

# **REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA (PRC) ON THE PREVENTION AND CONTROL OF MARINE POLLUTION FROM SHIPS**

**China SPRO Frequently Asked Questions [FAQs] as at 8 January 2014**

**Revised Detailed Rules - Compliance date - 14 September 2012**

## **Summary of changes dated 8 January 2014:**

**Cancellation of booming requirements Q&A 37**

**Temporary suspension of sludge discharge requirements Q&A 9**

**IG Sample Agreement 20 November 2012 remains unchanged for 2014 Q&A 37**

## **Introduction:**

The Regulations which 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 before the vessel enters a PRC port. The Maritime Safety Agency (MSA) of the PRC published Detailed Rules on the implementation of the Administration Regime of Agreement for Ship Pollution Response (Detailed Rules) which came into effect on 1 January 2012. On 14 September 2012 MSA revised the Detailed Rules (Revised Detailed Rules) and the Revised Detailed Rules came into effect on 14 September 2012. At the same time the MSA repealed the following notices:

Notice ([2011] No. 211)  
Supplementary Notice (HCB [2011] No. 359)  
MSA Notice No. 2  
MSA Notice No. 3

As a result of the repeal of these notices, it is no longer necessary for agents and consortia to apply to MSA for approval (See Q&A 26 and 40 below), but China MSA will continue to publish lists of agents and consortia. In addition, the rules on the fixing of retainer fees have been relaxed. The requirements do not apply to Hong Kong or Macau or inland waterways in China PRC except sea ports in Nantong (see Q&A. 53). Neither do they apply to LNG vessels below 10,000 GT, nor to ships which carry petroleum products below 10,000GT, nor do they apply to ships which carry other liquid cargoes below 10,000 GT whilst on a ballast voyage. (Revised Detailed Rules Article 17)

The China MSA also issued Notice (2013) No. 593 in September 2013 that cancels the requirement for booms to be deployed where ships are engaged in bunkering operations or are loading or discharging oil or HNS in bulk. See Q&A.37. This Notice became effective on 1 October 2013.

These FAQs reflect guidance given by the China MSA and are believed to be correct as at 8 January 2014 and replace the FAQs published on 21 December 2012.

## **Ship Pollution Response Organisations (SPROs)**

### **Approval of SPROs**

1. Are the contract requirements now being strictly enforced in all Chinese ports?

From 1 March 2012, the China MSA indicated that there would be strict enforcement of the contract requirements. It is possible that some local MSAs are more rigorously enforcing the requirements than others, but in any event owners are strongly recommended to ensure full compliance with the contract requirements in order to avoid fines and possible delay in port. From 1 January 2013 temporary waivers of the SPRO requirements will not be permitted, although Clause 5 of (HCB [2012] No. 658 (the Notice on Circulating the Detailed Rules on the Implementation of the Regime of Agreement for Ship Pollution Response (revised)) makes provision for alternative arrangements in areas where there are no MSA approved SPROs.

2. What is an MSA approved SPRO?

It is the clean-up organisation approved by the MSA and found to meet the requirements listed in the guidelines for Capacity Evaluations of SPROs, see Appendix 1 of the Revised Detailed Rules. This means that such SPROs are approved to contract with the owner/operator for pollution response for Level 1, Level 2, Level 3 or Level 4. (For an explanation of "levels" see section on "levels for SPROs" see Q&A 46 below). Please note that this does not necessarily mean that the SPRO will operate on terms which conform with the International Group guidelines see Q&A 36, 42, 46 & 49 below.

3. Will a "certificate" be issued by the MSA showing evidence that a SPRO has been approved?

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 (Article 9 of the Revised Detailed Rules of the MSA of the PRC on the implementation of the Administration Regime of Agreement for Ship Pollution Response (Revised Detailed Rules)). Such a certificate is normally valid for 3 years but see Q&A 6, 7 & 8 below.

4. Will a "certificate" be issued by MSA to owners/operators showing that the owners/operators have satisfied the requirement to contract with a SPRO?

No.

5. How will we as the owner/operator know that a SPRO has been approved? A list of MSA approved SPROs is published on the following website in Chinese:

<http://msa.gov.cn/Notice/NotList/00000000-0000-0000-0300-0400000000008>

but see also Q&A 7 & 8 for compliance with the Revised Detailed Rules.

The List also states the area where the SPRO is authorised to operate. Most are only authorised to operate in the port and near shore waters. However some are authorised to operate 20 miles off the shore, some in Shanghai are only authorised to operate within the port area and one is authorised to operate offshore (Tianjin). An unofficial English translation of this list is shown on Club websites and is updated regularly.

