

Properly Fly the Port State Flag to Avoid Administrative Penalties

Ingosstrakh' s P&I Correspondent in China Messrs. Huatai Insurance Agency & Consultant Service Ltd., keeps us in loop of update concerning proper fly the port state flag to avoid administrative penalties

Recently, Huatai has dealt with a number of cases in which ships were punished by the Maritime Safety Administration (hereinafter referred to as the "MSA") for failing to fly, improperly flying, or flying a damaged or defiled National Flag of the People's Republic of China. In order to prevent the recurrence of similar cases, Huatai hereby issues this Circular, introducing relevant laws, administrative regulations and the legal basis of administrative penalty imposed by the maritime authority, and provides loss prevention suggestions for the Clubs and Members' reference.

Laws and Regulations Relating to Ships Flying Chinese National Flag

Laws and regulations relating to flying of the Chinese National Flag by ships include the "Maritime Traffic Safety Law of the People's Republic of China", the "Measures for the Administration of Flying the National Flag by Ships", and the "Law of the People's Republic of China on the National Flag". The relevant provisions of the laws and regulations are quoted below:

The "Maritime Traffic Safety Law of the People's Republic of China", Article 10, Paragraph 1

Article 10

A ship may not navigate, berth, and carry out operations under the flag of China until it has applied to the maritime safety administration for ship nationality registration and obtained a nationality certificate in accordance with the applicable laws and administrative regulations on ship registration.

The "Maritime Traffic Safety Law of the People's Republic of China", Article 33, Paragraph 1

Article 33

To navigate, berth, and carry out operations, a ship shall hold a valid nationality certificate and other statutory certificates and documents, be equipped with navigational books and materials published in accordance with relevant provisions, fly the flag of the relevant country, region or organization, and indicate its name, identification number, port of registry, and load line mark.

The “Measures for the Administration of Flying the National Flag on Ships”, Article 6

Article 6

Foreign ships entering the inland waters, ports and anchorages of the People’s Republic of China shall fly the Chinese National Flag daily.

The “Measures for the Administration of Flying the National Flag on Ships”, Article 9

Article 9

The Chinese National Flag flown by ships shall be clean and tidy, and shall not be damaged, defiled, faded or substandard, nor shall it be displayed upside down.

The “Law of the People's Republic of China on the National Flag”, Article 19

Article 19

No damaged, defiled, faded or substandard national flag shall be raised or used, and the national flag shall not be displayed upside down, inserted upside down, or displayed or used in any other manner that undermines the dignity of the national flag.

Legal Basis of Administrative Penalty

The legal basis for the MSA to impose administrative penalty on the involved ships is as follows:

The “Maritime Traffic Safety Law of the People's Republic of China”, Article 96, Paragraph 2

Article 96

A ship or offshore installation falling under any of the following circumstances shall be ordered by the maritime safety administration to take corrective action, the owner, operator or manager of the ship or offshore installation in violation of the law shall be fined not less than 20,000 yuan nor more than 200,000 yuan, and the master and relevant liable persons shall be fined not less than 2,000 yuan nor more than 20,000 yuan; and under serious circumstances, the owner, operator or manager of the ship in violation of the law shall be subject to revocation of relevant certificates and documents, and the master and liable crew members shall be subject to suspension for 12 to 24 months or even revocation of their certificates of competency:

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(2) A ship fails to fly the national flag according to the law, or flies a flag of another country, region or organization in violation of the law.

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The “Provisions of the People's Republic of China on Marine and Maritime Administrative Penalties”, Article 11, Paragraph 2

Article 11

Where, in violation of Article 9, Article 10, Article 33 of the Maritime Traffic Safety Law, a ship or offshore installation falls under any of the following circumstances, the maritime authority shall order corrective action to be taken, fine the owner, operator, or manager of the violating ship or offshore installation not less than 20,000 yuan nor more than 200,000 yuan, and fine the master and any relevant liable person each not less than 2,000 yuan nor more than 20,000 yuan; and if the circumstances are serious, revoke the relevant certificates and documents of the owner, operator, or manager of the violating ship and suspend for 12 to 24 months or even revoke the seafarer's certificates of competency of the master and any liable seafarer:

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(2) The ship fails to fly the national flag according to the law, or illegally flies the flag of another country, region, or organization.

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The “Provisions of the People's Republic of China on Marine and Maritime Administrative Penalties”, Article 7, Paragraph 1

Article 7

Where the party committing a maritime administrative violation is under any of the following circumstances, a lighter or mitigated maritime administrative penalty shall be imposed in accordance with the law:

(1) Voluntarily eliminating or mitigating the harmful consequences caused by the maritime administrative violation.

