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**Compliance with ISO 28007
will determine the future of the private
maritime security industry**

香港航運業的前景



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相片攝於 2014 年 2 月 20 日晚，業界好友為廖漢波處長於上環信德中心美心皇宮舉辦之告別晚會。

廖漢波處長相識滿天下，當晚出席的好友逾三百多人，各人談笑風生，氣氛非常熱鬧。席間更遇上數位多年未碰面的同學，當晚我興奮莫名，亦是始料不及。

「天下無不散之筵席」，祝願處長更上一層樓，繼續在新階段開展更美好的人生。

(張迅文先生：海運學會副主席)

晚會上處長引吭高歌，餘音裊裊。匆匆數小時，晚會結束了，眾人仍要邀請處長拍照，期望能憑相寄意，留住對處長不捨之情。

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Compliance with ISO 28007 will determine the future of the private maritime security industry

Gerry Northwood

The successful Private Maritime Security companies (PMSCs) today and in the future will be those that are agile and large enough to be able to operate in an increasingly complex and regulated arena.

This environment will demand that PMSCs act not only in accordance with individual Flag State regulations but also with internationally recognised and auditable standards such as ISO PAS 28007.

Whilst piracy off the coast of Somalia seems to be at an all time low, the pirate infrastructure in the country is still very much intact. Other regions such as West Africa are also becoming areas of increasing concern.

The next few years will see an increasing focus on the oceans, part of the 'global commons' accounting for 70% of the Earth's surface, where there is little if any effective governance. Navies of the world are diminishing in numbers and those policing the Indian Ocean often refer to the scale of the problem as like policing an area the size of Europe with only half a dozen police cars.

Hurricane Haiyan in the Philippines has inadvertently impacted on the scale of the problem facing the World's navies. Warships like the Royal Navy's HMS

DARING, which was recently assigned to Counter Piracy operations, has, quite rightly, been ordered east to render disaster relief and aid. The irony of this will not be wasted on those who understand that the Philippines is home to the vast majority of the crews that man the world's commercial ships.

The reality is that very often, there is no 'police car' available in vast swathes of the 'global commons, meaning that it is time for the shipping industry to start thinking strategically about what needs to be done in the future if vessels, cargo and, more importantly, crews' safety are to be ensured.

The situation off Somalia and in the Indian Ocean Region has indeed quietened down to a degree, but as Somalia expert Mary Harper, BBC Africa Editor has recently commented, "Somali pirates are sleeping. They have not gone away."

Somalia is often described as a failed state. Well, yes it is, but not sufficiently failed that criminality cannot prosper. Piracy, as is the case with any criminality, can only exist when there is some legitimate governance, but not so much of it that the forces of law and order are able to successfully crack down on illicit activity. When a total breakdown

of governance occurs even piracy cannot exist in the ensuing chaos and anarchy. The situation in Somalia provides the perfect permissive environment for pirate activity to exist. It is often tolerated, and sometimes participated in, by local clan leaders and war lords who thereby provide the green light to any enterprising pirate band which is lucky enough to capture a vessel. Five years on from the 2008 Gulf of Aden piracy breakout that precipitated international action to restore order to the Indian Ocean, Somalia remains politically fragmented. Sadly, Somali clan leaders seeking to gain dominance over their area have continued to create conditions which remain favourable to pirate activity.

While the International Maritime Bureau (IMB) reported **thirteen** incidents, including two hijackings, in 2013 (reported on November 25th), the Somali Government claimed in September that no hijackings have been reported in the region for more than **fifteen** months. Both reports are true enough and highlight the degree to which the piracy problem in the Indian Ocean is subject to political spin backed by statistical analysis.

To add to this, the IMB reported pirate attacks on December 9th on two merchant vessels within a few miles of each other in the Gulf of Aden.

Knowing from first hand witness accounts that the two attacks on the 9th December did actually occur leaves me in no doubt that it does not matter whether what various international, national, or supra-national bodies declare are a fair

representation of the situation, the fact remains that there is no shortage of Somalis who are able and willing to play the piracy game.

So if they are irrefutably still out there, now is not the time for anyone to relax their guard. It is imperative that vessels apply BMP4 measures when transiting through a recognized High Risk Area (HRA) and have competent crews, who are well trained in radar and visual lookout, and that the vessel has a robust citadel to fall back on in the worst case situation. But the passive measures will ultimately only slow the pirates down, and will not in themselves be sufficient to prevent a determined band of pirates from boarding.

Therefore, with Counter Piracy being a tertiary priority for most navies, the burden truly falls on the rapidly maturing private maritime security industry to provide security for the world's merchant fleets, and to keep them safe as they navigate the world's oceans.

To do this well, the whole industry needs to be involved in the adoption and development of international quality standards, such as ISO PAS 28007. But this has to be seen and judged against the financial pressures operating within the commercial maritime environment. Shipping companies are increasingly demanding a quality service at a price that gives them extremely good value for money.

The good maritime security companies can deliver a tailored service to the ship-

owner at highly competitive prices, while retaining sufficient flexibility to provide it at relatively short notice. To achieve this, the successful companies are, and will be, those that take on a multi-national work force.

The most forward thinking companies have had Filipino, Indian, and most recently introduced, Sri Lankan teams at sea for over 18 months. In that time, these team members, most often under the direct leadership of European team leaders, have become highly reliable and skilled operators.

Training has been and is, of course, vital to ensure a quality service is provided, with the City & Guilds Maritime Security Operatives level 3 course being the gold standard. Moreover, the fact that it has been designed specifically to meet the training requirements mandated by ISO 28007 highlights the significant role of this standard in shaping the future of the industry.

ISO 28007 will be essential not only to regulate the growth and development of a maturing sector, but to ensure a much more professional and accountable industry base.

It demands the most exacting standards of compliance for maritime security companies, providing a formal mechanism by which they can be judged against operational, legal, and risk management criteria – covering aspects that range from the selection and vetting of

security personnel to providing guidance on Rules for the Use of Force.

Compliance and training are major investments for any private company. Both, however, are needed and will prove that the private maritime security industry is on track and, in fact, leading the way to providing more secure and safe transit lanes at a time when there is increased global maritime trade on ungoverned oceans.