The SPRO must be domiciled in mainland China.

6. Do the Revised Detailed Rules introduce new requirements for SPRO qualification?

Yes, see Appendix 1 of the Revised Detailed Rules.

7. How do I know that the SPRO meets the new requirements?

It will be necessary for an owner to check with each individual SPRO that it has contracted with or intends to contract with.

According to Article 10 of the Revised Detailed Rules, a SPRO shall 30 days prior to expiry of the certificate of approval, apply for renewal of the certificate. However, in view of the fact that the Revised Detailed Rules have changed the requirements for qualifying as a SPRO, China MSA has said SPROs must be fully compliant with the requirements of the Revised Detailed Rules by the end of this year (2012). Local MSAs must check to see whether the SPROs are fully compliant with the new requirements by the end of January 2013. Although China MSA will continue to publish a list of approved SPROs there is no set procedure for the owner to be able to check to see if the SPRO's compliance has been reconfirmed. It is the duty of the owner to check that the SPRO has had its status reconfirmed. This requirement is separate from the requirements of Article 12 of the Revised Detailed Rules (see Q&A 8 below). It is expected that a list of SPROs showing that their approval status has been reconfirmed will be published in early February 2013.

8. Will the SPRO's status need to be reconfirmed every year?

Yes. Article 12 of the Revised Detailed Rules requires the SPRO before 31 January each year to submit "the materials for annual record to the original issuing authority, and the material for annual record shall contain contents as required by Article 24. (The materials for the annual record should include material showing that the SPRO had been checked by the local MSA and found to be compliant for the forthcoming year). A level-1 SPRO should also submit these to the local MSA) and also to file material required by Article 24". Article 24 deals with the evaluation after a response.

9. We, as the overseas owner/operator already contract with an approved contractor for sludge removal. Do we need to enter into another contract for clean-up response?

Yes. The requirements for sludge removal are completely separate from clean-up response. There are separate MSA approval procedures for sludge contractors and for clean-up contractors. Owners are therefore recommended to enter into separate contracts for sludge removal and clean up response, even if the contractor is the same for both.

China MSA Notice (2013) No. 593 provides for a temporary suspension of the requirement to discharge sludge, and other pollutants, before leaving a Chinese port, save for departures from the following ports in the Bohai Bay where the discharge requirements remains in place:

- Yingkou (including Bayuquan) –营口（包括鲅鱼圈）
- Jinzhou—锦州
- Huludao—葫芦岛
- Qinhuangdao---秦皇岛
- Jingtang (including Caofeidian)---京唐（包括曹妃甸）
- Huanghua (including Cangzhou)---黄骅(包括沧州)
- Laizhou—莱州
- Longkou—龙口
- Yantai ---烟台
- Dalian---大连

Tianjin Xingang---天津新港

It is understood that the local MSAs within Bohai Bay will require vessels entering one of the above ports to provide the documentation related to sludge discharge and will then decide on a case by case basis whether such discharge is necessary.

### **Signatories to the Clean-Up Agreement**

10. Who should sign the clean-up agreement between the owner/operator and the SPRO?

The contract can be signed by the owner/operator, its branch company, office, agency, the agent of the ship or the Master.

11. Can we, as an owner/operator based in China, sign the contract directly with SPROs? If so, who in our company can sign such a contract?

If you are domiciled in China you may contract directly with a SPRO. However, it is the Legal Representative in your office who must sign the clean-up contract.

12. We, as the overseas owner/operator have a branch company, office or agency. Can we sign the contract directly with SPROs?

Yes if the branch company, office or agency is located in China and has registered with the competent PRC departments to do business in China - see Article 18 of the Revised Detailed Rules which states:

*“The Operator of a ship as referred to in the Regulations means the owner, manager or actual operator of a ship.*

*The operator of a ship may entrust its branch company, office, agency, agent of the ship or the Master to conclude an agreement for ship pollution response with a ship pollution response unit, or it may do so itself.*

*Where the operator of a ship entrusts its branch company, office, agency, agent of the ship or the Master to conclude an agreement for ship pollution response with a ship pollution response unit, such branch company, office, agency or agent of the ship shall possess lawful operation qualification and an authorization document of the operator.”*

13. Who in the branch company or office should sign the contract on behalf of the owner/operator?

The Legal Representative. Where the contract is signed directly by the branch company or office, without an agent, the Legal Representative in your branch company or office must sign the clean-up Agreement if authorised by the owner/operator.

