



## STEAMSHIP MUTUAL

To the Members

December 2012

Dear Sirs,

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

We refer Members to previous circulars on the Regulations of the People's Republic of China (PRC) on the Prevention and Control of Marine Pollution from Ships ("the Regulations") and the requirement that owners/operators of (a) any ship carrying polluting and hazardous cargoes in bulk or (b) any other ship above 10,000 GT enter into a pollution clean-up contract with a Maritime Safety Agency (MSA) approved ship pollution response company (SPRO) before the ship enters a PRC port.

Circular B587 of November 2012 informed Members that the China MSA issued revised Detailed Rules on 14 September on the Implementation of the Administration Regime of Agreement for Ship Pollution Response amending the Detailed Rules previously issued by the China MSA which came into effect on 1 January 2012. Members were informed that a further MSA Notice was expected shortly and that a revised set of FAQs on the revised Detailed Rules would be published once this Notice had been issued.

However, the further MSA Notice has yet to be issued and it is uncertain whether it will be before the end of this month. Since many owners will be signing new spill response contracts with SPROs in the near future, the revised set of FAQs taking account of the revised Detailed Rules have been issued as contained in Annex I to this circular in advance of any further MSA Notice. In the event that a new MSA Notice is issued shortly and it is necessary to amend the attached revised FAQs as a result, a new set of FAQs will be issued.

The China MSA also issued an amended model spill response contract as an annex to the revised Detailed Rules issued on 14 September. As a result, a revised, IG recommended spill response contract was attached to circular B587, the content of which did not differ substantially from the previous IG recommended contract and which was consistent with the MSA's revised Detailed Rules. However, it has since been necessary to amend the IG recommended contract in order to take account of some editorial amendments. The amended IG recommended contract with these changes is contained in Annex II to this circular. The content of the amended IG model contract does not differ substantially from the previous IG recommended contract attached to abovementioned circular.

Any Member requested to agree to a variation of the attached recommended contract is advised to check with the Club to ensure that such variations do not cause the contract to fall outside the scope of the IG Guidelines.

If Members are in any doubt about the contract then it is recommended that they contact their Club before contracting with any SPRO.

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

Yours faithfully,

THE STEAMSHIP MUTUAL UNDERWRITING  
ASSOCIATION (BERMUDA) LIMITED

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附件二

中国海事[2012]版 China MSA [2012]Version

协议编号:

Agreement No.:

## 船舶污染清除协议

(样本)

## Agreement for Ship Pollution Response

(Sample)

中华人民共和国海事局制

Printed by Maritime Safety Administration of the People's Republic of

China

## 协议样本说明

### Introduction to the Sample Agreement

一、为了有效实施船舶污染清除协议管理制度，根据《中华人民共和国船舶污染海洋环境应急防备和应急处置管理规定》第二十九条的规定，制定船舶污染清除协议样本（以下简称本协议）。

1. This Sample Agreement for Ship Pollution Response ( hereinafter referred to as “this Agreement” ) is formulated in accordance with the provisions of Article 29 of the Regulations of the People’s Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships for the purpose of effectively implementing the regime of agreement for ship pollution response.

二、船舶所有人、船舶管理人或者船舶的实际经营人（甲方）与取得相应资质的船舶污染清除单位（乙方），应当根据《中华人民共和国防治船舶污染海洋环境管理条例》第三十三条以及《中华人民共和国船舶污染海洋环境应急防备和应急处置管理规定》、《中华人民共和国海事局船舶污染清除协议管理制度实施细则》的有关规定，在船舶作业前或者进出港口前签订船舶污染清除协议。

2. The owner, manager or actual operator of a ship (Party A) shall, prior to ship’s operation or entering into or leaving from a port, conclude this Agreement with a qualified ship pollution response organization (Party B) in accordance with Article 33 of the Regulations of the People’s Republic of China on Administration of the Prevention and Control of Marine Environment Pollution from Ships, relevant provisions of the Regulations of the People’s Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships and relevant provisions of the Detailed Rules of Maritime Safety Administration of the People’s Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response.