(Mr. Gerry Northwood, Chief Operating Officer for maritime security company GoAGT)

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香港的海運事業發展至今，已經有一百多年的歷史，早於七、八十年代，香港已被確認為國際航運中心之一。

香港能夠成為國際航運中心的原因，包括具策略性地理位置，香港位於中國內地與鄰近亞洲國家的中心點，不但在珠江三角洲入口，還位於經濟增長驕人的亞洲太平洋周邊的中心，可說是佔盡地利的條件。

另外，香港是一個天然深水港，能夠讓現在最大型的集裝箱貨輪（能夠承載 18 000 個標準箱）通過和靠泊。香港港口班輪服務頻密，覆蓋面廣泛，現在約有 80 家班輪公司在香港提供航班服務，每星期約有 380 班集裝箱班輪，到全球約 550 個目的地，當中有 220 班是往來亞洲區內的港口。

過去 5 年（除了 2009 年受到金融海嘯的影響外），香港平均的吞吐量維持在 2 300 萬或以上的標準箱水平。當中大概七成的集裝箱是由遠洋輪船運載而來，三成是內河貨船。自 2007 年，香港在全球最繁忙貨櫃港口的排名一直維持在第三位，根據今年首九個月的數據顯示，深圳已處理 1730 萬個標準貨櫃，但香港就只處理約 1640 萬個標準貨櫃，顯而香港的位置已被快速發展的深圳取代。

除鄰近地區的競爭外，新加坡早前亦公佈打算在 2027 年將目前的轉運港搬遷至西部的圖阿斯港口（Tuas），屆時其港口吞吐量將較現時增加兩倍，達每年 6500 萬標準箱，大大加強新加坡作為國際性港口的競爭力。

至於上海，除積極改善外高橋港和洋山港的港口設施外，更於今年 9 月 29 日正式成立上海自貿區，採取較現時更大膽的改革及開放政策，藉以改善營商環境，促進投資。國務院公布有關上海自貿區的方案當中包括航運業，**允許中資公司擁有或控股擁有的非五星旗船，先行先試外貿進出口集裝箱在國內沿海港口和上海港之間的沿海捎帶業務**，相信有助刺激其國際轉運業務。

外商對上海自貿區的成立已有所期待，全球最大的船舶運輸服務公司馬士基希望爭取擬成立的船舶管理公司落戶上海自貿區；而全球唯一的航運市場獨立資訊提供商，波羅的海航運交易所，近日宣佈在上海浦東開設首個內地辦公室。但長遠而言，自貿區將推廣至更多的內地城市，據知，毗鄰廣東的前海、南沙、橫琴已先後就設立自貿區提出相關方案，屆時，經香港往來內地的貨物，及香港作為進入內地市場跳板角色的特殊地位，將受一定的影響。

從以上種種的情況來看，香港的國際航運中心地位是否已逐步褪色呢？

我認為，若單以貨櫃吞吐量評定香港的國際航運中心地位是不夠全面。事實上，在航運業，貨運量只是其中一環，還有船舶管理、船務代理、船舶融資、航運保險、船舶註冊、法律服務、海事仲裁等，正如倫敦，其貨櫃吞吐量基本是微不足道，但倫敦今日仍能保持全球級國際航運中心的地位，屹立不倒，足以證明，國際航運中心地位並不是單以貨櫃處理量作指標。

航運服務業由很多不同，而又相關的行業有機地連結起來，成為航運業群。香港現時就約有七百多間公司與航運業務有關，提供多元化和國際化的航運服務，包括船舶融資、船舶和船員管理、海事保險、經紀、測繪、修復、仲裁、法律服務及海事仲裁等等。但為了進一步擴展本地之航運業，我們有需要吸引更多的船東，船舶管理公司及貿易商等落戶香港，利用我們的先行者優勢，努力創建“關鍵主體量 – critical mass”，以維持我們的競爭優勢。

香港有完善的國際網絡，是自由貿易港，資金、資訊及人流自由流動，簡單和低稅率稅制，法制健全，廉潔的政府，完善的金融制度，良好營商環境及已經與 37 個主要貿易伙伴，就航運收益作出雙重課稅寬免安排，這些競爭優勢吸引了很多國際著名的船東在香港經營業務，截至 2013 年 10 月，有 2,315 條船舶在香港登記，總噸位約 8500 萬噸，總噸位較去年同期增加了百分之九，船舶註冊總噸位名列世界第四位。

由於香港註冊的船舶其管理素質在國際上是具有一定的認受性，近年內地船東崛起，不少中國內地船東也選擇將船舶在香港註冊。根據紀錄，香港註冊船隊被扣查的百分率只有 0.85，表現全球最佳，並遠低於全球平均的百分之 4.59，為免打破這個良好紀錄，我支持政府盡快落實近日提出的《2013 年商船（海員）修訂條例草案》，籍以落實聯合國國際勞工組織在 2006 年通過的《海事勞工公約》，避免香港註冊船隊遇上因未執行有關《公約》受到不必要的扣查，影響香港註冊船舶的聲譽及船舶運作。

香港作為國際金融中心，是亞洲區內一個重要的國際船舶融資中心；香港管理和擁有的商船隊伍佔全球商船總載重噸位

的百分之十；從事船舶保險業務的本地及海外保險公司分別有 52 及 31 家；香港完善的司法制度，對國際商業合約的訂定及執行是非常的重要，香港作出的仲裁裁定得到超過 140 個締約國執行；世界最出名的船級社都在香港設有辦事處，它們都聘請足夠的專業驗船師駐守香港，可見香港的航運服務方面是有一定的基礎。

香港享有《內地與香港關於建立更緊密經貿關係的安排》，是外資進入中國的門戶，又是中國範圍內唯一提供國際認可的綜合航運服務，如海事仲裁、船舶保險及融資等，香港應因應本身優勢，抓緊機遇，推出政策，吸引更多海外船東及航運企業在香港設立辦事處。

雖然香港有先天的地理位置優勢，是國際金融中心，有完善法治制度，一直以來吸引不少外商投資在香港，但不進則退，近年，香港的競爭力確實令人擔憂，世界經濟論壇在今年九月發表的全球競爭力報告，香港只是排名第七。因此，如我們繼續只靠食老本，沒有配合內地及區內的發展步伐，他日被邊緣化亦是意料中事。為了進一步加強香港作為國際航運中心的地位，我們的業界不斷要求政府制訂全面和長遠的政策，深化香港自身的優勢，提升香港在航運物流方面的競爭力，促進航運業可持續發展。

行政長官在去年初（2013 年）的〈施政報告〉中，表明政府將強化本港航運服務業的群組作用，向高增值的航運服務業進發，並在新成立的「經濟發展委員會」特設「航運業小組」，小組會就兩項顧問研究，包括《香港港口發展策略 2030 研究》及《提升香港作為國際航運中心地位》，提出具體建議如何利用香港固有的優厚條件，和國家給予香港的機遇，去進一步發展本港的航運業。

就《提升香港作為國際航運中心地位》的顧問研究初稿已提交香港航運發展局討論。研究報告概述了如何擴大香港的航運事業。雖然我現在未能披露顧問研究的詳細內容，但可以告訴大家的是，當中的建議是具積極性，亦有回應業界的訴求。航運發展局基本上是贊同該顧問的建議，一旦最後報告準備好，將會由運輸及房屋局局長作出宣佈。