14. Will China MSA publish a list of those entities who have been authorised by the owner/operator to sign SPRO contracts on its behalf?

Yes. It is expected that China MSA will publish a list of those entities who are legally established in China PRC and who have been authorised to sign contracts.

15. We are an overseas owner/operator and do not have a branch company or office in China, will we need an agent to sign on our behalf?

No, it is not necessary. An overseas owner/operator may choose to sign a clean-up contract directly with an MSA approved SPRO or appoint an agent to sign the contract on his behalf.

In addition the master of the ship may sign a contract direct with the SPRO provided he is authorised to do so by the owner/operator (see below Q&A 21). It is recommended that the master only signs the contract with the SPRO in cases of emergency since this could delay completion of departure formalities for the ship in some cases. If the contract is signed through the master of a vessel, the ship's chop or stamp should be stamped on the contract.

16. We are an overseas owner/operator with a branch company/office in China but the branch company/office does not have the resources to conclude contracts with SPROs directly, can we use an agent to sign the contract with SPROs on our behalf? If we can, who in the company should appoint the agent, the overseas head office or the branch office in China?

Yes, an agent may be used. The SPRO contract can be signed either by the Legal Representative of the overseas owner/operator, the Legal Representative of the overseas owner's/operator's branch company or office (but see Q&A 22 below) or by an authorised Agent. If an Agent is to be used the Legal Representative of the overseas owner/operator should appoint the agent using an LOA and in some cases a contract, see Q&A 26 below.

17. Who, in the Head office or branch company or office of the overseas owner/operator, should sign the contract with the SPRO?

The Legal Representative in the relevant office or other person legally authorised to do so. In exceptional circumstances the master may sign the contract on behalf of the owner/operator(see Q&A 15 above).

18. Who should sign the contract on behalf of the SPRO?

The Legal Representative or another person legally authorised to do so by the SPRO.

It is recommended that the SPRO should also put a company chop or stamp on the contract in addition to the signature because company chops/stamps are more important in China than signatures. All the company chops/stamps are filed with local police in China.

19. Should a charterer sign the contract with an approved SPRO?

No. Although the definition of "operator" included in the Revised Detailed Rules refers to the owner, manager or actual operator of a ship, which might conceivably include the charterer, it is the owner or manager of the ship who has primary liability in the case of a spill and it is therefore the owner who should sign the contract with the SPRO and have control of the clean-up operation in the event of a spill not the charterer. Club cover may be prejudiced for a charterer who voluntarily assumes pollution liabilities by contracting with a SPRO.

### **Letter of authorisation (LOA)**

20. If, as an overseas owner/operator without a branch company, office or agency in China, we choose to employ a legally authorised agent to sign the contract with the SPRO, do we also need to sign a contract with that agent?

No but you will need to sign a letter of authorisation (LOA) authorising the agent to sign on your behalf. The International Group has prepared a proforma LOA as shown on the Club's web site.

proforma LOA is known to many legally authorised agents and this is the one in current use. It has the footer “IG LOA dated 6 December 2011”. However, it is recommended that you also sign a contract with the legally authorised agent. Currently authorised LOAs will remain in force indefinitely or until the expiry date fixed.

21. We, as the overseas owner/operator need to put into a port in China in an emergency. We understand we need to conclude a clean-up contract with a SPRO, and that the master can sign the clean-up contract on our behalf. Do we need to provide an LOA to the master?

Yes. You will need to provide authority to the master and it is recommended that this be in the form of an LOA which merely provides that "the master of xxxxx ship" has authority to sign and does not name the actual master, since it is possible that the master may change. See also Q&A 15 and the need for the ship's chop/stamp.

22. We are an overseas owner/operator with a branch company/office in China; do we need to provide special authority to our branch company/office to sign the contract with the SPRO? If so should this be in the form of a LOA and should this LOA be filed?

Yes. See Article 18 of the Revised Detailed Rules (Q&A 12 above). Please note that it is necessary for the branch company or office to register with the competent authorities. Some foreign operators' branch companies or offices in China have already filed details with China MSA and their names are published on the MSA website (msa.gov.cn).

23. Is there a proforma letter of authorisation for such a purpose?

The IG proforma LOA should be used see Q&A 20 above.

24. Who in our company can sign the Letter of Authorisation?

The Legal Representative of the company or other person authorised to sign on behalf of the company.

