## Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Compensation for Vessel-induced Oil Pollution Damage

The Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Compensation for Vessel-induced Oil Pollution Damage, which were adopted at the 1509th meeting of the Judicial Committee of the Supreme People's Court on January 10, 2011, are hereby promulgated, and shall come into force on July 1, 2011.

(Interpretation No.14 [2011] of the Supreme People's Court)

To correctly try cases of disputes over compensation for vessel-induced oil pollution damage, and in light of the judicial practices, these Provisions are formulated pursuant to the General Principles of the Civil Law of the People's Republic of China, the Tort Law of the People's Republic of China, the Marine Environment Protection Law of the People's Republic of China, the Maritime Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China, the Special Maritime Procedure Law of the People's Republic of China, other relevant laws and regulations, and the international treaties which the People's Republic of China has concluded or acceded to.

**Article 1** These Provisions shall apply when the people's courts try cases of disputes over compensation for vessel-induced oil pollution damage as involved in oil pollution incidents of vessels that cause oil pollution damage or pose dangers of oil pollution damage in the territory or any other territorial sea of the People's Republic of China.

**Article 2** Where a party concerned brings a lawsuit for the oil pollution damage caused by an oil tanker carrying persistent oil or applies for establishing a fund for limitation of liability for oil pollution damage, the maritime court at the place where the vessel-induced oil pollution incident occurs shall have jurisdiction over it.

Where, after a vessel-induced oil pollution incident caused by an oil tanker carrying persistent oil occurs without the territory or any other territorial sea of the People's Republic of China but causes actual oil pollution damage or poses dangers of oil pollution damage to the territory or any other territorial sea of the People's Republic of China, and a party concerned brings a lawsuit for damage caused by the vessel-induced oil pollution incident or applies for establishing a fund for limitation of liability for oil pollution damage, the maritime court at the place where the oil pollution damage is done or oil pollution preventive measures are taken shall have jurisdiction over it.

**Article 3** When oil has escaped from two or more vessels, and pollution damage results therefrom, if the party who suffers the damage requests that the owners of all vessels involved undertake the liability for compensation, the owners of all vessels involved shall undertake their respective liability for compensation if the damage is reasonably separable according to the quantity of oil leaked, the harm caused by their oil and other relevant factors; if the damage is not reasonably separable, the owners of all vessels involved shall be jointly and severally liable, unless exonerated by law.

Where the owners of all vessels involved are jointly and severally liable for the damage, they shall determine the amount of compensation of each one of them according to their respective liability. If it is difficult to determine who undertakes a bigger liability, they shall undertake the liability for compensation evenly. Where any owner pays more than the payable amount, it has the right of recourse against the owners of other vessels involved.

**Article 4** If oil pollution damage is caused by oil which has escaped as a result of a collision between vessels in contributory negligence, the party who suffers the damage may request that the owner(s) of the vessel(s) from which the oil has escaped undertake all the liabilities for compensation.

**Article 5** If oil pollution damage is done due to the persistent oil carried by oil tankers, the limits of liability shall be determined according to the Regulation on the Prevention and Control of Vessel-induced Pollution to the Marine Environment and the International Convention on Civil Liability for Oil Pollution Damage (1992).

If oil pollution damage is caused by non-persistent fuel oil carried by oil tankers or by fuel oil carried by vessels other than oil tankers, the limits of liability shall be determined according to the provisions of the Maritime Law on the limits of liability for maritime claims.

**Article 6** If it is proved that the oil pollution damage is resulted from an act or omission done by the vessel owner with intent to cause damage or with knowledge that such damage would probably occur, the owner's claim for limiting its liability shall not be upheld by the people's court.

**Article 7** If the oil pollution damage is caused by the vessel owner with intent, the claim of the party, who suffers the damage, for compensation against the insurer of the liability for oil pollution damage or the party providing financial security shall not be upheld by the people's court.

**Article 8** Where the party who suffers the damage directly brings a lawsuit against the insurer of the liability for oil pollution damage or the party providing financial security, the insurer or the party providing financial security may defend on the claim of the party who suffers the damage against the vessel owner.

Unless the oil pollution damage is caused by the vessel owner with intent, the defense of the insurer or the party providing financial security on the claim of the party who suffers the damage against the vessel owner shall not be upheld by the people's court.

**Article 9** The compensation for vessel-induced oil pollution damage shall cover:

1. Costs of preventive measures to prevent or minimize vessel-induced oil pollution damage, and further loss or damage caused by preventive measures;

2. Property damage caused outside the vessel carrying oil by the vessel-induced oil pollution incident, and loss of earnings caused therefrom;

3. Loss of earnings caused by environmental damage resulting from oil pollution; and

4. Costs of reasonable measures which have been taken or are about to be taken to restore the contaminated environment.

**Article 10** The people's courts shall reasonably determine the costs of preventive measures and the further loss or damage caused by preventive measures according to the polluted area, degree of pollution, quantity of oil that has escaped, reasonability of preventive measures, number of persons assigned to clean out oil, costs of equipment put into use, etc.

