

【Title】 Measures of the People's Republic of China for the Implementation of Civil Liability Insurance for Vessel-induced Oil Pollution Damage [Effective]

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The Measures of the People's Republic of China for the Implementation of Civil Liability Insurance for Vessel-induced Oil Pollution Damage, which have been adopted at the 6th executive meeting on July 9, 2010, are hereby promulgated and shall come into force on October 1, 2010.

Minister Li Shenglin

August 19, 2010

Measures of the People's Republic of China for the Implementation of Civil Liability Insurance for Vessel-induced Oil Pollution Damage

Chapter I General Provisions

Article 1 These Measures are formulated in accordance with the Marine Environment Protection Law of the People's Republic of China, the Maritime Law of the People's Republic of China, the Regulation of the People's Republic of China on the Prevention and Control of Vessel-induced Pollution to the Marine Environment, and other laws and administrative regulations as well as the relevant international treaties concluded or acceded to by China for purposes of improving the compensation mechanism for vessel-induced pollution incidents, and establishing a civil liability insurance system for vessel-induced oil pollution damage.

Article 2 For the vessels carrying oil substances and vessels carrying non-oil substances with a gross tonnage of not less than 1,000 gross tons which are navigating within the sea areas of the People's Republic of China, the owners thereof shall buy civil liability insurance for vessel-induced oil pollution damage or obtain corresponding financial guarantee in accordance with these Measures.

The commercial insurance institutions and the mutual-aid insurance institutions undertaking civil liability insurance for vessel-induced oil pollution damage shall comply with these Measures.

Article 3 The transport administrative department under the State Council shall be responsible for the unified management of the work of civil liability insurance for vessel-induced oil pollution damage throughout the country.

The maritime administrative institution of the state shall be responsible for organizing and implementing the work of civil liability insurance for vessel-induced oil pollution damage throughout the country.

The coastal maritime administrative institutions at all levels shall be responsible for specifically implementing the work of civil liability insurance for vessel-induced oil pollution damage according to their respective duties.

Chapter II Civil Liability Insurance for Vessel-induced Oil Pollution Damage and the Limits Thereof

Article 4 The vessels navigating within the sea areas of the People's Republic of China shall buy civil liability insurance for oil pollution damage or obtain other financial guarantee in accordance with the following provisions:

(1) Where a vessel carrying persistent oil substances in bulk buys civil liability insurance for oil pollution damage, the insured subject matter shall cover the pollution damage caused by the persistent oil substances;

(2) Where a vessel carrying non-persistent oil substances with a gross tonnage of 1,000 gross tons or more buys civil liability insurance for oil pollution damage, the insured subject matter shall cover the pollution damage caused by the non-persistent oil substances and the pollution damage caused by bunker oil;

(3) Where a vessel carrying non-oil substances with a gross tonnage of 1,000 gross tons or more buys civil liability insurance for oil pollution damage, the insured subject matter shall cover the pollution damage caused by bunker oil; and

(4) Where a vessel carrying non-persistent oil substances with a gross tonnage of less than 1,000 gross tons buys civil liability insurance for oil pollution damage, the insured subject matter shall cover the pollution damage caused by non-persistent oil substances.

Article 5 The civil liability insurance for oil pollution damage bought or other financial guarantee obtained by the vessels carrying persistent oil substances in bulk and navigating within the sea areas of the People's Republic of China shall not be less than the following limits:

(1) For a vessel of less than 5,000 gross tons, the limit shall be 4.51 million Special Drawing Rights (SDR); and

(2) For a vessel of 5,000 gross tons or more, in addition to the amount as specified in the preceding paragraph, 631 SDR shall be added for each additional gross ton. However, the total amount shall not exceed 89.77 million SDR in any case.

Article 6 The civil liability insurance for oil pollution damage bought or other financial guarantee obtained by the vessels carrying non-persistent oil substances and the vessels carrying non-oil substances with a gross tonnage of 1,000 gross tons or more which are navigating within the sea areas of the People's Republic of China shall not be less than the following limits:

(1) For a vessel of more than 20 gross tons but less than 21 gross tons, the limit shall be 27,500 SDR;

(2) For a vessel of more than 21 gross tons but less than 300 gross tons, in addition to the amount as specified in the sub-paragraph (1), 500 SDR shall be added for each additional tonnage;

(3) For a vessel of 300 up to 500 gross tons, the limit shall be 167,000 SDR;

(4) For a vessel of 501 up to 30,000 gross tons, in addition to the amount as specified in the sub-paragraph (3), 167 SDR shall be added for each additional tonnage;

(5) For a vessel of 30,001 up to 70,000 gross tons, in addition to the amount as specified in the sub-paragraph (4), 125 SDR shall be added for each additional tonnage; and

(6) For a vessel of 70,001 gross tons or more, in addition to the amount as specified in the sub-paragraph (5), 83 SDR shall be added for each additional tonnage.