航運業界期望今屆政府是有所「為」，甚至「做多做濶」，希望當局能盡快制定促進航運業持續發展的長遠政策，鞏固香港作為國際航運中心的地位。

但香港現時面對最棘手的問題是人力資源短缺。上個月，特區政府發表題為《集思港益的人口政策諮詢文件》。在文件中提及，香港的快速人口老化及出生率低是引致人手短缺的問題，預計勞動人口將由2012的58.8%降至2041年的49.5%，屆時我們有三分之一的人口達65歲！因此，觸發社會討論香港是否有需要輸入勞工的議題。為保護本地工人，上月，來自工聯會的立法會議員在立法會提出「反對擴大輸入勞工」動議議案，我就議案提出了修正，要求政府在優先照顧本地工人就業的同時，也要兼顧經濟發展，平衡處理輸入人才的需要，並盡快和適度地就個別行業擴大輸入外地勞工。但最終，原議案及我提出的修正均未能獲得通過，當然這亦是意料中事，這類具爭議性的議題，一般均難以在議會上獲得共識。

為促進航運業的持續發展，我們需要更多的人才加入航運業，財政司司長在2013至14的財政預算中建議預留一億元款項設立〔海運及空運人才培訓基金〕，吸引青年人接受相關的技術訓練及投身航運業。當局已就如何善用款項，設三方（政府-業界-院校）合作小組探討。

現時建議的款項，除了加強現有的培訓資助外，如增加航海訓練獎勵計劃的學員津貼，提供香港海事法律獎學金計劃和香港航海及物流獎學金計劃下兩個碩士課程的學生海外學習和擴闊視野的機會，至於新措施，包括支持現職從業員的培訓；增設更多行業相關的實習計劃及海外學習機會，甚至提供經濟誘因，鼓勵年青人考取行業的專業資格等，希望透過這些培訓及經濟誘因能吸引更多有志青年加入航運業。這些建議已於立法會經濟事務委員會會議上討論，稍後再到立法會的財務委員會申請撥款。

即使政府投放資源，加強海事的培訓，業界的支持及支援同樣重要，希望業界積極提供學員的學習機會，讓我們的年輕人增加對航運業的認識，加入航運業，促進香港航運業的持續發展。

既然國家十二五規劃明確支援香港作為國際航運中心的地位，今屆政府亦顯而有決心加強香港在航運方面的競爭力，我對航運業的前景仍然是樂觀的。我希望與業界朋友，緊密合作，促進本港航運業的發展。

(易志明先生：航運交通界立法會議員)



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Up to now, there are more than 100 Liner Shipping Companies (LSCs) all over the world competing for the same market share in the liner shipping industry. Most of the LSCs provide shipping services on fixed routing and timing of voyage. In order to promote the image and increase the market share in the competitive business environment, LSCs implement different marketing campaigns and strategies.

Traditionally, LSCs posted their company advertisements through the printed media *like Shippers Today, Seaview, Shipping Gazette*, and newspapers in order to increase the awareness of the maritime industry. In order to establish and extend the networks, LSCs also consider becoming the corporate members in different associations, such as *Institute of Seatrtransport, The Chartered Institute of Logistics and Transport (CILT), Hong Kong Sea Transport and Logistics Association (HKSTLA)*, and *Hong Kong Association and Freight Forwarding and Logistics Ltd (HAFFA)*. In addition, LSCs participated in seminars, workshops and exhibitions so as to search for potential clients during these activities.

Because of globalization and customer demand are increasing, LSCs need to provide real time information in 24 hours 7 days (24/7). LSCs change their marketing strategies into electronic tools including Facebook, QQ, Youtube, Electronic Data

Mail (EDM), Website, Forum, LinkedIn and E-commerce. Through electronic marketing tools, it is easier for LSCs to manage their global business effectively, establish close relationships with clients, reduce searching time for finding new clients and maintain the “Green Shipping” concept in the 21st century.

Marketing campaign is a tool for LSCs to explore the new market in the world. In order to build up the good reputation and word of mouth, LSCs not only provide reliable liner shipping service, but also offer value-added and after-sales liner shipping services to clients. This is important for the next research topic of Customer Relationship Management (CRM) in the future.

(Mr. Yui Yip Lau: Assistant Lecturer Divison of Business, Hong Kong Community College, The Hong Kong Polytechnic University)

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Comments from a member - An Economic Study of Mid-Stream Operations in Hong Kong

Dear Editor—in-Chief/Mr So Ping Chi-Chairman of Institute of Seatransport,

I read with interest but with despair on an article of “An Economic Study of Mid-Stream Operations in Hong Kong” by 3 learned scholars from the HK Polytechnic University in the Summer Issue of Seaview in 2013.

The attempt of the authors to look into the less popular subject of Mid-Stream Operations(MSO) is applauded as this is often a neglected area of the success of Hong Kong Port. But some of the descriptions and analysis of the article are misleading.

Firstly, the notion of “triad” culture of MSO(p23) is misleading and defamatory. There is no such culture in the trade. I would like to ask the authors to put up facts to substantiate their claim. All the major players in the field are leading companies in HK including Hutchison Whampoa(Mid-Stream Holding Ltd), China Merchants(China Merchants Container Services Ltd), Sun Hung Kai(Hoi Kong Container Services Co Ltd),China Resource(Yuen Fat Wharf and Godown Co Ltd) etc.

Secondly, PCWA (Public Cargo Working Areas) is not the major terminals for MSO. MSO needs a much bigger support land based container stacking area than PCWA can afford. So the major MSO sites are in Stonecutter MSO terminals, Cheung Sha Wan, Tsing Yi and River Trade Terminals in Tuen Mun. PCWAs serve as support terminals for MSO or handle river trade/break bulk cargoes. In fact, MSO has grown out of PCWAs in the 1980s and its performance is affected by other wider issues.

Thirdly, there is no standard berth width as required by law. The quotation of 40 metres in the article is misleading and incorrect.

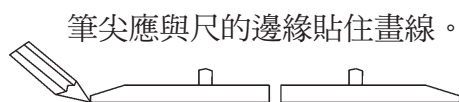
Being a veteran in the MSO trade and being a member of the Institute, I am very disappointed at the quality of this article. I would like to request the Editorial Board to ensure a higher standard in quality control of the professional standards on the Institute’s journal.

(Mr. Choi Kim Lui, 12.2.2014)

教了這麼多年書，一直留意學員們在作業海圖上的時候之技巧如何畫得準確，不會打穿羅經(即相反方向)。經過多年觀察，發現他們在畫線條、用尺和鉛筆的移動方向都被忽視，以致影響準確度，甚至打穿羅經。

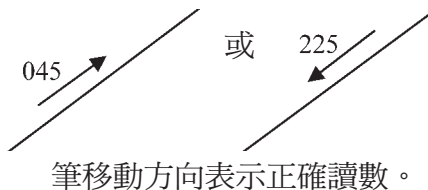
這些小技巧，行內沒有人提及，書本也沒有提及；現在筆者在此說說，獻一點兒醜，請各位前輩見諒。

