollution Compensation Fund, to be funded by contributions from receivers of persistent oil cargoes which have been transported by sea to a Chinese port. In this regard, it is noted that 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.

Guide to Chinese pollution regulations

A collection of relevant articles in summary translation from the Regulation can be found on pages 6 and 7 in this briefing. References to a number of these articles appear in the footnotes to this briefing as further information.

The Club has previously issued four circulars to date on this subject:

- Circular 7/10 – April 2010
- Circular 5/10 – February 2010
- Circular 15/09 – January 2010
- Circular 12/09 – November 2009

¹Draft Regulations on the Emergency Prevention and Disposal of Marine Pollution from Ships
Draft Regulations on the Management of the Civil Liability Insurance for Ship Oil Pollution

The MSA will be the designated authority for enforcing the Regulation and is therefore the responsible administration for the specific supervision and management 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).

Pre-contracting with approved OSRO

The Regulation will create a very significant additional requirement for ship operators, namely that ships carrying polluting and hazardous cargoes in bulk and other ships above 10,000 gt must pre-contract with an approved Chinese oil spill response organization (OSRO) before entering into or departing from a Chinese port, or handle relevant operations.² It provides that ship operators are responsible for concluding the contract with an OSRO, but as yet there is no clear definition of “operator”. It is believed that the form and terms of the contract will be pre-approved by MSA and published in due course.

As of today, the list of approved OSROs has not been published. It is said that the qualified OSROs will be organized into four levels of capability. The list may be different from port to port, or region to region, and as it may be difficult for an OSRO to be approved nationwide, this may cause difficulties for operators where there is a change of calling ports at short notice.

Scope of application

The Regulation covers 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, Chinese exclusive economic zone and continental shelf, and all other sea areas under the jurisdiction of the People’s Republic of China.

Pollution incidents refer to spill of oil, oily mixture and other poisonous hazardous substances from ships or out of ship-related operations.³ However, the term “poisonous hazardous substances” is not clearly defined as yet and the list of the pollution hazardous cargo is expected to be published. Ship-induced pollution incidents are classified into four levels from general, less severe, severe, and extremely severe in accordance with the volume of spilled oil and the size of loss and damage that pollution incidents cause.⁴

Compulsory insurance and establishment of domestic oil pollution fund

In accordance with the Regulation, all ships trading within Chinese territorial waters, with the exception of those below 1,000gt that are carrying non-oil cargoes, are required to maintain insurance or other financial security cover to satisfy the requirements of the Chinese Maritime Code (i.e. LLMC 1976) or the 1992 CLC and 2001 Bunkers Convention where applicable.⁵

China is not a State party to the 1992 Fund Convention. The Regulation confirms that a domestic oil pollution compensation fund will be founded through imposing levies on persistent oil cargo owners or their agents.⁶

In the past, there have been many discussions whether an ocean-going ship should be held liable for pollution damage caused by a domestic coastal trading ship with which the ocean-going ship collides, because there was no requirement for compulsory liability insurance, and domestic coastal trading ships used not to carry or carried very low levels of liability insurance. It was not uncommon that the judges managed to seek contributions from and hold ocean-going ships directly liable for pollution damages claimed by authorities and victims. The introduction of compulsory insurance to the domestic coastal trading ships over 1,000gt or carrying oil in bulk and the establishment of a Chinese domestic ship oil pollution compensation fund in the foreseeable future will remove that pressure on the ocean-going ships and may lead to a more consistent and predictable approach in dealing with pollution arising from ships’ collisions. It will be interesting to see what approach will be adopted by the judiciary under the new legislation.

Strict liability and limitation of liability

The wording of liability provisions in the Regulation largely mirror the doctrine of strict liability⁷ and provide the same exceptions⁸ as provided in 1992 CLC and 2001 Bunkers Convention.

