

No. 10 2009/2010 - Regulations of the People's Republic of China on the Prevention and Control of Marine Pollution from Ships

November 2009

Dear Sirs

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

Background

On 1 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 9 September) 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 International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (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. Note: 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 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 or of 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 approving contractors in the various Chinese ports and further legislation will be issued in the near future. This legislation will cover both the response contracts that will need to be concluded by operators and the contractors that have been approved by the MSA. 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 four levels of contractors will be designated who will have 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 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, this is likely to result in a very short time period within which operators can conclude such contracts prior to 1 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 1 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 and, logically, per breach.

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 (e.g. IG Club letter or local PRC insurer/PRC bank guarantee) 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 MARPOL 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 Regulation largely mirror those contained in those Conventions, which provide for strict liability of the owner¹ for pollution damage arising from the carriage of persistent oil by sea (1992 CLC) and strict liability of the shipowner² 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 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 PRC MSA in this regard. A further update to members will be provided in due course.

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

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

A Paulson
Director

¹ Defined as the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship.

² Defined as including the registered owners, bareboat charterers, managers and operators.