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The “Regulations of the People's Republic of China on Administration of Traffic Safety in Inland Rivers”, Article 68, Paragraph 1

Article 68

Where a ship navigating in inland waters, in violation of these Regulations, comes under any of the following circumstances, the maritime safety authority shall order it to make corrections and impose a fine of not less than 5,000 yuan but not more than 50,000 yuan; if the circumstances are serious, the maritime safety authority shall prohibit it from entering or leaving ports or order it to stop navigation, and may suspend the certificates of competency or the equivalent documents of the responsible crewmembers for three to six months:

(1) Failing to fly its national flag or failing to have its name, ports of registry, or load lines explicitly marked in accordance with the provisions;

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The “Provisions of the People's Republic of China on Inland-Water-Related Maritime Administrative Penalties”, Article 16, Paragraph 1

Article 16

In the case of committing any of the following conduct when navigating in any inland water in violation of the provisions of Article 14, 18, 19, 20 or 22 of the Regulation on the Administration of Traffic Safety in Inland Waters, the violator shall be, in accordance with the provisions of Article 68 of the Regulation on the Administration of Traffic Safety in Inland Waters, ordered to make correction and be fined 5,000 yuan up to 50,000 yuan; if the circumstances are serious, the ship shall be prohibited from entering or leaving the harbor or ordered to cease navigation, and the liable seafarer shall be subject to the punishment of having his or her certificate of competency for seafarers or other credentials of competency withheld for three to six months:

(1) Failing to hang the national flag as required.

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Objects of Administrative Penalty

The Objects of administrative penalty shall be Owners, Operators or Managers of illegal ships or marine installations, as well as the Master and relevant responsible persons.

Precautions for Flying the Chinese National Flag

The following Chinese ships shall fly the Chinese National Flag daily:

- (1) Ships of 50 gross tons and above.
- (2) Ships sailing in waters outside China's territorial waters and in Hong Kong, Macau.
- (3) Official ships.

Foreign ships entering the internal waters, ports, and anchorages of the People's Republic of China shall fly the Chinese National Flag daily.

The 5 general dimensions of the Chinese National Flag are listed as follows:

Class A: 288 cm in length, 192 cm in height;

Class B: 240 cm in length, 160 cm in height;

Class C: 192 cm in length, 128 cm in height;

Class D: 144 cm in length, 96 cm in height;

Class E: 96 cm in length, 64 cm in height.

The Corresponding Dimensions of the Chinese National Flag should the Ships fly

Ships shall fly the Chinese National Flag of the corresponding dimensions according to their length:

(1) Ships with a length of 150 meters and above shall fly Class A, Class B, or Class C Chinese National Flags.

(2) Ships with a length of 50 meters or above but less than 150 meters shall fly either Class C or Class D Chinese National Flags.

(3) Ships with a length of 20 meters or above but less than 50 meters shall fly either Class D or Class E Chinese National Flags.

(4) Ships less than 20 meters shall fly Class E Chinese National Flags.

The dimensions of the Chinese National Flag to be flown by a foreign ship shall generally not be less than the dimensions of the flag of the Flag State she is flying.

When should Ships Fly the Chinese National Flag

Ships shall hoist the Chinese National Flag in the morning and lower it in the evening. However, in case of bad weather, the Chinese National Flag may not be hoisted.

Where should Ships Fly the Chinese National Flag

(1) Chinese ships shall fly the Chinese National Flag on the ensign staff. If there is no ensign staff fitted at the ship's stern, it shall be displayed on the top of the bridge signal pole or on the starboard yard arm.

(2) Foreign ships shall fly the Chinese National Flag on the top of the foremast or on the top of the bridge signal pole or on the starboard yard arm.

(3) When the Chinese National Flag and other flags are simultaneously flown on the starboard yard arm of the bridge signal pole, the Chinese National Flag shall be displayed on the outermost side.

Loss Prevention Suggestions

According to relevant laws and regulations, the MSA shall order ships and crew members who violate the "Law of the People's Republic of China on the National Flag" and the "Measures for the Administration of flying the National Flag on Ships" to rectify the violation immediately, and may impose penalties in accordance with the "Law of the People's Republic of China on the National Flag" and other relevant provisions of China according to the circumstances. If a foreign ship refuses to make corrections according to the requirements of the MSA, the MSA may order it to depart from the inland waters, ports, or anchorage of the People's Republic of China.

Therefore, they suggest the responsible crew members on board to carry out necessary training to familiarize them with the requirements of flying the Chinese National Flag. In addition, it is recommended that ships promptly check whether they are equipped with a sufficient number of standard Chinese National Flag prior to entering Chinese waters.

After entering Chinese waters, ships shall properly fly the Chinese National Flag to avoid administrative penalties for violation of relevant laws and regulations.

Full text of the Circular is available via [the link](#).

P&I Ingostrakh Correspondent in Africa - Eltvedt & O'Sullivan comments on fines for violating the provisions of the International Convention for the Prevention of Pollution from Ships of 1973, amended by the Protocol of 1978 or MARPOL 73/78 in the ports of Ghana.

ELTVEDT&O'SULLIVAN'S comments on MARPOL violation fines in Ghana

As Correspondent of the Club in Ghana ports, TCI GHANA / ELTVEDT&O'SULLIVAN are drawing the attention of all vessels going to Ghana to pay serious attention to MARPOL violation fines, as currently imposed by GHANA MARITIME AUTHORITY (GMA).

GHANA enacted in 2016 the < Maritime Pollution Act 2016 >, Act 932, implementing in the country MARPOL 73/78 with its 6 Annexes.