25. Do we, as owner/operator, need to sign a separate LOA to authorise a person to sign each individual SPRO contract or can the LOA be sufficiently broad to include SPROs in several different ports?

The operator only needs to send and sign one authorisation letter i.e. the same letter can be addressed to and name different agents that have been authorised to perform specific functions (if this is the case), or it can be addressed to one agent who may be authorised to sign contracts with different SPROs in different ports for different vessels. Such agents must be legally established in China. The choice as to whether one or more agents are used depends on the nature of the owner's/operator's operations and trade to China.

### **The agency in China**

26. Can we appoint any agency to act on our behalf?

Yes provided the agency is domiciled in China PRC, is authorised by the owner/operator and is a company legally established in China PRC (Article 18 of the Revised Detailed Rules). There are various companies that offer the service of agency for the purposes of contracting with SPROs. Many of these are associated with umbrella SPRO/alliances/consortia/chained organisations and are used to supplement the choice of SPRO in ports which are not covered by the umbrella SPRO/alliances/consortia/chained organisations. However, at least three have no association with a

particular umbrella SPRO/alliances/consortia/chained organisation. These are CMS, Huatai and Sunic. In the case of many of these companies it will be necessary to sign a service contract with them if you wish to employ them. These contracts contain details of the nature of the services offered and fees charged. However, in some cases a letter of authorisation is considered sufficient. This would be the case if all that is needed is to sign a contract with a single SPRO.

The agency must be domiciled in mainland China and licensed or legally authorised to perform this function. A list of such agencies is published by the China MSA on the China MSA website: <http://msa.gov.cn>. *(Please note that the agent no longer has to meet the requirements relating to approval procedures laid down in MSA Notice No. 3 of 22 December 2011 since this has been repealed.)* An unofficial translation of the full list of agencies with contact details where known is published on the Club websites. When new lists are issued they will be published on the Club websites.

27. Can we appoint the agent of the ship as our agent for the purposes of signing the contract?

Yes, provided the agent is legally established in China and legally authorised by the owner to do so.

### **Electronic documents and signatures**

28. Can the contract with the SPRO and the LOA with the legally qualified agent or other party be signed in electronic form (pdf format) and then sent via email to the appropriate persons or authorities?

Whilst, China MSA has confirmed that this is acceptable there is not yet a system in place to receive electronic communications.

29. To where should the Letter of Authorisation (LOA) be sent?

The LOA should be filed by the legally authorised agent but a copy should be retained on board the ship. It is expected that in due course China MSA will announce an email address where LOAs can be lodged. Until such address is published the LOA should be sent by post/mail to MSA Beijing, c/o the Department of Ship Safety Pollution Prevention Department..

30. To where should the contract with SPROs be sent?

This should be retained on board the ship. There is no longer a requirement to file the contract with the local MSA, although many SPROs are still doing so.

31. Are there any special requirements with regard to electronic signatures on the documentation?

No.

### **Legal Representative**

32. Who is the Legal Representative of the owner/operator?

The "Legal Representative" means the Owner's/Operator's statutorily designated representative pursuant to their Articles of Association, or similar. This person should sign the authorisation letter for appointing an agent and should also sign the contract with that agent if that option is chosen. This is the same legal representative that will be named in the contract. See page 5 of the contract with footer.

33. Who is the Legal Representative of the SPRO?

The "Legal Representative" means the SPRO's statutorily designated representative pursuant to its Articles of Association. Under Chinese law, the Legal Representative may delegate this power to one particular person within the company or to more persons if there are more, such as directors of the board, who may be authorised to sign legal documents in the Articles of Association. If this is the case those directors can also sign the contract. The Legal Representative of a SPRO will be named in the MSA approved list of SPROs. A Legal Representative of the SPRO must be named in the clean-up contract and must sign it.

34. Should the person signing the SPRO contract on behalf of the SPRO be the representative listed in the approved list of SPROs? And should that person be listed as the Legal Representative in the list at the front of the contract?

The same person may be named in the MSA approved SPROs' list and also sign the contract on behalf of the SPRO. However, it is possible that different persons may be authorised to sign.

**The contract**

35. Is there a particular format for the contract?

On 1 June 2011 the MSA published a model contract entitled "Sample Agreement" to be used when the owner/operator concludes a clean-up contract with a SPRO. A new model contract was attached as Annex 2 to the Revised Detailed Rules published on 14 September 2012.

36. Can any of these articles in the contract be changed?

The contract contains two compulsory articles which cannot be changed – Articles 1 and 2. For the remainder of the articles, the parties are free to negotiate terms.