(1) 鉛筆與平行尺的接觸



(2) 畫線條的方向

一條直線有兩個方向，究竟那個才對？如不想打穿羅經，移動鉛筆畫線時應跟着羅經數字方向移動，例如：



(3) 那個起點開始畫線

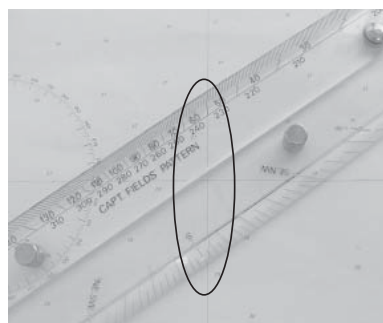
繪畫目標物如燈塔時，方位從那一點開始畫？應從海上向着目標物畫去，筆的移動方向應是該方位數字的方向。不要由陸上目標物開始畫出，否則容易打穿羅經；除非該方位說明由岸上目標物開始。

(4) 平行尺上的羅經花或量角器的運用

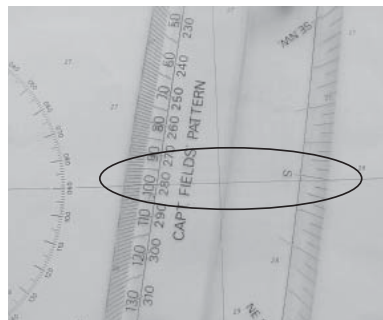
有時，兩個羅經花的距離太遠，可於接近目標物附近，利用經緯線條和尺上的羅經花量出羅經度數。

使用方法：

- a. 用平行尺上的所刻度數，以平行尺一邊的刻有(S)點及另一邊尺的需要方位度數，同時連在同一經線上，亦可以畫出方位線或航線。
- b. 當太接近南或北時，有時很不方便使用經線，那便可以使用緯線。方法是一樣的，不過，記得先加或減 90° 才可以讀出正確的讀數。



a. 利用經線



b. 利用緯線

- (5) **羅經花與目標物距離應是最短的**
移動平行尺的距離愈少，出錯機會愈少，提高準確度。

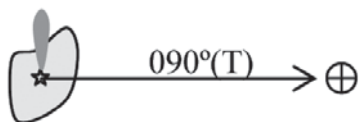
- (b) 要做目標物以東，航向應以某里程距離以正切方法駛往該目標物東面。

希望這些小技巧能幫助並提點準備應考的學員，順祝他們成功！

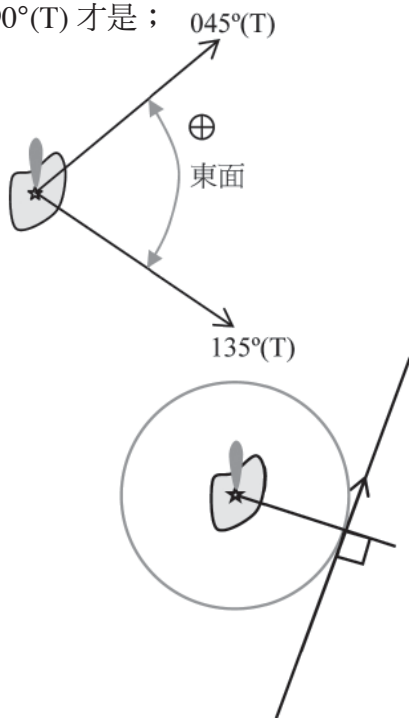
由岸上算出的方位

需要時，方位也可由陸地上測出來的，其實就是海上方位的相反方向。以一陸地目標物作中心，我們站在此目標物上看出去所有視線方向，都是由陸上測出的方位。

但陸上目標物測出的方位可會是準確的方位或大約的方位。例如，在一小島上向正東便是 090°(T)，若向東面或小島以東，則是由 045°(T) 至 135°(T) 都是小島的東面；所以每當做海圖時，小心閱讀題目上的文字描述。



- (a) 要做目標物正東，則由島上量出 090°(T) 才是；



(林傑船長：Master Mariner, M.I.S., M.H.)

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Asbestos thought to be a problem of the past it is still found in new ships - Version 4.0

Ren Di

INTRODUCTION

Cradle to Tomb, the new regulatory challenges facing ship owners and their responsibility for the hazardous materials control on new and existing ships

In various industries hazardous materials are listed to be controlled, for example Asbestos, which is one of the most harmful materials has been regulated and restricted in most countries for the past 30 years.

The Shipping industry is also playing an active part in the hazardous materials control globally. The newly adopted Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 has restricted 13 hazardous substances. Asbestos is on the top of this regulated hazardous substance list.

In an effort to analyze the economic and legal risk of hazardous materials onboard ships we have compiled data

from over 200 new and existing ships, we will also highlight the relevant impacts and responsibilities for shipowners, shipyards and charters.

LEGAL RESEARCH

Shipping is a global industry with many stakeholders and because of the international business the shipping industry is governed by not only the individual flag states and the international convention scheme to regulate and enforce the legal requirement globally.

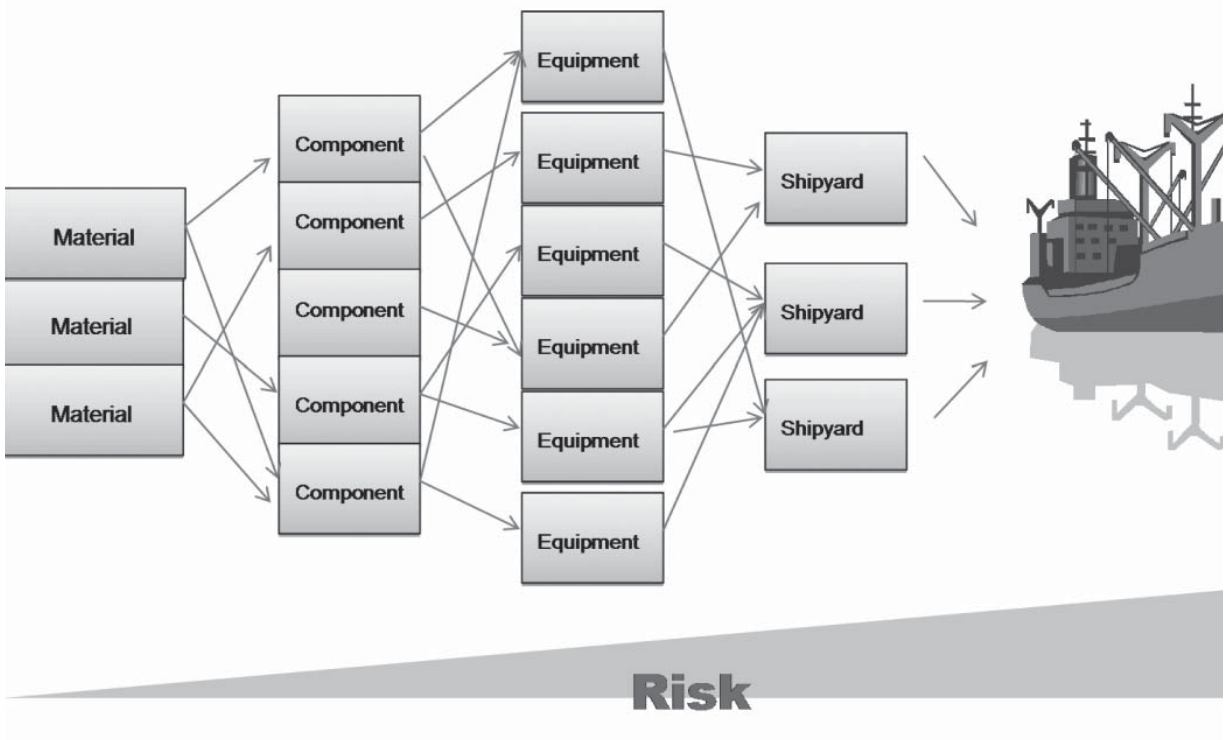
In the last 10 years, Hazardous materials like the Asbestos, Ozone Depletion Substances and Toxic organic tin compounds are regulated by SOLAS, MARPOL and the AFS convention. However until the adoption of Hong Kong convention, there are no clear legal responsibilities for the stakeholders, with regard to how to control the hazardous materials onboard during the lifecycle of ships, which is also described as “From Cradle to Tomb”.