Following this enactment, the table below of fines has been adopted by GHANA MARITIME AUTHORITY in case of any incident violating the domestic law:

INCIDENT	REFERENCE TO MARPOL	AMOUNT OF FINE
1. WASTE Evidence of illegal dumping	ANNEX V	36,000.00 USD
2. OIL -If no oil record book (ORB); -Failure to record in ORB; -Discharge of oil/oily mixture (like sludge)	ANNEX I	7,200.00 USD 2,400.00 USD for each entry omitted 60,000.00 USD
3. SEWAGE Illegal discharge	ANNEX IV	36,000.00 USD

<p>4. GARBAGE</p> <ul style="list-style-type: none"> -No garbage record book (GRB); -Failure to record in GRB; -No Garbage Management Plan; -Evidence of illegal discharge of garbage; 	<p>ANNEX V</p>	<p>6,000.00 USD</p> <p>2,400.00 USD for each entry omitted</p> <p>6,000.00 USD</p> <p>24,000.00 USD</p>
<p>5. TRANSFER OF OIL</p> <ul style="list-style-type: none"> -Bunkering without GMA permit; -Transfer of oil without 48H notification (in port); -Transfer of oil without 48H notification (outside port) 	<p>ANNEX I</p>	<p>60,000.00 USD</p> <p>14,400.00 USD</p> <p>60,000.00 USD</p>

Practically a PSC (Port State Control) will be organized by GMA on a targeted vessel either in anchorage on the roads (outside the port) or in port. Any vessel can be targeted as there is no eligibility criteria.

The PSC inspector, duly mandated by GMA, will introduce himself to the Captain and will request to check the vessel for any violation of the <Maritime Pollution Act 2016>. He will focus his attention on the possible violations as mentioned in the above table.

I. LOSS PREVENTION

Evidence of illegal dumping of waste or illegal discharge of garbage will be established when the inspector, after inspecting the points of collection, will come to the conclusion that the quantity of garbage actually on board is not matching with the quantity expected to be generated according to the number of crew and voyage duration.

It is thus important for the vessel to keep the entries in GRC (Garbage Record Book) in order. All receipts proving the legal discharge of garbage in previous ports should be available. That is the only way to disclaim the vessel from the illegal discharge of garbage claim.

The Garbage Management Plan should be displayed for all crew members to take note. The inspector will surely check whether it is displayed or not.

The Oil Record Book (ORB) should also be in order. The inspector will check the last entry. Any movement of oil on the vessel (transfer of HF or MDO from one tank to another, bunkering, authorized discharge of sludge, etc...) should be mentioned in the ORB.

Before doing any discharge of sludge or any oily mixture to shore facilities, the Captain should get permission from GMA and the Harbor Master through the Shipping Agent. This authorization will assist in disclaiming the vessel.

ELTVEDT&O'SULLIVAN highly recommends that the scuppers on main deck should be plugged during the time the vessel is in port or outside in anchorage waiting for berthing prospects. The purpose is to avoid any inadvertent discharge of oil at the sea or in the port's basin water.

During authorized bunkering, the vessel should make sure that the save-alls around the manifold can keep any leakage from the hose.

The sewage plant should be in good working condition. According to the <Maritime Pollution Act 2016>, Act 932, the effluent in the retention tank should be CLEAR and without any suspected particle.

Usually during the inspection of the plant, the inspector will collect sample of effluent from the tank. Once this effluent is found slightly colored and not CLEAR, the vessel will be fined for illegal discharge of sewage even though the discharge valve is duly locked and sealed! For the inspector, the colored effluent is an evidence that the plant is not working correctly.

We highly recommend that the vessel's Chief Engineer takes time to clean properly the tank and to make sure that the effluent is CLEAR (like water) before entering GHANA territorial waters.

Concerning the transfer of oil (as far as bunkering is concerned), the Captain should seek for a written 48H permission from both the Harbor Master and GMA before doing such transfer. The Shipping Agent will assist him in getting the permission.

TCI GHANA, as the local P&I Correspondent, should also be contacted to coordinate with the Agent in this loss prevention.

II. DETENTION OF THE VESSEL

Once the vessel is fined for any breach or violation of the Maritime Pollution Act 2016, it will not be easy to have the fine cancelled or reduced. GMA is generally strict in this regard. The vessel can stack in the port or in anchorage outside the port as long as the fine is not paid.

The only way to obtain the sailing of the vessel is the commitment either by the Agent or by the P&I Correspondent to pay the full amount of fine within 2 weeks. This undertaking is signed at GMA office on their own dedicated forms.

After the sailing of the vessel, failing to pay to GMA the amount of fine within 2 weeks will expose the person who signed the undertaking to a court action.

III. CONCLUSION

The MARPOL violation fines are really a serious issue faced actually by vessels in Ghana ports. The precautionary measures we suggested as loss prevention can assist the Members' vessels in avoiding the fines.

We would like to draw the attention of Shipowners to the importance of immediately informing Ingosstrakh about all incidents for the most professional and effective business management. If you need additional information or assistance, please contact Ingosstrakh with your questions.