Recommended additional clauses developed by the International Group were included in a recommended IG Sample contract with footer IG Sample Agreement dated 6 December 2011. This has now been revised to take into account the changes in Articles 1 and 2 of the MSA Sample Agreement. The new agreement with footer "IG Sample Agreement dated 20 November 2012" is attached. It should be noted however, that the IG recommended contract does not differ substantially to that previously in use and should therefore continue to be accepted by most SPROs.

Most SPROs will accept the IG sample Agreement wording if requested to do so by the owner. Every effort should therefore be made to get the SPRO to accept the IG sample wording in the first instance.

37. Were any new requirements included in the China MSA 2012 Sample Agreement?

Yes. Article 2.4 which introduces booming requirements for ships engaged in ship-to-ship transfers and Article 2.5 which requires the parties to perform joint emergency exercises with agreed vessels.

At the time, where ships were engaged in ship-to-ship transfers and both fell within the requirement to sign a spill response contract with an approved SPRO, the International Group understood that the two parties should decide between themselves which of the contracted SPROs should follow the booming requirements and which SPRO should remain on standby.

However, this requirement has now been cancelled by means of MSA Notice (2013) No. 593 issued in September 2013, although Article 2.4 of the China MSA 2012 Sample Agreement (which is the



latest version) remains unchanged. Since this Article is mandatory and must still be included in the contract, without amendment, it is recommended that it remains in the contract wording until the China MSA notifies otherwise, and that owners discuss with their contracted SPRO whether the booming is required by the local MSA.

The IG Sample Agreement dated 20 November 2012 also remains unchanged.

38. Can we see from the contract which the relevant local MSA is?

Yes. The first two numbers of the header will show which MSA is involved. The key to the MSAs is shown on page 4 of the Sample Agreement.

39. If we, as the owner/operator are contracting with an umbrella/alliance/consortium/“chained” organisation SPRO who is contracting on behalf of several other SPROs, which number will be inserted?

The number of the lead SPRO. However, when the ship is entering the port where the SPRO is not the lead SPRO, that non-lead SPRO should insert after the lead SPRO number, an additional six digits which represent its port, level and code. (*Please note MSA Notice 2011 No. 3 of 22 December 2011 which required consortia to be approved by the MSA has been repealed.*) Therefore the lead SPRO no longer is required to obtain approval to form a Consortium from China MSA to meet the requirements laid down in that Notice, e.g. that all SPROs in the Consortium are Level 1 SPROs.

A list of umbrella SPROs/alliances/ consortia/“chained” organisations is published on the China MSA website: <http://msa.gov.cn>. An unofficial translation into English of the list is published on Club websites.

40. The agreement refers to Party A and Party B. Where are these terms defined?

The parties are named on page 5 of the revised Sample Agreement. Party A is the owner/operator. Party B is the SPRO.

41. What are the additional clauses recommended in the IG sample contract?

In its IG recommended SPRO Agreement of 6 December 2011, the International Group recommended some additional articles principally in relation to termination and insurance. These articles remain substantially the same in the new IG recommended SPRO Agreement with footer “IG sample Agreement dated 20 November 2012”

The International Group recommends that the owner/operator ensures that a Level 1 SPRO has at least a level of RMB 2 million of insurance to cover its liabilities under the contract (principally Article 6 of the Revised IG sample contract), Level 2: RMB 1.5 million, Level 3 RMB 1 million and Level 4 RMB 500,000 (Article 5). A number of domestic insurers currently provide such cover. PICC has confirmed that it will continue to provide such cover.

It is recommended that the Agreement include a clause permitting the parties to terminate during a response to an incident after discussion with MSA. (This requirement is now contained in Article 23 of the Revised Detailed Rules.)

It is recommended that in Article 8 the parties choose the courts of China to resolve disputes.

42. If we are in doubt on the contract terms, or we receive a contract which is different to the recommended IG Sample Agreement, what should we do?

Contact your Club as entering into a SPRO contract with terms differing from those in the recommended IG Sample Agreement with footer "IG Sample Agreement dated 20 November 2012" could result in Club cover problems.

43. The SPRO is "MSA approved" but does not accept the insurance provision of the supplemental clauses, what should we do?