-----“From Cradle to Tomb”-----

**Legal framework of Life-cycle Management Responsibilities of Hazardous Materials
Described by Hong Kong Convention**

Control HazMat during Ship life-cycle	Newbuilding	Delivery	Operation	Recycling
Suppliers of product	X	X (limited Guarantee)	X (limited Guarantee)	
Newbuilding yard	X	X (limited Guarantee)	X (limited Guarantee)	
Shipowner			X	
Ship charterer			X (subject to the descrip of charter)	
Ship repairing yard		X (limited Guarantee)	X (limited Guarantee)	
Ship recycling yard				X

Hazardous Material Risk Amplified during the Newbuilding Process



The IMO has progressive legislation in place stating that the Inventory of Hazardous Materials (IHM) should be prepared, maintained and certified from the beginning to the end of the life of the ship.

CHALLENGES BEING FACED BY THE INDUSTRY

It would always be easier to say there should be no hazardous materials built into a ship than to prove the legal compliance with due diligence. There are actually huge amounts of work to be done for the whole industry to prove the compliance condition of hazardous materials that are present on ships.

Some serious cases have happened during last 3 years between the supplier, newbuilding yards, the ship owners and the charterer.



Caroline Essberger12

This 8,400 dwt tonne chemical Tanker *Caroline Essberger* was built in the Eregli shipyard in Istanbul, Turkey in 2009 for German Shipowner John T. Essberger. She was found to be 'riddled with asbestos in thousands of gaskets and other seals'. The asbestos was only found several months after the ship was built and all the items had to be replaced. It was estimated that the cost of replacement of the asbestos parts was in the order of 10% of the original cost of the ship, although the work was carried out at Essberger's own facilities. (source: Lloyd`s List)

There are more serious cases than the above "Caroline Essberger 12" that have been detected onboard new construction ships just 2-3 months before the delivery. In 2012, a ship in a Far East yard was found containing asbestos within over 40,000 M² of A-60 insulation and sound-proofing insulation. In 2013, another ship was identified to have most of the cable penetrations containing asbestos. In both the above cases, the shipyard and the shipowner all suffered the big loss of removing the wrongly installed asbestos and delay of delivering the ship.



Picture: Insulation material detected containing asbestos from newbuilding ship



Picture: Cable penetration detected containing asbestos from newbuilding ship

According to ship asbestos survey results released by CTI marine, who are the only UKAS accredited organization authorized to perform marine asbestos surveys, 97% of Cargo ships and almost 86% of offshore ships were found to contain asbestos. Most of them were delivered after year 2002, when SOLAS first mandatorily restricted the use of asbestos.

Ship type	Total inspection	Vessel found ACM	ACM vessel rate	Sample checkpoints/inspected ship	Asbestos sample/inspected ship
Cargo ship	70	68	97.1%	122	8.7
Offshore ship and facility	30	26	86.7%	122	12.1

(Source: CTI Marine Service, www.cti-ship.com)

The Netherland flag state recently inspected 11 foreign ships visiting their ports and found 10 ships containing asbestos. The results showed that, despite the fact asbestos was prohibited from 1 January 2011 pursuant to the SOLAS regulations, this clear and unambiguous prohibition of ACMs, still has not stopped asbestos still regularly encountered in various locations on board new ships. During inspections asbestos has been found in such places as fire blankets, insulation materials, types of sealants, friction material for brakes, wall and ceiling coverings, cables, cords, electric fuses etc. Moreover, ships that were originally free of asbestos appear to have ACMs on board as a result of repairs

at shipyards and/or the purchase of spare parts at a later stage.

(Source: http://www.ilent.nl/english/merchant_shipping/port_state_control/asbest/)

Other hazardous materials are continuously detected onboard the newbuilding vessels with the implementation of Hong Kong Convention. Recently over eight times more concentration of heavy metals were identified onboard one newbuilding offshore pipelaying vessel which has claimed to be Green and Environmentally compliant.



Picture: Cooling chambers material found containing over concentration of ODS as required



Picture: Painting found containing eight times more concentration of Lead as required



Picture: Cable caulk material found containing over concentration of Hexavalent chromium as required

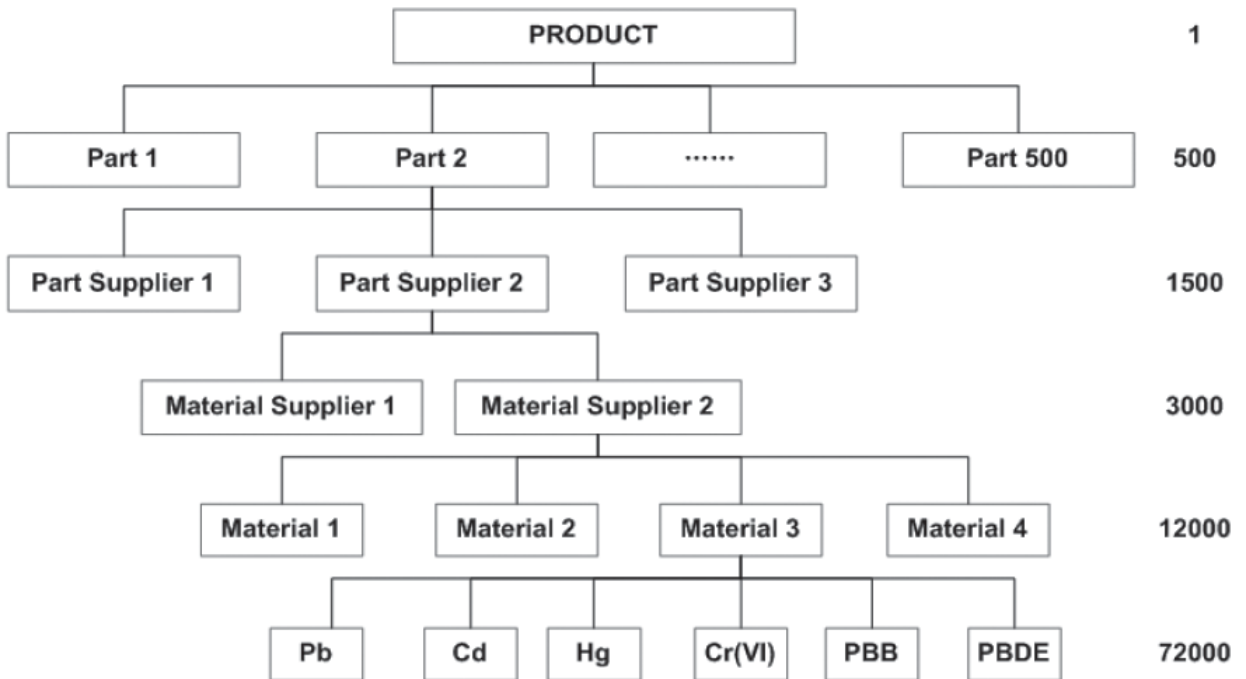
The credibility of the hazardous material compliance declaration, submitted by the newbuilding shipyard need to be verified with more detail. As a consequence the shipowners are facing the legal risk of their ships containing hazardous materials onboard, which is potentially harmful to people's health and the environment.