Article 7 For vessels engaged in freightage between the ports of the People's Republic of China or in costal operations, the limits for the civil liability insurance for oil pollution damage bought or other financial guarantee obtained shall be computed in accordance with 50% of the limits as prescribed in Article 6.

Chapter III Civil Liability Insurance Institutions for Vessel-induced Oil Pollution Damage

Article 8 The vessels of Chinese registry shall buy civil liability insurance for vessel-induced oil pollution damage from the insurance institutions selected and published by the maritime

administrative institution of the state, or obtain letters of guarantee, letters of credit or other financial guarantee issued by the insurance institutions selected and published by the maritime administrative institution of the state, domestic banks or other financial institutions.

Article 9 A mutual-aid insurance institution undertaking civil liability insurance for vessel-induced oil pollution damage for vessels of Chinese registry shall meet the following requirements:

- (1) It is registered in China or has a representative office or agency in China;
- (2) It has more than 100 million U.S. dollars of net funds or the net fund per ton exceeded 3 U.S. dollars; and
- (3) The insurance clauses are consistent with the relevant provisions of the laws, administrative regulations and rules of China, and the international treaties ratified or acceded to by China.

Article 10 A commercial insurance institution selling civil liability insurance for vessel-induced oil pollution damage for vessels of Chinese registry shall meet the following requirements:

- (1) It is established upon approval of the insurance regulatory authority under the State Council, has obtained an insurance business permit, and has registered with the administrative organ for industry and commerce and obtained a business license;
- (2) Its net assets in the last year exceeded 700 million RMB;
- (3) Its solvency in the last year exceeded 100%; and
- (4) The insurance clauses are consistent with the relevant provisions of laws, administrative regulations and rules of China, and the international treaties ratified or acceded to by China.

Article 11 An insurance institution selling civil liability insurance for vessel-induced oil pollution damage for vessels of Chinese registry shall submit the following materials to the maritime administrative institution of the state prior to October 15 of each year:

(1) a registration certificate, business license, insurance business permit, other legal certificates of incorporation and other evidential materials, and, the evidential materials for establishment of a representative office or agency within China if it is an overseas mutual-aid insurance institution; if the business license, registration certificate or other legal certificates of incorporation provided by the overseas mutual-aid insurance institution are photocopies, the photocopies shall be notarized by a notarization institution established according to law in the country or region where the insurance institution is located and be authenticated by the embassy or consulate of China in such country;

(2) the balance sheet and income statement in the last year audited by the certified public accountants;

(3) the solvency for civil liability insurance for vessel-induced oil pollution damage in the last year (only for commercial insurance institutions);

(4) the gross tonnage of the civil liability insurance for vessel-induced oil pollution damage sold in the last year;

(5) the list of the vessels of Chinese registry underwritten in the last year;

(6) the claim settlement for the vessels of Chinese registry underwritten in the last year;

(7) the sample of the insurance contract on civil liability for vessel-induced oil pollution damage;

(8) the person in charge, contact person and contact information on the business of civil liability insurance for vessel-induced oil pollution damage; for an overseas mutual-aid insurance institution, the person in charge, contact person and contact information on its representative office or agency within the People's Republic of China; and

(9) other background materials required to be explained.

Article 12 The maritime administrative institution of the state shall timely check the materials submitted by the insurance institutions, determine the insurance institutions that conform to these Measures after soliciting the opinion of the insurance regulatory authority under the State Council, and announce them to the public prior to November 30 of each year.

Chapter IV Certificate of Civil Liability Insurance for Vessel-induced Oil Pollution Damage

Article 13 After buying civil liability insurance for vessel-induced oil pollution damage or obtaining any other financial guarantee, a vessel of Chinese registry shall apply to the maritime administrative institution directly under the Ministry of Transport of the place where its port of registry is located for handling corresponding certificate of civil liability insurance for vessel-induced oil pollution damage in accordance with the following provisions:

(1) A vessel carrying persistent oil substances shall handle a Certificate of Civil Liability Insurance for Oil Pollution Damage or of Any Other Financial Guarantee;

(2) A vessel carrying non-persistent oil substances with a gross tonnage of 1,000 gross tons or more shall handle a Certificate of Civil Liability Insurance for Bunker Oil Pollution Damage or of Any Other Financial Guarantee and a Certificate of Civil Liability Insurance for Non-persistent Oil Pollution Damage or of Any Other Financial Guarantee;

(3) A vessel carrying non-persistent oil substances with a gross tonnage of less 1,000 gross tons shall handle a Certificate of Civil Liability Insurance for Non-persistent Oil Pollution Damage or of Any Other Financial Guarantee; and

(4) A vessel carrying non-oil substances with a gross tonnage of 1,000 gross tons or more shall handle a Certificate of Civil Liability Insurance for Bunker Oil Pollution Damage or of Any Other Financial Guarantee.

Article 14 Where a vessel of Chinese registry applies for handling a certificate of civil liability insurance for vessel-induced oil pollution damage, it shall submit the following materials to the maritime administrative institution:

(1) an application;

(2) effective documents of civil liability insurance for vessel-induced oil pollution damage or other financial guarantee testimonials; and

(3) certificate of registry of the vessel.