Contact your Club. If there is a possibility of contracting with a SPRO in a particular port which has insurance and whose contract conforms, the member should opt for the SPRO with insurance. When it is necessary to contract with a SPRO on an urgent basis and none are available with insurance in the area, it would seem reasonable to suggest that the contract should just be for that voyage and not the annual contract. It should be noted that some SPROs do not realise that insurance of the type required, is available in China PRC, although an increasing number of SPROs are now taking out insurance. It is possible to obtain this insurance from PICC Property and Casualty Company Limited. The relevant policy bears the footer "Version 3". Contact details for PICC can be obtained from the Club..Please note that any insurance policies have to be reviewed by the Club.

44. The SPRO is "MSA approved" but does not accept the termination of work provision of the supplemental clauses, what should we do?

Contact your Club. This is a requirement of the Revised Detailed Rules see Q 42 above.

45. Are we, the owner/operator, free to contract with any SPRO approved by the MSA?

Yes, depending on whether the SPRO has the appropriate level of qualification, see Attachment No. 1. SPROs may be qualified for different levels. Level 1 is the highest level of qualification. The criteria for determining the level of SPRO are shown in the guidelines for the capacity evaluations of ship pollution clean units published on 1 June 2011, as amended by Annex 1, Appendix 1 of the Revised Detailed Rules. Please note whilst a SPRO may have MSA approval, in order not to prejudice club cover an owner should ensure before signing a contract with a SPRO that certain conditions are fulfilled, namely that the SPRO's contract is on the International Group revised recommended wording, that the SPRO has acceptable insurance and that the SPRO's clean-up response tariff has been reviewed by ITOPF and found acceptable. If a SPRO offers a contract with wording other than the revised IG wording, fails to provide evidence of acceptable insurance (Q&A 42) or fails to provide an acceptable tariff (Q&A 62) you should contact your club.

Level 1 approval is carried out by China (Beijing) MSA, approval of other levels is carried out by local MSAs.

46. How do we, the owner/operator determine if the cargo that our ship is carrying means that it falls within the scope of the contract requirements?

If the vessel is carrying oil in bulk or a "liquid hazardous cargo other than oil in bulk" then the contract requirements will apply.

The MSA issued a Notice in February 2011 with an accompanying "Catalogue of Cargoes Apt to Cause Pollution during Ocean Carriage" for the purposes of the Regulations and the MSA Sample Agreement.

The Catalogue in Chinese can be found on the following website:

In terms of those cargoes not listed, the Notice states that "*Cargoes that are not listed in the Catalogue but are suspected of apt to cause pollution and cargoes with uncertainty whether apt to cause pollution shall be submitted to an appraisal agency recognized by the Maritime Safety Administration for test and assessment*". It has been confirmed that the list pertains only to cargoes carried in bulk and not those carried in containers. It does include liquefied gases. However, Article 17 of the Revised Detailed Rules provides:

*"Where ships engaged in voyages in inland rivers, ships of less than 10,000 GT carrying liquefied gases, ships in ballast carrying gasoline and empty liquefied cargo carriers enter into or leave from coastal ports of China, or operate in coastal waters of China, such ships shall not be compulsorily required to conclude the agreement for ship pollution response"* [see explanation on page 2 above]

The MSA has confirmed that semi-submersibles and Mobile Offshore Drilling Units (MODUs) must meet the requirements.

47. Annex IV to the former MSA Sample Agreement in some versions refers to Classes 1— 4. Are these the same as Levels?

Yes. See the table, Attachment 1 to these FAQs.

48. Should we, the owner/operator sign the contract on a voyage basis or annual basis or otherwise?

This will depend on how frequently the ship calls at Chinese ports and is left to the discretion of the individual member. However if a member due to an emergency is forced to sign a contract which does not conform with the International Group guidelines, does not show evidence of adequate insurance or for which the response tariff is unreasonably high, it is recommended that this is done on a single voyage basis to allow an opportunity for further negotiation for any subsequent calls. The contract will be valid for the period of time agreed between the operator and the SPRO. The contract contains a clause that allows for it to be agreed for a fixed term of years or months, or on a per voyage basis.

49. Are any local MSAs or SPROs prohibiting owners from signing contracts on a voyage basis and requiring them to sign contracts on an annual basis?

It would be in contravention of the MSA's Revised Detailed Rules (Article 21) if any local MSAs or SPROs prohibited the signature of contracts on a single voyage or annual basis.

50. The area we are trading to does not have any SPRO even though our vessels are required to contract with one under the Revised Detailed Rules, what should we do?