ACTIVE CONTROL APPROACH AND RISK MANAGEMENT OF HAZARDOUS MATERIALS

The failure of the above cases is due to the loose and lack of quality control procedures within the supply chain during the newbuilding process. To date there is no requirement for material suppliers to have their products certified asbestos free, only a statement stating the materials are asbestos free!

How to control the subcontractors and subcontracted supply? The shipyard will need to know about all the materials that are being provided externally that are to be placed on the ship. The only way to control this process is through the supply contract, which in almost all cases will be with the shipyard. Therefore, contracts will need to recognise that all relevant materials, locations and quantities have to be identified and the information controlled and verified. (Guide to the IHM, 2014, LR)

Supply chain model of a 500-parts product onboard the ship

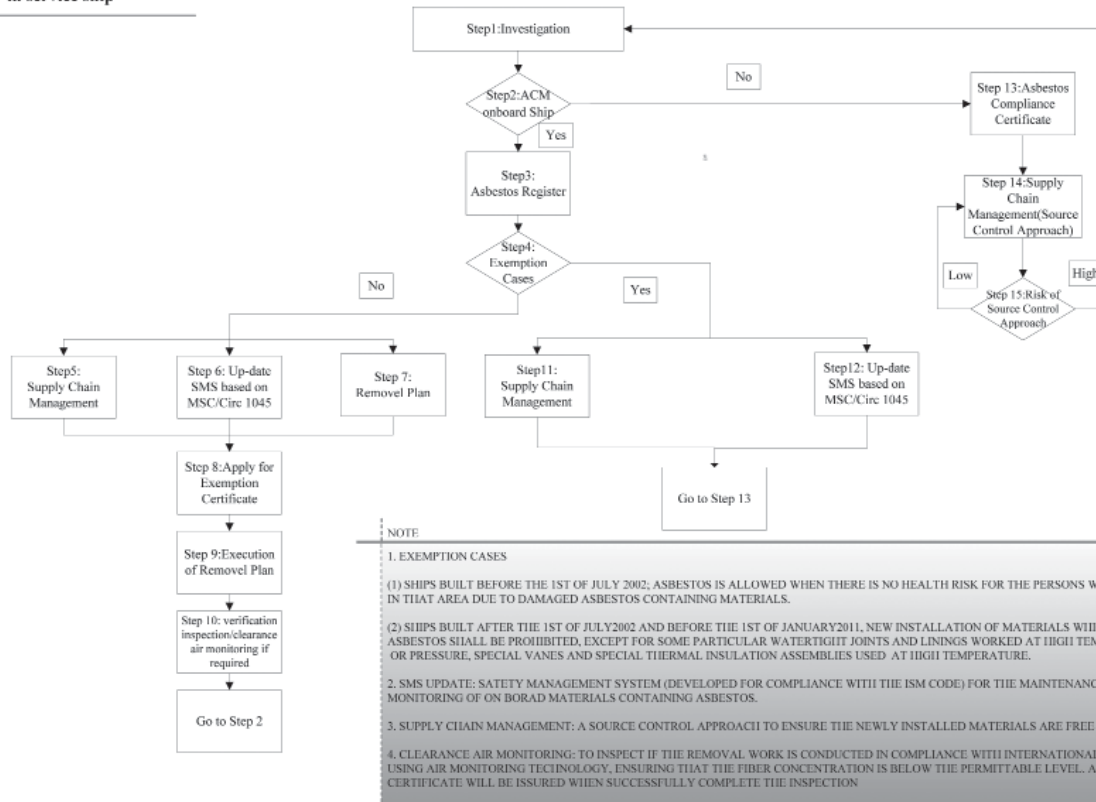


The above model tells us the whole story of the supply chain for example a 500 parts product. In the end there are almost 3000 materials manufactures and 1500 part suppliers being involved in the control process of hazardous materials.

Prudent ship owners are including asbestos survey clauses in their new build contracts, a major Hong Kong ship management company operating 280 ships that is currently building 38 VLCC's puts this clause in their contract "*Asbestos absence certificate to be issued by IACS member approved lab. In event yard does not agree, owners have the right to employ an IACS member approved Lab whose result*

will be binding. In case Asbestos is found, yard will bear full Lab costs for incurred for the inspection and testing the whole vessel and removal and decontaminating the area/equipment and renewing the affected component."

The other failure is from the ship owner side, the poor risk management of hazardous materials onboard. As stated in the Hong Kong Convention, it is the requirement from SOLAS and corresponding Circulars that ship owners should manage the risk of hazardous materials, such as the health risk from asbestos, with the implementation of ISM system onboard.



Note: the Netherland flag state choose to keep CTI logo on the right top to respect the original intellectual right of CTI efforts in developing this chart. http://www.ilent.nl/english/merchant_shipping/ship_owners_dutch_flag/developments/asbestos/

In the step 3 of above flowchart as suggested by Netherlands flag state, the shipowner can engage a marine specialist asbestos survey body to establish an Asbestos Register and risk management plan.

Legal entities that specialize in asbestos litigation have said “the cost of having an asbestos survey is insignificant compared to the huge potential litigation costs.”

Senior Managers from shipping companies are aware it is a SOLAS

requirement that ships built after July 2002 have to be asbestos free and if asbestos is found the flag state will issue a non-renewable exemption certificate, that states the asbestos has to be removed within 3 years. Ship owners are now also aware that charterers are using the opportunity that if asbestos is found during a port authority inspection it gives them a “get out” to cancel a non-profitable charter agreement! The ship owners therefore realize it is better to have an asbestos survey done to protect their interests and be in control.

This more proactive approach is also provided by Hong Kong Convention and SOLAS Convention circulars for the shipowner to identify and manage the hazardous material compliance condition by engaging an experienced marine hazardous expert that is accredited to perform asbestos ship surveys.