**Article 11** Expenses incurred for taking measures to prevent pollution from a vessel in distress shall be treated as costs of preventive measures if the major purpose of such operations is merely to prevent or minimize oil pollution damage.

If the said operations are for the dual purposes of salvaging the vessel in distress and salvaging other property and preventing or minimizing oil pollution damage, the costs of preventing measures and the costs of salvaging measures shall be reasonably separated according to the proportion between the major purpose and the minor purpose. Where there is no reasonable basis to decide which purpose is major, the expenses shall be evenly distributed. Expenses incurred after the danger of pollution is eliminated shall not be treated as costs of preventive measures.

**Article 12** If the oil that has escaped from a vessel contaminates other vessels, fishing gears, breeding devices or other property, and the party who suffers the damage claims for reasonable expenses on cleaning and restoring contaminated properties against the party liable for pollution damage, the people's court shall uphold it.

If it is unable to clean or restore the contaminated properties or the cleaning or restoring costs are more than the value thereof, the claim of the party, who suffers the damage, against the party liable for pollution damage for reasonable expenses on replacing the properties shall be upheld by the people's court, but the compensation shall be reasonably reduced according to the actual service life in proportion to the expected service life of the contaminated properties.

**Article 13** If the normal production and operating activities of the party who suffers the damage are disrupted due to property losses resulting from vessel-induced oil pollution, its loss of earnings shall be calculated according to the reasonable period for cleaning, restoring or replacing such property.

**Article 14** Where any entity or individual engaged in marine fishery, costal tourism or other operations on the sea claims for loss of earnings suffered from environmental pollution, and the claimant meets all of the following conditions and hence proves a direct causality between the loss of earnings and environment pollution, the people's court shall uphold the claim:

1. The claimant's production and operating activities are located in or near the contaminated area;

2. The claimant's production and operating activities mostly depend on the contaminated resources or coastlines;

3. It is difficult for the claimant to find alternative resources or business opportunities; and

4. The claimant's production and operating activities are in a relatively stable sector in the local area.

**Article 15** If the party who suffers the damage claims for loss of earnings from the maritime aquatic breeding or maritime fishery business operated without the approval of the competent administrative department, the people's court shall not uphold it, but its claim for reasonable costs on cleaning, repairing or replacing the breeding or fishery devices shall be upheld.

**Article 16** If the party who suffers the damage claims for loss of earnings resulting from pollution of its property or environment pollution, the earnings shall be its average net income during the same period over the last three years minus its actual net income during the period of loss, in reasonable consideration of other factors affecting its income.

If it is impossible to determine the loss of earnings under the preceding paragraph, the statistics or data of the governmental departments can be used as a reference, or the average income of business operators of the same category in the same area during the same period can be considered to reasonably determine it.

If the party who suffers the damage claims for costs of reasonable measures taken to avoid loss of earnings, the claim shall be upheld by the people's court only to the extent of not exceeding the amount of avoided loss of earnings.

**Article 17** If a vessel-induced oil pollution incident causes environmental damage, the compensation for environmental damage shall be limited to expenses on reasonably measures which have been taken or are about to be taken to restore the environment. Such expenses include reasonable expenses on monitoring, assessment and research.

**Article 18** If the party who suffers the damage claims for maritime lien against a vessel with civil liability insurance for vessel-induced oil pollution damage or other financial security in force, the people's court shall not uphold it.

**Article 19** Claims for compensation for oil pollution damage caused by non-persistent fuel oil carried by oil tankers or fuel oil carried by vessels other than oil tankers shall be governed by the provisions of the Maritime Law of the People's Republic of China on the limitation of liability for maritime claims.

Where a same maritime incident causes oil pollution damage mentioned in the preceding paragraph and other damage for which the liability can be limited under Article 207 of the Maritime Law of the People's Republic of China, the vessel owner's claim for limiting its liability for compensation within a same limit under Chapter XI of the Maritime Law of the People's Republic of China shall be upheld by the people's court.

**Article 20** If the vessel owner has taken measures such as floating, clearing off or eliminating the harm of the vessel which is sunken, grounded or in distress for the purpose of preventing pollution damage caused by non-persistent fuel oil carried by oil tankers or fuel oil carried by vessels other oil tankers, the owner's claim for limiting its liability for the costs thereof under Chapter XI of the Maritime Law of the People's Republic of China shall not be upheld by the people's court.

**Article 21** For oil pollution damage caused by persistent oil carried by oil tankers, if the vessel owner, insurer of liability for vessel-induced oil pollution damage or party providing financial security claims for limiting its liability, a fund for limitation of liability for oil pollution damage shall be constituted.

If the fund is constituted with cash, the amount of fund shall be the limit for compensation as prescribed in the Regulation on the Prevention and Control of Vessel-induced Pollution to the Marine Environment and the International Convention on Civil Liability for Oil Pollution Damage (1992). If the fund is constituted in the form of security, the amount of security shall be the amount of fund plus the interest incurred during the constitution of the fund.

