



**A Brief Analysis
on the Regulations of the Supreme People's
Court on Trial of Dispute Cases over Damages
for Ship-induced Oil Pollution**

Yang & Lin Co. Law Firm
Judy Lin

Background

- ❖ The Regulations on Trial of Dispute Cases over Damages for Ship-induced Oil Pollution (the “Regulations”) was announced by the Supreme Court On 4 May 2011.
- ❖ The “Regulations” has come into force on 1st July, 2011.

The scope of application


- ❖ The “Regulations” only applies to ship-induced oil pollution accident and does not apply to other marine pollution.
- ❖ The definition of ships in Article 31 of the “Regulations”, “Ship” means sea-going ships used for non-military and non-public service purposes, and other mobile units, including oil tankers and non-oil tankers navigating in the international lines and domestic lines;
- ❖ The non-persistent oil as cargo is not included in the scope of application.

Scope of compensation for oil pollution damage

- ❖ The ship-owners' oil pollution damage compensation liabilities cover the losses and expenses incurred by adoption of preventive measures to mitigate the pollution damage, other property loss and loss of income caused by oil pollution as well as reasonable expenses for environmental restoration-----Articles 9-17 of the “Regulations”

❖ **How to divide the liability when the damage caused by oil leakage from two or more ships?**

- ❖ if the respective damage can be reasonably divided based on factors, the owners of the leaking ships shall bear the several liability;
- ❖ if the respective damage cannot be reasonably divided, they shall bear joint and several liability.
- ❖ if the liability could be apportioned, the compensation liability shall be borne by each ship as per their liability proportion; but if the liability proportion could not be ascertained, the compensation liability shall be equally borne by each owner.



❖ **When will the owner of the oil-leaking ship bear the full liability?**

- ❖ For the oil pollution damage caused by oil leakage as a consequence of a “both to blame” collision of ships, the aggrieved party may request the owner of the oil-leaking ship to bear full liability.

What is the Centralized Jurisdiction?

- ❖ The compensation claims regarding pollution damage incurred by persistent oil carried by oil tankers, such case shall be subject to the centralized jurisdiction of the maritime court at the place where the oil pollution incident occurs.
- ❖ In case the place where the oil pollution incident occurs is beyond the territorial sea of China but such pollution incident has caused pollution damage to the territorial sea of China, thus such cases shall be under the jurisdiction of the maritime court at the place where the damage result occurs or the place where pollution preventive measures are taken.

How the “Regulations” perfects the Procedures of Limitation of Liability?

❖ **The Requirement for Limitation of Liability**

- ❖ If the ship-owners, the oil pollution liability insurers or the financial guarantors claim for limiting their compensation liabilities in respect the oil pollution damage caused by oil tankers carrying persistent oil Limitation Fund for oil pollution damage shall be constituted. (Article 21)

How the “Regulations” perfects the Procedures of Limitation of Liability?

- ❖ **The Situation of the loss of limitation of liability**
- ❖ Article 6 of the “Regulations” stipulates in case that it is proved that the oil pollution damage was caused by the ship-owner’s intention or due to his careless act or omission done with the knowledge that such damage would probably result, the ship-owner will loss his right to enjoy the limitation of liability.

How the “Regulations” perfects the Procedures of Limitation of Liability?

- ❖ **The Judgment about the limitation right could be made beforehand**
- ❖ In case the suffered brings a lawsuit claiming that the ship-owner shall not be entitled to enjoy the liability limitation right, the maritime court may try the case and make the judgment beforehand about whether the ship-owner could enjoy the liability limitation right.(Article 25)

How the “Regulations” perfects the Procedures of Limitation of Liability?

❖ The Amount of Limitation Fund

- ❖ The amount of the limitation fund is the amount stipulated in Regulations of the People’s Republic of China on the Prevention and Control of Marine Pollution from Ships and CLC 1992.
- ❖ If the limitation fund is constituted by way of security, the security amount is the limitation fund amount plus its interests incurred thereon during the constitution period of the fund.(Article 21)

How the “Regulations” perfects the Procedures of Limitation of Liability?

- ❖ **Waived the Right to be satisfied from the Limitation Fund**
- ❖ With regard to the oil pollution damage caused by persistent oils carried by oil tankers, the claimant who does not register its claim during the stipulated period of registration of creditor’s rights shall be deemed to have waived its right to be satisfied from the limitation fund for oil pollution damage. (Article 26)

How the “Regulations” perfects the Procedures of Limitation of Liability?

❖ **Method of Fund Distribution**

- ❖ When the limitation fund is not enough to satisfy the relevant oil pollution damage, it shall be distributed proportionately according to the confirmed compensation amount in accordance with law. (Article 27)

❖ **How to exercise the Subrogation Right?**


- ❖ If the ship-owners, the oil pollution liability insurers or financial guarantors have paid the oil pollution compensation prior to the distribution of limitation fund, they may be entitled to apply in writing for subrogation of right to be satisfied from the fund.

The ship-owners have the right to participate in the distribution of limitation fund for oil pollution damage with respect to the expenses reasonably incurred or sacrifices reasonably made by the prevention or mitigation of the oil pollution damage on the ship-owners' own initiative.
(Article 29 and 30)



❖ **Which provision conflicts with the CLC and the Bunkers Convention ?**

- ❖ According to the “Regulations”, cleaning up costs incurred by the Maritime Safety Administration should be compensated in priority to other claimants. This may conflict with the CLC and the Bunkers Convention which lays down that all admissible claims are to be treated equally and without priority for government claims.

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- ❖ In Conclusion, even though the “Regulations” has some creative provisions and some supplementary provisions, and try to perfect all the procedure of the claim for damage from ship-induced oil pollution, it cannot resolve all issues initially.
 - ❖ There are some difficult long term questions, such as the title to sue, the admissibility of compensation claims, methods of investigation and burden of proof, which remain to be clarified, all of the above need to be reinforced either by supplementary regulations or rules of judicial practice.

The Introduction to Agreement for Ship Pollution Response

- ❖ In the mid-March, 2011, China MSA gave an announcement “A Notice of Seeking Opinions on the Format of Agreement for Ship Pollution Response” to all of the related companies and organizations.
- ❖ On 12 April, China MSA published the newest version of the Agreement on the website.
- ❖ On 20 April, China MSA organized related companies and organizations to do the discussion about the Agreement.
- ❖ On 28 April, China MSA issued a government document to announce the “Agreement for Ship Pollution Response (Sample)”. – please see *Attachment One*



Thank You !