For example Centre Testing International Co. Ltd. (CTI) is an internationally recognized laboratory and Certification of Compliance company. The marine division is managed by former Senior DNV Surveyors, Government Marine Safety Surveyors, Senior Marine Technical Managers and Marine Chief Engineers. CTI is the only UKAS accredited inspection body to carry out asbestos surveys and has performed hundreds of ship surveys and have project managed asbestos removal projects worldwide.

On 31 December of 2013, EU Ship recycling regulation is entered into force. This Regulation should provide protection from the possible adverse effects of hazardous materials on board all ships calling at a port or anchorage of an EU Member State, at the same time ensuring compliance with the provisions applicable to those materials under international law. Currently, port State control inspectors are tasked with the inspection of certification and with active testing for hazardous materials, including asbestos, under the International Convention for the Safety of Life at Sea ("SOLAS"). The

Paris Memorandum of Understanding on Port State Control provides a harmonised approach for those activities.

(Source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32013R1257:EN:NOT>)

Over the next few years the marine industry will improve as shipowners and shipyards take a proactive approach to the control of hazardous materials on ships. Which, in part, will be driven by the planned increase in port authority inspections, within the EU states and Australia.

(Mr. Ren Di : Director of marine division of CTI group, the publicly listed testing and certification company employing over 3000 people in the world. His educational background is MSC in Marine Safety and Environmental Administration, World Maritime University (affiliate agency of IMO in Sweden). He is the consultancy representative for IMO marine hazardous materials issue representing Chinese government and the board member of China National Ship Recycling Association. He is also the designated trainer and lecturer for DNV-GL and CCS.)



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Law Column -

The Decurion: Hong Kong court rules on meaning of “control” in the context of a ship arrest

Max Cross / William Blagbrough

Chimbusco Pan Nation Petro-Chemical Co Ltd v. The Owners and/or Demise Charterers of the Ship or Vessel “Decurion” (The Decurion) [2012] HKCFI 630; HCAJ141/2010 (4 May 2012)

This case arose out of the common scenario where a supplier delivers bunkers to a “fleet” of ships it believes are under common control and extends credit terms to its customer. If the customer fails to pay, the supplier will try to arrest one or more ships in the fleet to settle its invoices. As the supplier in this case found, there can often be considerable difficulties enforcing in this way.

The background facts

The bunker supplier, Chimbusco Pan Nation Petro-Chemical Co Ltd (“Chimbusco”) had supplied bunkers to the vessel, Decurion, for which it had not been paid. This vessel was owned by Maruba SCA, which was part of the Maruba Group. The claim for these unpaid bunkers amounted to about US\$85,000.

Chimbusco had also supplied bunkers to ten other vessels through bunker supply contracts with Maruba SCA. It had not been paid for the provision of these bunkers either; a claim in excess of US\$4.1 million.

Maruba SCA did not, however, own any of those other vessels. They were chartered by Clan SA, another company within the Maruba Group. Maruba SCA supplied those vessels with bunkers when they were in Hong Kong through another Maruba Group company and pursuant to a separate Services Agreement between the Maruba Group companies.

The *Decurion* called in Hong Kong and was arrested by Chimbusco. Chimbusco claimed against the Decurion the outstanding sums for the provision of bunkers for all eleven vessels, not just the bunkers supplied to the *Decurion*.

Maruba SCA accepted that Chimbusco had a claim against the *Decurion* for bunkers supplied to the *Decurion*. Maruba SCA denied, however, that Chimbusco could claim against the *Decurion* for the unpaid bunkers in relation to the other ten vessels. It sought to have this element of Chimbusco’s claim struck out.

The legal background

The Admiralty Jurisdiction in Hong Kong is governed by the High Court Ordinance (“HCO”). Under the HCO, a bunker supplier can arrest a ship in respect of claims for bunkers which are sold to the owners and supplied to that ship for her operation.

Where bunkers are supplied to ship A for her operation, a bunker supplier may also arrest ship B for claims for bunkers supplied to ship A only if two conditions are met. Those conditions are specified in the HCO and are as follows:

1. that when the cause of action arose, the defendant to the claim was the “owner, charterer of, or in possession or control” of ship A; and
2. that, at the time the action was brought (i.e. when the writ was issued), the defendant was the beneficial owner of ship B.

In this instance, it was clear that Maruba SCA owned the Decurion at the time the writ was issued, so point (2) was not in issue. Maruba SCA were, however, neither the registered owners nor the charterers of the other ten vessels. The issue before the court was, therefore, the interpretation of the words “in possession or control,” as contained in the HCO.

The court’s decision: the meaning of “control” The court looked at the limited cases relating to “control” that had been heard previously in other common law jurisdictions. It found that there may be control of a ship without possession of it, and that the term “control” in such circumstances must mean something else other than the kind of control that comes with possession. The most obvious example of that kind of control would be the ability to tell the person in possession of the ship what to do with the ship.

In this instance, the court found that this ability lay with the charterers, Clan SA, by virtue of the employment clauses contained in the charterparties which it had entered into with the various ships’ registered owners.

Chimbusco pointed to many factors that it said meant Maruba SCA effectively controlled Clan SA and, therefore, the other ten ships. The court, however, refused to look beyond the charterers in determining who exercised control of the ships:

“[e]ven if (say) Maruba SCA might be treated as the parent of Clan or the individual companies owning the 10 vessels at the relevant times, there is no basis for piercing the corporate veil.”

Accordingly, Chimbusco’s claim in relation to the bunkers which it had supplied to the other ten ships was struck out.

Comment

By adopting the analysis above, the court in this case set out a clear and rigorous test for the meaning of “control” under the HCO. Control of a ship rests with the person who is able to tell the person in possession of the ship what to do with that ship. For a ship under time charter, control will normally rest with the time charterer.

The court refused to widen the circumstances in which a ship may be arrested in Hong Kong, which has helped to preserve certainty. It does, however, reinforce the need for bunker suppliers,

if they are going to extend credit terms to owners, to have a properly drafted contract which would at least allow for the arrest of the vessel supplied if payment is not made on time. Equally, managers who decide to extend credit to a whole fleet should be aware that recovering payment may still require a series of separate arrests.

(Mr. Max Cross: Partner, Hong Kong.

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Mr. William Blagbrough: Solicitor, Hong Kong.

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In the tanker market the large oil companies, the so called oil majors such as Shell, ExxonMobil, BP and Chevron, only consider chartering tankers which meet their minimum safety standards. They inspect the vessels by using a Standardized Inspection Report, called SIRE report. This completed SIRE report is then evaluated to see whether a particular vessel meets their requirements. If so, an approval will be granted.

Before the pollution incidents of the vessels ERICA and PRESTIGE in 2002, the majority of oil majors were willing to issue “approval” letters to the vessels which passed the SIRE inspections. As such it was not uncommon to see the following clause incorporated in charterparties as the standard Oil Major Approvals Clauses.

“Owner warrants that the Vessel is approved by the following companies and will remain so throughout the duration of this charterparty.”

“Owners will exercise their best endeavors so that the Vessel shall maintain acceptable to oil companies.”