三、本协议中的第一条、第二条权利义务条款为强制性条款，协议双方不得更改其内容。本协议未尽事项，协议双方可另行补充约定，但不得违反国家有关法律、法规、规章规定以及本协议中甲乙双方的基本权利义务的约定。本协议的签订不得影响甲乙双方根据有关法律、法规和规章的规定所享有的包括责任限制等在内的权利以及应承担的义务。

3. The Article 1 and Article 2 on rights and obligations of this Agreement are mandatory and both parties shall not change the contents of these articles. For matters not covered in this Agreement,

the parties may reach a separate supplementary agreement. In no case should such supplementary agreement violate relevant provisions of laws, regulations and rules as well as stipulations in this Agreement concerning both parties' fundamental rights and obligations. The conclusion of this Agreement shall not prejudice the rights and obligations that shall be enjoyed or borne by both parties in accordance with relevant laws, regulations and rules, including the right of limitation of liability.

四、对协议文本中括号中需要选择的内容以及空格部位需要填写的内容，双方应当协商确定。

4. Choices of options with square brackets and the contents to be filled in blank spaces shall be determined by both parties through negotiation.

五、协议采用 14 位数字编号(如 01-1001-2011-0001)，其中，前两位表示直属海事局代码，第 3 位表示船舶污染清除单位资质等级, 分别用 1、2、3、4 对应一、二、三、四级船舶污染清除单位的资质, 第 4 至 6 位表示船舶污染清除单位代码, 由各直属海事局确定, 第 7 至 10 位表示签订协议的年份, 第 11 至 14 位表示协议序号, 由各船舶污染清除单位确定。

5. The Agreement adopts fourteen numbers as its serial number (such as 01-1001-2011-0001), amongst which the first two numbers represent the code of a MSA directly under the P. R. China MSA; the third number represents the qualification level of the ship pollution response organization (SPRO), 1, 2, 3 and 4 respectively represents level-1, level-2, level-3 and level-4; the fourth to sixth number represents the code of the ship pollution response organization and shall be determined by the MSA directly under the P. R. China MSA; the seventh to tenth represents the year in which the Agreement is concluded; the eleventh to the fourteenth represents the sequence number of the Agreement and shall be determined by the SPRO.

各直属海事局代码分别为：辽宁局 01, 天津局 02, 河北局 03, 山东局 04, 江苏局 05, 福建局 06, 上海局 07, 浙江局 08, 广东局 09, 深圳局 10, 广西局 11, 海南局 12。

Codes of MSA directly under the P.R China MSA are as follows: Liaoning MSA: 01, Tianjin MSA: 02, Hebei MSA: 03, Shandong MSA: 04, Jiangsu MSA: 05, Fujian MSA: 06, Shanghai MSA: 07, Zhejiang MSA: 08, Guangdong MSA: 09, Shenzhen MSA: 10, Guangxi MSA: 11, Hainan MSA: 12.

船舶污染清除单位连锁机构应当按照以下规则予以编号：代表其它船舶污染清除单位签订协议的船舶污染清除单位，应当在其签订的协议正本上按照上述要求用本单位的证书编号予以编号，即采用14位数字编号（如01-1001-2011-0001）。为了方便船舶办理进出港口或作业手续，被代表的其它船舶污染清除单位将协议副本报当地海事管理机构备案的，应当在协议副本上加注被代表的其它船舶清除单位的证书编号（如01-1001-2011-0001-07-1007）。协议船舶可持协议正本或副本办理船舶进出港口或作业手续。

For those chain SPROs, the following rules are applicable: For the SPRO representing other SPRO, the 14-number rule as above-mentioned shall be used on the original Agreement, such as 01-1001-2011-0001. To facilitate ship's entering or leaving or operation permission procedures, other SPRO being represented shall make a mark by adding the serial number of SPRO being represented after 14-number above, such as 01-1001-2011-0001-07-1007 on the copy Agreement. Whether the original or copy agreement may be present to MSA for procedures of ship's operation or entering into or leaving from a port.