In accordance Clause 5 of the Notice on Circulating the Detailed Rules of the Implementation of the Regime of Agreement for Ship Pollution Response (revised) Hai Chuan Bo [2012] No. 658, the MSA may, as a temporary measure, permit a contract with an approved SPRO from a nearby port to be used where none is available in the relevant port. Once there is an appropriately qualified SPRO in the relevant port, the temporary permission will be revoked. Where no SPRO appears on the list of MSA approved SPROs for the port in question, members are recommended to check with their agents to find out whether temporary measures are in place in that port.

51. Can we, as owner/operator enter into one contract with a specific SPRO but for a number of different vessels calling at the port where the SPRO has been approved?

Yes, the contract allows for this; see Appendix 1 of the recommended revised IG Sample Agreement with footer “IG Sample Agreement dated 20 November 2012”.

52. We, the owner/operator understand that the requirements do not apply to inland waterways in China PRC including ports on the Yangtze River. Is this true?

Yes, with the exception of certain sea ports under the jurisdiction of MSA Nantong. It is understood that the requirements will only apply to the sea ports of Qi Dong (启东) and Ru Dong (如东).

53. We, the owner/operator, are taking delivery of a new vessel in a Chinese port. Will we need to ensure that a contract is in place with an approved SPRO for that vessel for the purposes of its maiden voyage even if it is not calling at a Chinese port in the following year?

Yes.

### **One stop service/umbrella SPROs/alliances/consortia/“chained” organisation**

In accordance with Article 19 of the revised Detailed Rules, a SPRO may contract with the operator of a ship through a “chained” organisation. ,

MSA Notice 2011 No. 3 dated 22 December 2011 required such “chained” organisations to be file the documents with China MSA. This Notice has been revoked. “Chained” organisations no longer have to apply to China MSA for approval.

54. What is the definition of a “chained” organisation?

A “chained” organisation is one established by SPROs through an agreement, and which adopts uniform criteria as to behaviour and service. It is to be expected that all SPROs in a “chained” organisation will adopt the same contract, response tariff and retainer fees.

55. Can we, as the owner/operator, enter into a contract under the umbrella of one SPRO that has been approved in different ports?

In addition, can a SPRO have representatives in various Chinese ports that will be included in one contract for these ports or must each operator contract with different SPROs depending on the port?

Yes. It is possible to contract with one SPRO which has formed an umbrella/alliance/consortium/”chained” organisation with SPROs in other ports. If the umbrella/alliance/consortium/”chained” organisation is fully operational this SPRO, known as the “lead SPRO”, may then contract with an owner/operator on behalf of other SPROs under its umbrella/alliance/consortium/”chained” organisation provided those SPROs are included in the published list of MSA umbrella/alliance/consortia/”chained” organisations (see Q&A 57 below). In any event, the parties under the agreement are the owner/operator and the SPRO in the relevant port for the purposes of operational matters. Whilst it is not compulsory to file a signed contract, Article 25 of the Revised Detailed Rules, requires that a copy of the contract be kept on board the ship and available for inspection.

56. Do we have the names of those umbrella SPROs/alliances/consortia/”chained” organisation?

Yes. A list of MSA-approved umbrella SPROs/alliances/consortia/”chained” organisation is published on the China MSA website: <http://msa.gov.cn>. An unofficial translation into English is to be found on Club websites. This list provides the name of the consortium, the lead SPRO who will

contract on behalf of the other SPROs in the umbrella/alliance/consortium/"chained" organisation, and the members of the consortium. This list varies from time to time as members of the umbrella/alliance/consortium/"chained" organisation are added or removed.

In addition OSRO China (based in Hong Kong) offers a service to facilitate an alliance of SPROs in China. Shenzhen Pearl River Jia Ren Oil Spill Response operates an alliance of three SPROs.

It would seem that the umbrella/alliance/consortium/"chained" organisation SPROs intend to charge the same response tariff for all the SPROs in their individual umbrella. However, the response tariff varies from one umbrella/alliance/consortium/ "chained organisation" to another.

With regard to retainer fees/standby rates, up until now there is no uniform rate. Parties are free to negotiate rates. (See Q&A 60 below).

57. Does a copy of the contract need to be kept on board?

Yes it does. Article 1.3 of the Sample Agreement requires Party A (owner/operator) to keep a copy (of the Agreement) on board all the ships listed in the Agreement and to make sure that the crew are familiar with the Agreement.

58. Does the Agreement require the Party A to keep any other documents on board?

Yes. Article 1.3 of the Sample Agreement also requires Party A to keep on board a copy of the Pollution Response Operation Plan formulated by Party B since it requires the crew to be familiar with this document.