Oil tankers’ liability limitation is same as the scheme provided in 1992 CLC. Other ships may limit liability in accordance with the Chinese Maritime Code, which follows the scheme of LLMC1976.⁹ There is a new provision whereby

²Article 33 ³Article 35 ⁴Article 36 ⁵Article 53 ⁶Article 56 ⁷Article 50 ⁸Articles 50 & 51 ⁹Article 52 ¹⁰Article 55

the MSA's costs or expenses incurred in its cleanup operation will be compensated in priority to other claimants.¹⁰ It is unclear how this provision will work, as it may be potentially in conflict with the CLC and the Bunkers Convention which provide that all admissible claims are to be treated equally and do not give priority to governments' claims.

Direct action against insurers

The Regulation does not refer to direct action against insurers. In accordance with Article 97 (1) of the Special Maritime Procedure Law of the People's Republic of China, claims for oil pollution damage may be brought directly against the insurers or other person providing financial security for the owner's liability for oil pollution damage. Therefore, compulsory liability insurers for oil pollution damage can be sued directly under Chinese law and the CLC and Bunkers Convention.

Currently MSA issues CLC certificates and Bunker certificates for Chinese flag ships against blue cards issued by P&I clubs. The draft Regulation by the Chinese Ministry of Transport on oil pollution

civil liability insurance has specific requirements on insurers providing insurance coverage for oil pollution liability to Chinese flag vessels.

Summary

As mentioned above, the Regulation sets up only the general framework of the Chinese oil pollution law, and it can not resolve all issues initially. Some long term difficult questions, such as the title to sue, admissibility of claims for compensation, methods of investigation and burden of proof, remain to be clarified, either by the supplementary regulations or rules of judicial practice.

For practical guidance and latest development on this matter, please visit the UK Club website's special resource page – China Oil Pollution Regulations. This resource page is continually updated with information from both the International Group and also from other contacts of the UK Club. A link to this page can be found on the UK Club home page at www.ukpandi.com.



Selected articles from the Regulation

The Regulation imposes following requirements on ships:

Article 10: Ships' pollution prevention structure, equipment and facilities shall meet the technical specifications of the law and Conventions, and shall obtain and carry on board the certificates and documentations required by the law.

Article 11: Chinese flag ships shall establish safety management and pollution prevention and control system approved by MSA, and obtain MSA certificates.

Article 14: Shipowners/operators must develop emergency response plans to prevent and control pollution incidents and make oil spill response plan, which should be approved by MSA. Ships shall carry out drills on a regular basis of their emergency response plans.

Article 15: Discharge of garbage, domestic sewage, oil sewage, sewage containing poisonous and hazardous substances, waste gas and ballast water shall be carried out in a legal manner. Other polluting substances shall be discharged to special receiving unit. No discharge is permitted in environmentally sensitive areas.

Article 16: Keep correct and accurate record of any discharge of pollutants. Used Garbage Record Book shall be kept for two years on board; Used Oil Containing Sewage, Poisonous and Hazardous Substances Containing Sewage Record Book shall be kept for three years on board.

Article 21: No carriage of polluting cargo permitted by ships that do not meet the requirements for such cargo carriage.

Articles 22 & 23: Ships carrying polluting cargo shall obtain MSA prior approval for port entry/exit, transit stay and cargo operation, and stay at designated dock/terminal.

Article 26: Ships undertaking lightering involving bulk liquid polluting cargoes shall submit application to MSA for approval.

Article 28: Keep bunker delivery notes on board for three years, and keep bunker samples for one year.

Article 31: No transfer of hazardous waste in

Chinese inland and territorial waters. Transfer of hazardous waste in other waters shall be pre-approved in writing by the environment protection authority and under direction of MSA.

Article 32: Dumping waste in the seas shall be pre-approved by the MSA, and be recorded accurately. Written report shall be surrendered to MSA after the operation.

Article 33: Any ships carrying polluting and hazardous cargoes in bulk and any other ships above 10,000 gt shall pre-contract with approved Chinese oil spill response organization (OSRO) before entering Chinese ports.

Article 35: The vessel-induced pollution incident as referred to in this Regulation means the marine environmental pollution incident caused by the leakage of the oils, oil mixtures and other hazardous and noxious substances from a vessel and its relevant operation.