甲方:

Party A:

住所地:

Domicile:

法定代表人:

Legal representative:

联系人:

Contact person:

通讯地址:

Correspondence address:

电话: \_\_\_\_\_ (24 小时应急电话)\_传真:

Telephone: \_\_\_\_\_ (24 hour emergency number) Fax:

电子信箱:

E-mail:

乙方:

Party B:

资质等级及服务区域:

Qualification level and service area:

住所地:

Domicile:

法定代表人:

Legal representative:

联系人:

Contact person:

通讯地址:

Correspondence address:

电话: \_\_\_\_\_ (24 应急电话)传真:

Telephone: \_\_\_\_\_ (24 hour emergency number) Fax:

电子信箱:

E-mail:

根据《中华人民共和国合同法》、《中华人民共和国海洋环境保护法》、《中华人民共和国防治船舶污染海洋环境管理条例》、《中华人民共和国船舶污染海洋环境应急防备和应急处置管理规定》、《中华人民共和国海事局船舶污染清除协议管理制度实施细则》（以下简称《细则》）等有关法律、法规和规章的规定，甲乙双方经过友好协商，在真实、充分地表达各自意愿的基础上，达成如下协议，并由双方共同恪守。

In accordance with relevant provisions of the Contract Law of the People's Republic of China, the Marine Environment Protection Law of the People's Republic of China, the Regulations of the People's Republic of China on Administration of the Prevention and Control of Marine Environment Pollution from Ships (hereinafter referred to as "the Regulations"), the Regulations of the People's Republic of China on Emergency Preparedness and Response on Marine Environment Pollution from Ships (hereinafter referred to as "the Rules") and the Detailed Rules of Maritime Safety Administration of the People's Republic of China on the Implementation of the Administration Regime of Agreement for Ship Pollution Response ( hereinafter referred to as "the Detailed Rules") and other laws and regulations, Party A and Party B agree to reach the following agreement after equal consultation and on the basis of truthfully and / or completely expressing respective intentions, and the said agreement shall be abided by both Party A and Party B.

## 第一条 甲方的权利义务

### **Article 1 Rights and Obligations of Party A**

1. 甲方应当向乙方提供本协议框架下接受服务船舶（以下简称协议船舶，见附录一）的基本信息，并按照双方约定方式和内容，在协议船舶进入乙方服务区域前的 \_\_\_\_天内，向乙方提供船舶有关动态信息。甲方应当在协议船舶驶离乙方服务区域前\_\_小时，将船舶有关动态信息告知乙方。甲方应当书面确认已收到乙方按照本协议第二条第二款提供的应急值守相关信息。

1. Party A shall provide Party B with basic information of the ships (hereinafter referred to as "the agreed ships" , Appendix I) to receive services under this Agreement, and shall, within\_\_days prior to the agreed ships' entry into Party B' s service area, inform Party B of the agreed ships' dynamic information in accordance with the time, way and contents agreed by both parties. Party A shall, within\_\_hours prior to the agreed ships' departure from Party B's service area, inform Party B of the agreed ships' relevant dynamic information. Party A shall

confirm in written form the receipt of information on relevant emergency standby provided by Party B in accordance with stipulations of paragraph 2 of Article 2 of this Agreement.

2、甲方应当指定联络人，并确保联络人在根据本协议开展应急防备和应急处置过程中保持联系和沟通。甲方需要变更联络人或联系方式的，应当及时书面通知乙方，在得到对方确认后，方可变更。

2. Party A shall make arrangement for her contact persons, and ensure that such contact persons can keep in touch with Party B in the course of the emergency preparedness and response as per this Agreement. Where Party A needs to change its contact person or the contact person's contact detail, such party shall inform the other party by a written notice in a timely manner and no alteration shall be made until receiving the other party's notice for confirmation.

3、甲方应当将本协议副本留存协议船舶上，并确保船上有关人员熟悉协议内容及乙方制定的污染清除作业方案。

3. Party A shall keep a copy of this Agreement on board the agreed ships, and make sure that relevant staffs onboard the ships are familiar with the contents of this Agreement and the contents of Pollution Response Operation Plan formulated by Party B.

4、甲方应当配合乙方按照《细则》规定开展船舶污染应急演练。

4. Party A shall cooperate with Party B to carry out ship pollution emergency exercises in accordance with the provisions of the Detailed Rules.

5、甲方应当在协议船舶发生污染事故时，立即通知乙方并组织开展污染控制和清除行动。甲方应当在行动结束后，配合乙方开展污染清除行动评估。

5. Party A shall, when a pollution accident happens to the agreed ship, inform Party B immediately and coordinate the pollution control and cleanup action. Party A shall, after the termination of such actions, cooperate with Party B to carry out the evaluation on such actions.