**Article 22** If the vessel owner, insurer of liability for vessel-induced oil pollution damage or party providing financial security applies for constituting a fund for limitation of liability for oil pollution damage, but an interested party raises a demur against the vessel owner's claim for limiting its liability, such a demur shall be raised in writing within the time limit specified under Paragraph 1, Article 106 of the Special Maritime Procedure Law of the People's Republic of China, but it does not affect the constitution of the fund.

**Article 23** For oil pollution damage caused by persistent oil carried by oil tankers, if no interested party raises any demur against the vessel owner's claim for limiting its liability within the prescribed time, after the fund for limitation of liability for oil pollution damage is constituted, the maritime court shall lift the preservation measures taken against the vessel owner's property or return the security provided for lifting the preservation measures.

**Article 24** For oil pollution damage caused by persistent oil carried by oil tankers, if an interested party raises a demur against the vessel owner's claim for limiting its liability within the prescribed time, the people's court shall, if deciding that the vessel owner is entitled to limit its liability for compensation, lift the preservation measures taken against the vessel owner's property or return the security provided for lifting the preservation measures after the decision comes into force.

**Article 25** For oil pollution damage caused by persistent oil carried by oil tankers, if the party who suffers the damage claims in its lawsuit that the vessel owner has no right to limit its liability for compensation, the maritime court may firstly try the case about dispute over whether the vessel owner is entitled to limit its liability and make a judgment thereon.

**Article 26** For oil pollution damage caused by persistent oil carried by oil tankers, if the party who suffers the damage fails to apply for the registration of the creditor's right within the prescribed time, it shall be construed that the party has abandoned the right to receive compensation from the fund for limitation of liability for oil pollution damage.

**Article 27** If the fund for limitation of liability for oil pollution damage is insufficient to pay off the compensation for oil pollution damage, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

**Article 28** For oil pollution damage caused by persistent oil carried by oil tankers, if the vessel owner, the insurer of the liability for oil pollution damage or the party providing financial security shall apply for constituting a fund for limitation of liability for oil pollution damage, or the party who suffers the damage applies for registration of creditor's rights and compensation, the Special Maritime Procedure Law of the People's Republic of China and the relevant judicial interpretations shall apply in the absence of governing provisions in these Provisions.

**Article 29** Where the vessel owner, the insurer of the liability for oil pollution damage or the party providing financial security has paid the compensation before the fund for limitation of liability for oil pollution damage is distributed, it may apply for subrogation against the fund in writing up to the amount that the compensated person is entitled to.

The maritime court shall, after accepting the subrogation application, notify all interested parties claiming against the fund for limitation of liability for oil pollution damage in writing. Any interested party shall raise a demur, if any, against the subrogation applicant within 15 days after being notified.

If, upon examination, the maritime court decides to establish the applicant's right of subrogation, it shall make a ruling thereon; if the application lacks factual or legal basis, the maritime court shall rule to reject it. If the applicant refuses to accept the ruling, it may make an appeal within 10 days after receiving the written ruling.

**Article 30** Claims in respect of expenses reasonably paid or sacrifices reasonably made by the owner of a vessel voluntarily to prevent or minimize pollution damage against the fund for limitation of liability for oil pollution damage shall be upheld by the people's courts and be handled analogically under Paragraph 2 or 3, Article 29 of these Provisions.

**Article 31** For the purpose of these Provisions:

1．"Vessels" means any sea-going ship and any seaborne craft of any type whatsoever not used for military purposes or official duties of the government, including oil tankers and vessels other than oil tankers of international and domestic voyages. In particular, oil tankers refer to ships built or rebuilt to convey persistent oil in bulk and other ships actually carrying oil in bulk as cargo.

2. "Oil" means any hydrocarbon mineral oil and the residuum thereof, limited to persistent oil carried on board a vessel as cargo and persistent or non-persistent fuel oil carried in the bunkers of such a vessel, not including non-persistent oil carried on board a vessel as cargo.

3. “Vessel-induced oil pollution incident" means any occurrence or a series of occurrences causing oil pollution damage resulting from the escape of oil from the vessel or, if there is no escape of oil, posing serious and urgent dangers of oil pollution damage. A series of occurrences having the same origin shall be treated as a same incident.

4. “Insurer of the liability for oil pollution damage or party providing financial security” means the party providing insurance or financial security for a vessel from which oil has escaped or which directly poses dangers of oil pollution damage in a maritime incident.

5. “Fund for limitation of liability for oil pollution damage” refers to a liability limitation fund constituted by the owner of a vessel, the insurer of the liability for oil pollution damage or the party providing financial security for oil pollution damage caused by oil tankers carrying persistent oil upon the application thereof.

**Article 32** For any discrepancy between any judicial interpretation issued by the Supreme People's Court before these Provisions come into force and these Provisions, the latter shall prevail.

Where a final judgment has been made for a case before these Provisions come into force, the people's court shall not apply these Provisions in the retrial of the case.