Article 36: The vessel-induced pollution incidents shall be ranked as follows:

- (1) The extremely severe vessel-induced pollution incident refers to the vessel-induced pollution incident the oil-spill amount of which is more than one thousand tons, or resulting in more than two hundred million yuan direct economic loss;
- (2) The very severe vessel-induced pollution incident refers to the vessel-induced pollution incident the oil-spill amount of which is more than five hundred tons but less than one thousand tons, or resulting in more than one hundred million yuan but less than two hundred million yuan direct economic loss;
- (3) The severe vessel-induced pollution incident refers to the vessel-induced pollution incident the oil-spill amount of which is more than one hundred tons but less than five hundred tons, or resulting in more than fifty million yuan but less than one hundred million yuan direct economic loss;
- (4) The general vessel-induced pollution incident refers to the vessel-induced incident the oil-spill amount of which is less than one hundred tons, or resulting in less than fifty million yuan direct economic loss.

Article 37: Wherever there is a vessel-induced pollution incident that may cause pollution to sea waters under PRC jurisdiction, ships should activate oil spill response plan and report to MSA.

Article 38: Eight compulsory items of ships' pollution incident report are:

- (1) ship's name, flag, call sign / IMO number;
- (2) name and address of owner, operator or manager;
- (3) time, location of the incident, weather and sea condition of the area;
- (4) preliminary assessment of cause;
- (5) type, volume and stowage of pollutants on board;
- (6) pollution level;
- (7) clean up actions / control taken or to be taken;
- (8) other matter as may be required to be reported. Timely follow up report on any further development.

Article 40: In case of a ship sinking, all valves of piping system of oil tanks should be shut, and air holes should be sealed, and timely report shall be made to MSA with nature, volume, types, stowage and other information of polluting substances with clean up measures taken.

Article 48: Ships shall cooperate with MSA investigation and provide information honestly.

Article 50: Any parties that have caused the pollution damage to the marine environment shall be responsible for removing the hazard and making compensation for the damage; In the event of pollution damage to the marine environment resulting entirely from the intentional or negligent act of a third party, that party shall be responsible for removing the hazard and making compensation for the damage.

Article 51: Compensation liability may be exempted, if the pollution damage to the marine environment cannot be avoided despite prompt and reasonable measures taken, when the pollution damage is caused by any of the following circumstances:

- (1) War;
- (2) Irresistible natural calamities; or
- (3) Negligence or other reckless acts of the departments responsible for the maintenance

of lights or other aids to navigation in the exercise of that function.

Article 52: With regard to the limitation of liability for pollution damage caused by vessels, provisions of Maritime Code of the PRC in respect of the limitation of liability for maritime claims shall apply. However, with regard to the limitation of liability for pollution damage caused by vessels carrying persistent oils in bulk to sea areas under the jurisdiction of the PRC, the provisions of the international treaties concluded or acceded to by the PRC shall apply.

The term "persistent oils" as referred to in the preceding paragraph means any of the persistent hydrocarbon mineral oil.

Article 53: All ships trading within PRC territorial waters, with the exception of those below 1,000gt carrying non-oil cargoes, are required to maintain proper insurance for pollution damage.

Article 54: Chinese flag oil tanks shall obtain CLC certificate or bunker liability certificate or the financial guarantee from MSA.

Article 55: Where a vessel-induced oil pollution incident occurs, the necessary expenses incurred by the relevant units under the organization of the State when carry out the emergency handling and the removal of the pollution shall be compensated with priority.

Article 56: The cargo owners or their agents who receive persistent oil cargoes carried by sea within sea areas under the jurisdiction of the PRC shall pay the vessel-induced oil pollution compensation fund.

The specific rules on collecting, using and managing the vessel-induced oil pollution compensation fund shall be worked out by the Competent Authority of Finance under the State Council jointly with the Competent Authority of Transport under the State Council.

The State shall establish the Vessel-Induced Oil Pollution Compensation Fund Regulatory Commission who will be in charge of dealing with the compensation of the Vessel-Induced Oil Pollution Compensation Fund. The Vessel-Induced Oil Pollution Compensation Fund Regulatory Commission shall consist of the relevant administrative organs and the important cargo owners who have paid the vessel-induced oil pollution compensation fund.

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