## 第二条 乙方的权利义务

### **Article 2 Rights and Obligations of Party B**

1、乙方应当具有海事管理机构批准的资质，并保持相应的应急清污能力。

1. Party B shall possess relevant qualification approved by Maritime Safety Administration (MSA), and maintains its corresponding



capability of pollution response.

2、乙方应当书面确认已收到甲方按照第一条第一款约定提供的协议船舶的基本信息和动态信息,并按照双方约定的时间、方式和内容将乙方应急值守的相关信息告知甲方。

2. Party B shall confirm in written form the receipt of the agreed ships' relevant basic information and dynamic information provided by Party A in accordance with stipulation of paragraph 1 of Article 1, and inform Party A of information on relevant emergency standby provided by Party B in accordance with the time, way, and contents agreed by both parties.

3、乙方应当指定联络人,并确保联络人在根据本协议开展应急防备和应急处置过程中保持联系和沟通。乙方提供的联系电话应当为应急联系电话,并保持值守状态。乙方需要变更联络人或联系方式的,应当及时书面通知甲方,在得到对方确认后,方可变更。

3. Party B shall make arrangement for her contact persons, and ensure that such contact persons can keep in touch with Party A in the course of the emergency preparedness and response as per this Agreement. The telephone number provided by Party B shall be an emergency number, and the number shall be kept attended. Where Party B needs to change its contact person or the contact person's contact detail, such party shall inform the other party by a written notice in a timely manner and no alteration shall be made until receiving the other party's notice for confirmation.

4、乙方应当在接收到协议船舶驶入服务区域的通知后,做好应急值守准备,备妥应急船舶、设备和器材。接到甲方协议船舶驶离服务区域的通知后,乙方可取消应急值守。协议船舶从事油类或散装有毒液体物质过驳作业的,乙方应当按照有关规定为协议船舶布设围油栏,或采取其它适当的替代措施。协议船舶从事油类或散装有毒液体物质装卸作业的,乙方应当确保协议船舶布设围油栏,或采取其它适当的替代措施。

4. Party B shall, upon receiving the notice concerning the agreed ships' entry into the service area, be on emergency standby duty and make sure that the emergency ships, facilities and equipments are standby. After receiving the notice that the agreed ships of Party A have departed from the service area, Party B may cancel such standby status. Among them, in case of the agreed ships engaged in transfers of oil or bulk HNS cargo, Party B shall deploy oil boom around the agreed ships or take other appropriate alternative measures according to relevant requirements, where in case of the agreed ships engaged in

loading/unloading operation of oil or bulk HNS cargo, Party B shall make sure that around the agreed ships oil boom is deployed or other appropriate alternative measures are taken.

5. 乙方应当与甲方选择适当的时机和适当的协议船舶，开展联合船舶污染应急演练。

5. Party B and Party A shall carry out joint ship pollution emergency exercises at appropriate time with the involvement of the appropriate agreed ships.

6、乙方应当在签订本协议时，将其制定的污染清除作业方案中英文文本向甲方提供。

6. Party B shall, when concluding this Agreement, provide Party A with a Chinese and / or English version of the Pollution Response Operation Plan formulated by Party B.

7、协议船舶发生污染事故时，乙方应当在甲方的组织下开展污染控制和清除行动。乙方应当在行动结束后，配合甲方开展污染清除行动评估。

7. Once a pollution accident happens to the agreed ships, Party B shall, under the command of Party A, carry out pollution control and cleanup actions, and shall co-operate with Party A to conduct the evaluation on such actions.

**其它条款** 甲乙双方可就本协议相关的其它事项约定并作为本协议的组成部分。

**Other Articles** Both parties may conclude other articles as part of the Agreement.

### **第三条 费用**

#### **Article 3 fees and expenses**

1、甲方应按照双方约定的收费标准（见附录二（1））和支付方式向乙方支付船舶污染清除协议费用，用于应急防备的合理支出。

1. Party A shall pay Party B the ship pollution response agreement fees in accordance with the rates (Appendix II.1) and mode of payment agreed by both parties for the purposes of reasonable cost of emergency preparation.

2、协议船舶发生污染事故，乙方根据本协议开展污染控制和清除行动，甲方应当根据附录二（2）的费率向乙方支付实际发生

的合理的污染控制和清除费用。

2. If Party B carries out pollution control and cleanup actions in accordance with this Agreement after a pollution accident happens, Party A shall pay Party B the actual and reasonable expenses incurred in such actions based on the tariff set out in Appendix II.2.