However, the situation began to change in 2002 after the occurrence of the above mentioned oil pollution incidents. The oil majors hesitated to issue “approval” letters as they believed that their image had been damaged by these pollution incidents

involving pre-approved tankers. Instead they now issue “approval” letters in more guarded terms, often stating that blanket approval has not been granted and should not be assumed. Some examples are quoted below.

“We have now received sufficient information with regard to this vessel and will not normally require re-inspecting the vessel for a 12 month period from the date of inspection. Please note, however, that this letter does not constitute a blanket approval of the vessel for LUKOIL-LITASCO business or for visits to Lukoil terminals or facilities. The vessel will be screened by us on each occasion it is tended (sic) for Lukoil/Litasco business or intendeds to visit one of our terminals or facilities.”

“Please be advised that once your comments have been uploaded to please consider the inspection process complete from our side. We do not have any further follow up needed. We review vessels acceptability on a case by case basis at time of nomination through our Commercial Department. This completion of the SIRE inspection process is not to be misinterpreted as a Chevron pre-approval of the vessel for future business.”

In the past few years, numerous disputes arose as a result of this change in that some charterers tried to deduct charter hire because these charterers

believed absence of oil major blanket approvals constituted a breach of the Oil Major Approval Clause. The earliest case was *B.S.& N.Ltd v Micado Shipping Ltd*. A clear direction was not given until the recent Court of Appeals case *Transpetrol Maritime Services Limited v SJB*. In the first trial the court said *“Although it seems that some in the market prefer not to use the expression ‘approval letter’ there is no doubt that the word ‘approved’ in the clause is referring to such letters. ‘Approved’ is an ordinary English word and the owner therefore warrants that the vessel has indeed been approved and will continue in such status throughout the charterparty..... Notwithstanding the potential risk for confusion particularly amongst outsiders the letters in this case would all be taken to constitute approval letters.”* This view was upheld by the Court of Appeals.

Now, more and more charterers have started to change the wording in their charterparties from “approval” to “no rejection” to avoid unnecessary disputes. For instance, some charterers now write *“There must not be in place any rejection of the Vessel from the following oil majors.”* This would certainly be a way to resolve the continuous disputes on the issue of oil major approvals.

(Eric Chau: LLM, DBA, CEng, MICS Superintendent, Wah Kwong Ship Management (HK) Ltd)

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AA TALK

MORE ABOUT POLLUTION CLAIMS

Raymond T C Wong

Following a vessel with cargo on board running aground shortly after leaving the loading port:

1. The local port authority sends out anti-pollution craft in case there is any escape of oil;
2. The anti-pollution craft cleans up some bunker oil that escapes;
3. Extra crafts are sent to the vessel to standby during refloating operations in case of pollution arising there from;
4. Extra expenses are incurred cleaning up oil that escapes as a result of refloating damage;
5. The vessel is refloated and needs to go into a nearby port for common safety and to effect repairs necessary for the safe prosecution of the voyage - the port authority insists that pollution control vessels standby while she is in the harbour;
6. While in the harbour awaiting repairs, some oil seeps out from an area damaged by the grounding and extra costs are incurred cleaning it up;

7. Some further oil seeps out in as a result of the refloating damage.

Furthermore, assume that as a result of the stranding, the vessel's shell plating is holed and that certain of the double bottom tanks are ruptured, including some tanks containing fuel oil. For so long as the vessel remains afloat, this oil will not escape, but as soon as she is dry-docked and clear of the water, some escape of oil is apparently inevitable. The vessel dry-docks as she is and as a precaution against any of the oil getting into the basin itself, a boom is placed around the dry-dock and in an attempt to keep the oil seepage as low as possible, the holed double bottom tanks are pumped out into the deep tanks as the water level in the dry-dock is lowered. The latter precaution is largely unsuccessful owing to the fact that the vessel's piping is damaged. When the water level drops below the top of the keel blocks, a heavy deposit of oil occurs and this covers the entire dry-dock bottom and runs over the ends of the dock. A considerable quantity escapes the boom and flows into the basin itself. As a result, the following costs are incurred:

8. Costs of precautionary measures designed to minimize oil contamination;

9. Costs of cleaning up oil spillage in the dry-dock;
10. Costs of cleaning up oil spillage from the basin;
11. Costs of cleaning other vessels which are in the basin and the hulls of which are contaminated by oil.

General Average - It is considered that the costs of measures taken under items 3 and 5 would be allowable in general average where the contract of affreightment provides for adjustment per York-Antwerp Rules 1994, the specific rule in support of such allowances being Rule XI(d). Regarding item 1, the determining factor is whether the initial oil pollution response and control actually carried out following the grounding are within the broad spectrum of the steps that might have been taken by a salvor acting in accordance with Art.13 of the Salvage Convention. None of the activities under items 2, 4, 6 and 7 justify any allowance in general average in terms of the York/Antwerp Rules 1994.

Reasonable cost of repairs – It is submitted that the method adopted being a practical and reasonable way of doing so, the costs incurred under items 8 and 9 form an inevitable part of the cost of adopting that method allowable as part of the reasonable cost of repairs. It does not appear that the contamination of the basin itself is unavoidable, there being a fresh accident which results in costs being incurred (under items 10 and 11) to avoid

a potential liability to third parties. It is not considered that such costs can be regarded as flowing from the need to repair the stranding damage or as forming part cost thereof.

It is suggested that subject to the terms of the cover, the above-mentioned costs falling outside the scope of general average and/or particular average, may form a claim on the P&I Club or Liability Underwriters.

Cat Fines Pack

The issue of machinery damage caused by high cat fine content in bunker fuel has been discussed for some years now. A working group of the Joint Hull Committee has produced a cat fines pack for the consideration of hull insurers, which information can be accessed from the Joint Hull Committee page of the LMA website: http://www.lmalloyds.com/LMA/Underwriting/Marine/Joint_Hull_Committee/Web/market_places/marine/JHC/Joint_Hull.aspx

New Edition of Lowndes

The 14th edition of Lowndes & Rudolf on “General Average and York-Antwerp Rules” has been published, only 5 years after the previous one in 2008, there being apparently little note-worthy happenings relevant to general average in between. It is however worth noting that the 14th edition of this “bible” on general average is the first to be available to subscribers online.

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*(Editor: Mr. Raymond T C Wong
Average Adjuster)*

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<p>DECLARATION</p> <p>I, the undersigned, hereby apply for admission to membership of the Institute of Seatransport, and do agree, if admitted, to comply with the By-laws and by any subsequent amendments and / or alternations there to which may be made, and by any Regulations made or to be made for carrying them into effect.</p> <p>SIGNATURE _____ DATE OF APPLICATION _____</p>	

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Please state name, number, date and place of issue of certificate/degree, or name and membership no. of other related Institute(s) on separate sheets. Please enclose a photocopy of your qualification if possible.

* For applicant with only commercial background, please fill in sufficient experience to cover the minimum requirements as stipulated in Articles 6.3. If insufficient information is given, the applicant will only be graded according to Article 6.4 as Associate Member.



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