

June 2018

Environment and pollution

Chinese oil pollution

Background

Regulations that came into effect on 1 March 2010 require owners/operators of

(a) any ship carrying polluting and hazardous cargoes in bulk, or

(b) any other vessel above 10,000 gt

to enter into a pollution clean-up contract with a Maritime Safety Agency (MSA) approved Ship Pollution Response Organisation (SPRO) before the vessel enters a People's Republic of China port.

In accordance with the 'Regulations on Emergency Prevention & Response to Marine Pollution from Ships' issued by the Ministry of Transport of the People's Republic of China (MOT), which came into effect on 1 June 2011, China MSA has issued a notice entitled 'Implementation Details of Ship Pollution Response Contract Management Regulation', in which it sets out the basic guidelines on evaluation and approval procedures of the SPROs.

A MSA-approved SPRO is a clean-up organisation which is found to meet the requirements listed in the guidelines for Capacity Evaluations of SPROs. There are currently four levels of SPRO. Approval for level 1 SPROs is carried out by China MSA, whereas approval of all other levels is carried out by local MSAs. A SPRO will receive a certificate showing that it has been approved by the MSA for clean-up response. This is called a Ship Pollution Response Unit Qualification Certificate. A list of approved SPROs is published on the China MSA [website](#). The list also states the area where the SPRO is authorised to operate.

Sample agreement

On 1 June 2011, China MSA published a model contract entitled 'Sample Agreement' to be used when an owner/operator concludes a clean-up contract with a SPRO. Because the sample agreement dealt with pollution liabilities (in particular, clean-up costs), the International Group (IG) had an interest in ensuring that there was an equitable split of risk/liability between owners/operators and SPROs under the contract and, therefore, made suggestions to China MSA to amend certain sections of the Sample Agreement. This led to additional clauses being developed by the IG and included in a recommended 'IG Sample Contract'. On 14 September 2012, China MSA revised the Regulations, which led to amendments to the Sample Agreement and, accordingly, amendments to the 'IG Sample Contract' (the '[Revised IG Sample Contract](#)').

It is not necessary for an overseas owner/operator to contract directly with a MSA-approved SPRO. Instead, it can choose to employ a legally authorised agent to sign the contract with the SPRO, provided the agency is domiciled in the PRC. Many of these agencies are associated with umbrella SPROs/alliances/consortia/chained organisations and can also be used to supplement the choice of SPRO in ports that are not covered by the umbrella SPROs/alliances/consortia/chained organisations themselves. In these circumstances, the owner/operator will need to sign a letter of authorisation (LOA) authorising the agent to sign on their behalf. The IG has prepared a pro forma LOA, which is widely accepted by the majority of legally authorised agents. The one currently in use has the footer 'IG LOA dated 6 December 2011'. Currently authorised LOAs will remain in force indefinitely or until their fixed expiry date.



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However, it is recommended that members should also sign a service contract with the legally authorised agent. The service contract should contain details of the nature of the services offered and the fees charged.

Changes to SPRO approval system

The MOT published revised Regulations of the People's Republic of China on Emergency Prevention and Handling of Marine Pollution Caused by Vessels (the 'revised Regulations'), which became effective on 12 May 2015.

The revised Regulations have the effect of removing the requirement on SPROs to be approved by the China MSA, and introduce instead a new supervision and examination procedure by the local MSAs. Under the revised Regulations, SPROs are also required to publish their capabilities, resources and service area for access by the public.

The responsibility is on the SPRO, and not the shipowner, to ensure that the SPRO continues to meet its legal requirements and also publishes information for access to the public regarding its capabilities, resources and service area.

Despite the responsibility being on the SPRO, owners/operators are still advised to exercise caution when contracting with SPROs to ensure they satisfy the local MSA's requirements in order to avoid being the subject of penalties.

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