3、为保证污染控制和清除行动顺利进行，如果乙方开展的污染控制和清除行动超过了30个工作日，乙方可以要求甲方就已经开展的污染控制和清除行动，每隔30个工作日向乙方支付一笔临时费用。临时费用应在乙方向甲方开具临时费用账单后30个工作日内汇到乙方指定账户，并从双方最后结算的污染控制和清除费用中扣除。

3. When a pollution control and cleanup action lasts more than 30 working days, to ensure the smooth performance of the actions by Party B, Party B may demand Party A to pay an interim sum every 30 working days for the actions that has been carried out by Party B. This interim payment shall be remitted to the account appointed by Party B within 30 working days after Party B issues the invoice to Party A and such interim payment should be deducted from the final invoice.

4、在污染控制和清除行动结束后，乙方应向甲方提交已产生的费用清单和证明这些费用的文件，这些文件应附有支出款项的票据以及支付给具体人员的凭证。甲方应于30个工作日内向乙方支付双方没有争议部分的费用；对双方存在争议的费用，应乙方要求，甲方将提供适当的担保，担保形式可以为互保协会的担保函。任何产生的争议应根据双方在第7条中所约定的程序解决。

4. Upon terminating the pollution control and cleanup actions, Party B shall present to Party A a breakdown and preliminary evidence for the expenses incurred, such preliminary invoice shall be fully supported by attaching bills showing money expended or details of payment to personnel. Party A shall within 30 working days pay the undisputed sum and provide an appropriate security for the sum in dispute if required, such security to be in the form of a letter of undertaking from a P&I Club if offered. Any dispute between the parties shall be resolved in accordance with the agreed procedure in Article 7.

## 第四条 保密义务

### Article 4 Confidentiality Obligation

本协议签订后，无论本协议是否失效、终止，甲乙双方应当负有保守对方提供的所有资料、信息秘密的义务。除了海事管理机构等可依法取得该资料、信息的政府主管机关或者双方可以向其各自保险人披露本协议之外，甲乙双方不得向其它第三方公开资料、信息内容。

After conclusion of this Agreement, no matter whether this Agreement is in

effect or not, or no matter whether this Agreement is terminated, both parties are obliged to keep all the materials and information provided by the other party confidential. Except that both parties may disclose the Agreement to their respective insurers and such government authorities as the MSA may obtain the said materials and information in accordance with law, both parties shall not make in public the contents of such materials and information.

## 第五条 生效、变更和终止

### Article 5 Entry into Effect, Modification and Termination of Agreement

1、本协议有效期为：

【  】 固定期限为\_\_年（或月）；

【  】 协议船舶的\_\_个航次（每一航次时间另行约定）。

本协议自双方签字盖章后生效。

1. The validity of this Agreement is:

[  ] Fixed term of\_\_years (or months);

[  ]\_\_voyages of the agreed ships (the time of each voyage shall be determined by separate agreement).

This Agreement shall enter into effect as of signed and stamped by both parties.

2、未发生溢油时的合同终止。甲乙双方如需变更或终止协议，甲方或乙方应当按照约定方式提前 30 天通知对方，经双方协商一致后以书面形式确认。但是，协议船舶进入乙方服务区域后，任何一方不得变更或终止本协议。

应急行动的终止：即使有本合同其他条款的约定，在与海事局协商后，合同的任何一方都有权在根据本合同通知另一方后随时终止清污服务。乙方在接到此类通知时应停止提供清污服务或任何与之有关的活动，并进行必要的遣散活动，而甲方则应该根据第 3.4 条之规定支付所有未付的费用。

#### 2. Termination of Agreement when not employed during spill

In case Party A or Party B needs to modify or terminate the Agreement, Party A or Party B shall give 30 days' notice to the other party in the agreed way, and such modification or termination shall be confirmed in writing by both parties' consensus intention through negotiation. However, after the agreed ship(s) has (have) entered into the service area of Party B, neither party shall modify or terminate this Agreement.