Article 15 The maritime administrative institution shall examine the application materials, and issue corresponding certificate of civil liability insurance for vessel-induced oil pollution damage to the vessel within seven workdays upon acceptance if these Measures are complied with.

The valid period of a certificate of civil liability insurance for vessel-induced oil pollution damage shall not exceed the time limit of the insurance contract on civil liability for vessel-induced oil pollution damage or other financial guarantee testimonials.

Article 16 A certificate of civil liability insurance for vessel-induced oil pollution damage shall not be forged or altered, and shall be carried with the vessel for inspection by the maritime administrative institutions.

Where a certificate of civil liability insurance for vessel-induced oil pollution damage is lost, the vessel shall give reasons in writing, attach the relevant certification documents and apply to the original issuing authority for reissuance.

Article 17 A vessel of foreign registry navigating within the sea areas of China shall conform to the following requirements:

(1) For a vessel to which the International Convention on Civil Liability for Oil Pollution Damage (1992) shall apply, it shall hold a Certificate of Civil Liability Insurance for Oil Pollution Damage or of Any Other Financial Guarantee issued by the competent authority of a contracting State or an institution authorized by it.

(2) For a vessel to which the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001) shall apply, it shall hold a Certificate of Civil Liability Insurance for Bunker Oil Pollution Damage or of Any Other Financial Guarantee issued by the competent authority of a contracting State or the institution authorized by it.

(3) For a vessel carrying non-persistent oil substances with a gross tonnage of less than 1,000 gross tons, it shall hold effective documents of civil liability insurance for non-persistent oil pollution damage or other financial guarantee testimonials.

Article 18 The maritime administrative institutions shall strengthen the inspection of the certificates and documents of civil liability insurance for vessel-induced oil pollution damage or other financial guarantee testimonials.

Chapter V Legal Liability

Article 19 Where a vessel falls under any of the following circumstances, the maritime administrative institution shall order it to make rectifications, and impose a fine of 10,000 but up to 50,000 yuan. If it refuses to make rectifications, the maritime administrative institution shall order it to suspend the navigation, prohibit it from entering or leaving the port or making a transit stop, and impose a fine of 50,000 up to 250,000 yuan:

(1) The owner of the vessel navigating within the sea areas of China fails to buy civil liability insurance for vessel-induced oil pollution damage or to obtain other financial guarantee in accordance with the relevant provisions;

(2) The amount of civil liability insurance for oil pollution damage bought or the amount of other financial guarantee obtained by the owner of the vessel is less than that as prescribed in these Measures.

The following circumstances shall be deemed as failure to buy civil liability insurance for vessel-induced oil pollution damage or to obtain other financial guarantee in accordance with the relevant provisions:

- (1) failing to obtain corresponding certificate of civil liability insurance for vessel-induced oil pollution damage;
- (2) forging or altering the certificate of civil liability insurance for vessel-induced oil pollution damage;
- (3) the certificate of civil liability insurance for vessel-induced oil pollution damage held by the vessel has expired; or
- (4) the certificate of civil liability insurance for vessel-induced oil pollution damage held by the vessel is inconsistent with the actual situation of the vessel.

Where a certificate of civil liability insurance for vessel-induced oil pollution damage is forged or altered, the maritime administrative institution shall revoke the issued certificate of civil liability insurance for vessel-induced oil pollution damage.

Article 20 Where an insurance institution engaged in civil liability insurance for vessel-induced oil pollution damage falls under any of the following circumstances, the maritime administrative institution shall not determine or announce it within three years from the year following the year when the violation is found.

- (1) refusing execution upon expiry of the enforcement period as prescribed in an effective court judgment, arbitral award or arbitral mediation record, and failing to make compensation for the insured vessel; or
- (2) submitting false materials to the maritime administrative institution.

Article 21 Where any of the maritime administrative personnel abuses his power, practices favoritism, neglects his duties, or commits a gross misfeasance, the entity where he works or the authority at the next higher level shall impose an administrative sanction upon him. If a crime is constituted, he shall be subject to criminal liability according to law.

Chapter VI Supplementary Provisions

Article 22 The term “more than” as mentioned in these Measures shall include the figure following it, and the term “less than” as mentioned therein shall not include the figure following it.

Article 23 The following terms in these Measures mean:

“Oil” means any kind of oil and its refined products.

“Persistent oil” means any persistent hydrocarbon mineral oil such as crude oil, bunker oil, heavy diesel oil and lubricants.

“Non-persistent oil” means any oil other than persistent oil.

Article 24 These Measures shall come into force on October 1, 2010.

For the vessels carrying persistent oil substances in bulk with a gross tonnage of not more than 1,200 gross tons and navigating within the sea areas of the People's Republic of China, the system of civil liability insurance for oil pollution damage for them shall be implemented one year after these Measures come into force.