59. What is a Pollution Response Operation Plan (PROP)?

A Pollution Response Operation Plan or PROP is a contingency plan prepared by the SPRO for implementation in the case of a spill. It is reviewed by MSA as part of the SPRO assessment for approval. The PROP must be filed by the SPRO with the local MSA. Before signing the contract the owner should ask the SPRO for a copy, since under Article 1.3 of the clean-up Agreement the PROP should be kept on board and provided to the owner in English and Chinese, and the ship's crew should be familiar with its contents.

### **Retainer/Standby fees**

The retainer/standby fees to be charged by the SPRO will be listed in Appendix II.1 of the IG Sample Agreement. *The earlier Detailed Rules stated that such fees should be reasonable (Article 20 of the Detailed Rule) but this Article has been deleted.*

60. Are retainer fees covered by the Club?

No. This is an operational expense.

61. At which point on the ship's arrival would it be reasonable to expect the SPRO to charge a retainer fee?

Since the SPRO should be on standby from the point at which the ship enters the service zone it would be reasonable to charge the retainer fee from this point. However, there is no law which governs how and when the SPRO can charge retainer fees. This is a matter for individual negotiation.

## **Response tariffs**

Appendix II.2 of the IG Sample Agreement sets out the response tariff, i.e. the costs which will be charged in the case of a spill.

62. How do we determine if the response tariffs are reasonable?

Members should ensure that response tariffs are incorporated into the contracts and should contact their Club if the response tariff has not previously been considered by the International Group.

63. If the agent becomes bankrupt, or disappears, will the contract with the SPRO become invalid?

Whilst the law is not explicit on this point, it is considered likely that if the agent becomes bankrupt or disappears, the contract between the owner/operator and the SPRO will remain valid. However, the contract between the owner/operator and the agent will no longer be valid.

64. Is there an International Group recommended charterparty clause to describe the division of responsibilities between owner and charterer for compliance with the new regulations?

No. However, members should ensure that the terms of the charterparty do not prevent the owner from being the contracting party for the clean-up Agreement (see Q&A 19).

65. Are there any penalties if I do not conclude a contract with a SPRO?

Yes. Article 68 of the Regulations states that failure to conclude a clean-up contract can result in a fine of between RMB 10,000 and RMB 50,000. Article 58 provides that if a ship does not comply with the regulations, the MSA can order rectification of the omission and if this fails they can prevent the ship from entering or departing from a port.

66. Are there any rules which apply to particular provinces or ports?

There are no special rules provided by China MSA to govern a particular province or port, however, in the past, some local MSAs issued their own rules and notices, most of which are in accordance with the published by China Ministry of Transport (MOT) and China MSA. In addition some local rules and notices contained different requirements. However, the recently published HCB [2012] No. 658 does not permit local MSAs to publish rules which are inconsistent with the China MSA published rules.

67. Is there a requirement to provide the ship's details/dynamics to the SPRO under the contract?

Yes, Article 1.1 of the contract requires that the dynamic information of the ship covered by the contract is provided to the SPRO within an agreed time period prior to the covered ship's entry into the service area covered by the SPRO.

## **Check List for contracts**

1. Is the SPRO contract in the IG recommended form? If "No" see Q&A 43.
2. Has the SPRO provided evidence of insurance? Q&A 44.

3. Has the SPRO provided a clean-up response tariff and has it been assessed and finalised by ITOPF? Q&A 62.
4. Does the contract provide for standby/retainer fees? Q&A 61& 62.
5. Is the person signing the contract the Legal Representative of the owner/operator? If not is the person signing on behalf of the owner/operator either the Legal Representative of the registered owner's/operator's branch company or office or, a legally authorised Agent (Q&A 10-19)?
6. Has the owner's chosen agent been provided with an LOA? Q&A 20.

Table of Contracting Requirement

OSRO Level	Vessel carrying oil in bulk		Vessel carrying liquid hazardous cargo other than oil in bulk		Other vessel		
	Within harbor	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	Performing cargo transfer at sea
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 GT 10,000	Below GT10,000 <sup>1</sup>	Within 20 nautical miles	Below GT10,000 <sup>1</sup>	Within 20 nautical miles	GT30,000(incl.GT30,000) to GT50,000	Within 20 nautical miles
Class III	GT600(incl.GT600) to GT 2,000					GT20,000(incl.GT20,000) to GT30,000	
Class IV	Below GT600					GT10,000(incl.GT10,000) to GT20,000	

<sup>1</sup> 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 whilst on a ballast voyage