Termination of Response: Notwithstanding any other term of this Contract, each of the Parties shall be entitled at any time to terminate the spill response services, or any portion thereof, being provided under this Contract by giving notice to the other, after discussion with MSA. Upon such notice

being provided, Party B shall cease to provide the spill response services or any portion thereof, and shall carry out any required demobilisation activities, and Party A shall pay all outstanding fees in accordance with Article 3.4. “

3、甲乙双方终止本协议，或者因一方违约导致本协议无效的，应当立即向海事管理机构报告。

3. Where both parties terminate this Agreement, or where this Agreement becomes invalid due to one party's breach of this Agreement, it shall be reported to MSA immediately.

4. 保险：甲方保证有投保足够的互助保险以满足本合同下的责任。乙方应保持为其在本合同下的责任不低于以下保额的保险，并提供保险详情，包括保单复印件：

一级污染清除单位：人民币 200 万元

二级污染清除单位：人民币 150 万元

三级污染清除单位：人民币 100 万元

四级污染清除单位：人民币 50 万元

4. *INSURANCE: Party A warrants that it has adequate P&I insurance to meet its liabilities under the contract. Party B shall maintain insurance to cover its liabilities under the contract for a minimum sum of:*

*Level 1 SPRO: RMB 2,000,000.00 (RMB 2 million)*

*Level 2 SPRO: RMB 1,500,000*

*Level 3 SPRO: RMB 1,000,000*

*Level 4 SPRO: RMB 500,000*

and shall provide details of the insurance policy including a copy of the cover note.

## 第六条 违约及侵权责任

### Article 6 Liability for Breach of Contract and Tort

1、甲乙任何一方因违反本协议的约定或在履行本协议的过程中因过错给对方造成损失的，应根据本协议向对方承担违约责任或依照有关法律的规定向对方承担侵权责任。

1. Where a Party causes any damage or loss to the other Party due to its breach of this Agreement or fault in the course of performing this Agreement, such Party shall, in accordance with this Agreement, bear the liability for breach of contract to the other Party, or be liable to the other Party for infringement of rights in accordance with provisions of relevant laws.

2、在履行本协议的过程中，甲乙双方造成第三人损害，或者第三人造成甲方或乙方损害的，应当依照有关法律的规定承担相应的责任。

2. Where Party A or Party B causes any damage or loss to a third party due to performance of this Agreement, or where a third party causes any damage or loss to Party A or Party B, the party concerned shall bear corresponding liability in accordance with provisions of relevant laws.

3、甲方或者乙方因执行船舶污染事故应急指挥机构或者海事管理机构的指令或要求而未能履行或未能完全履行本协议约定的义务的，可免除其承担违约责任，但是，对于乙方根据本协议已经履行的污染控制和清除行动的部分，甲方应当根据第三条的约定支付污染控制和清除费用。

3. Where Party A or Party B fails to perform or completely perform the obligations under this Agreement due to executing the orders or requirements of Ship Pollution Accident Emergency Commanding Organ or MSA, such party may be exempted from undertaking the liability for breach of contract. However, Party A shall, in accordance with the stipulation of Article 3 of this Agreement, pay Party B the expenses incurred for pollution control and cleanup actions that Party B has actually conducted in accordance with this Agreement.

## 第七条 适用法律及管辖

### Article 7 Applicable Law and Jurisdiction

1、本协议及其项下争议适用中华人民共和国法律。

1. Laws of the People's Republic of China shall be applied to this Agreement and disputes arising from this Agreement.

2、双方对本协议及其项下的争议，由双方协商解决；协商不成的，按照下述方式解决：

申请海事管理机构调解；

提交中国海事仲裁委员会,按照申请仲裁时该会现行有效的仲裁规则在\_\_\_\_\_（地点）进行仲裁；

依法向中华人民共和国有管辖权的法院起诉。

2. Any and all disputes arising from this Agreement shall be solved through both parties' mutual negotiation; where no resolution is reached after negotiation, such dispute shall be resolved in accordance with the following:

Submit such dispute to MSA for mediation;

Submit such dispute to the China Maritime Arbitration Commission for arbitrating at\_\_\_\_\_(location) in accordance with the arbitration rules effective at the time of arbitration;

Bring an action before a court in the People's Republic of China that has jurisdiction.

**第八条** 本协议未尽事项，由双方约定后签订补充协议（见附录三）。

**Article 8** With respect to matters not covered in this Agreement, both parties may conclude a supplementary agreement. (Appendix III)

**第九条 协议份数**

**Article 9 Copy of this Agreement**

本协议正本一式\_\_份，具有同等法律效力，甲方持\_\_份，乙方持\_\_份，一份由乙方及时提交当地港口的海事管理机构以保证船舶进港、作业或离港不延迟。

This original Agreement is in\_\_\_\_ ; each copy bears the same legal effect. Party A holds\_\_copy (copies), Party B holds\_\_copy (copies), and a copy of the agreement shall be submitted by Party B to the local MSA at the port in such a timely fashion that the vessel's entry, operation or departure will not be delayed.

甲方(盖章):

Party A (seal):

法定代表人/委托代理人(签名):

Legal representative/Entrusted representative: (signature)

年 月 日

Date:

乙方(盖章):

Party B (seal):

法定代表人/委托代理人(签名):

Legal representative/Entrusted representative: (signature)

年 月 日

Date:

附录一:

**协议船舶名单**

船名	IMO 编号/船舶呼号	其它需要说明的事项

## Appendix I:

### List of the Agreed Ships

Name of vessel	IMO number/ Call sign	Other matters to be Remarked

附录二（1）：船舶污染清除协议费用

**Appendix II.1 Ship Pollution Response Agreement Fee**

附录二（2）：船舶污染清除费费率

**Appendix II.2 Ship Pollution Response Expense Tariff**

附录三：补充协议（如有）

**Appendix III Supplementary Agreement (if any)**

第 1 条第 1 项和第 2 条第 2 项规定的表格

**Insert boxes for Article 1.1 and Article 2.2**

支付方式

**Mode of payment**



**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 21 December 2012**

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

**Summary of changes:**

- No requirement for agents to go through the previous approval procedure before applying to MSA to be listed, see Q&A 26.
- No requirement for consortia to apply to MSA for approval, see Q&A 40.
- Confirms there is no requirement for a contract in Inland Waterways except sea ports in Nantong, see Q&A 53.
- Removes the requirement to contract in respect of certain vessels below 10,000 gt, see Q&A 47.
- No requirement to file contract with local MSA, see Q&A 30 and 56.
- Amends criteria and procedure for MSA approval of SPROs, see Q&A 6.
- Provides details for annual application by SPROs for reconfirmation of approved status as SPRO, see Q&A 8.
- Amends Article 18 of Detailed Rules to make clear that contract can be signed by an owner/operator located outside China PRC, see Q&A 15.
- Permits contract to be signed by any agent, branch company or office legally established in China PRC and legally authorised by the owner/operator to sign the contract, see Q&A 12.
- Amends the proforma MSA Sample Agreement, see Q&A 35-38.

**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)

These FAQs reflect guidance given by the China MSA and are believed to be correct as at 21 December 2012 and replace the FAQs published on 21 March 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:

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 the Club's website 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 approval procedures for sludge contractors and for clean-up contractors.

### **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 website](#). The 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's website.](#) When new lists are issued they will be published on the Club's website.

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, for the attention of Mr Xu Shiming or Mr E Hailing.

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.

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.

37. Have any new requirements been included in the new MSA 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. Where ships are engaged in ship-to-ship transfers and both fall within the requirement to sign a spill response contract with an approved SPRO, the International Group understands 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. It is likely that the fees charged by the two SPROs as a result will be different, but this will be subject to negotiation.

38. If I have signed a long-term contract with a SPRO, do I have to change the contract in view of the changes introduced by the Revised Detailed Rules?

As stated above the substance of the sample agreement has not changed substantially from the earlier contract. China MSA has confirmed that it will not be necessary for owners to change their existing long-term contracts with SPROs. However, any new contracts should be in the revised format introduced by the Revised Detailed Rules.

39. 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.



40. 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 the Club's website.](#)

41. 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.

42. 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.

43. 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.

44. 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 2" Contact details for PICC can be obtained from the Club. Ping An are also developing a policy. Please note that any insurance policies have to be reviewed by the Club.

45. 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.

46. 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.

47. 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:

<http://msa.gov.cn/Notice/NotList/00000000-0000-0000-0300-040000000006>

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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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”.

53. 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).

54. 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.

55. 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.

56. 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.

57. 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 the Club's website](#). 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).

58. 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.

59. 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.

60. 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.*

61. Are retainer fees covered by the Club?

No. This is an operational expense.

62. 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.

63. 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.

64. 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.

65. 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).

66. 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.

67. 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.

### **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? 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