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JOURNAL OF THE INSTITUTE OF SEATRANSPORT

Law Column -
Understanding Social Media Risks

索賠率高不僅與船舶建造品質有關

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Law Column - Understanding Social Media Risks

Su Yin Anand

According to a recent report by SmartInsights, the total number of active social media users hit 2.307 billion in January 2016, with the total number of internet users reaching 3.419 billion. In percentage terms, this amounts to almost 46% of the world's population. Unsurprisingly, the use of social media is becoming increasingly important in marketing and branding policies of businesses. However, in a recent survey conducted by FTI Consulting, 91% of board members and 79% of General Counsel interviewed by FTI Consulting admitted to not having a proper understanding of the risks posed by the use of social media. The risks posed by social media are real, and growing. Businesses need to be prepared to deal with these risks.

What is social media?

Social media refers to forms of electronic communication used for social networking and microblogging. It ought to come as no surprise that the most popular social media platforms globally are Facebook®, YouTube®, and Twitter®, LinkedIn®, with the likes of Pinterest®, and Instagram® steadily gaining in popularity. In China, WeChat® and Sina Weibo® are the tools of choice.

It does not include traditional forms of text messaging or emails. For the millennials, social media is an integral part of their life. However, the use of social media is also increasing amongst those age 65 and above.

What is social media used for?

Businesses use social media for:

- Recruitment
- Branding
- Marketing
- Corporate Communications
- Information sharing

Individuals use social media to share 'moments', photographs, discuss social issues and their current activities. Frequently, the line between personal life and professional lie is blurred and moments from professional lives find their way into the personal social media feed of employees. If this does not alarm you, it should. With the growing number of number of Millenials, who are accustomed to oversharing personal information on social media, this risk is real.

What are social media risks?

The assessment and quantification of social media risks is still at its early stages. In other words, it is difficult to pinpoint exact risks presented by social media. However, it does not take a rocket scientist to figure out what the risks are. Underscoring social media is the sharing of information. The leak of negative information can lead to reputational damage and the loss of revenue. These are just the obvious risks. The unintended leak or sharing of information pose these risks as well:

- Legal - For e.g. Breach of Privacy Laws, Misrepresentation
- Strategic – For e.g. Loss of Intellectual Property
- Operational / Business – For e.g. Fraud
- Financial

All companies are vulnerable to social media risks, no matter how well-established the company is. For example, back in 2013, JPMorgan Chase planned to conduct a Twitter Q&A using #AskJPM. Twitter users hijacked the hashtag and buried it under an avalanche of attacks, forcing the bank to drop the Q&A before it started.

Another example of a social media disaster was when US Airways accidentally included a vulgar photo of a naked woman with a toy plane in a tweet. The company removed the post within an hour, but not before it was retweeted hundreds of times. The airline apologized and said it was trying to flag the image, originally sent to its account by another user, as inappropriate but instead accidentally included it in a message. It hasn't used its account since.

The shipping industry is also not immune from social media risks. While social media platforms such as Facebook® and Sina Weibo® are great ways for the crew to keep in touch with friends and family, it can also be used by pirates and other snoopers with an interest and a threat profile. Back in 2010, a video footage showing a collision between a Chinese trawler and a Japanese patrol boat near the Senkaku Islands was leaked on Youtube® causing protests across Japan and China and inciting responses from the US Secretary of State and both the Japanese and Chinese Government.

Managing Social Media Risks

Like all compliance risks, social media risks can be managed, if there is a proper understanding of the risks.

The first step to managing social media risk is for the board room to recognize that social media can have negative outcomes and to make the risk assessment of these negative outcomes part of its business case assessment.

The second step is to put in place clear guidance for employees on the use of social media for business purposes and for personal use. Employees should be aware of these risks and take responsibility for the information they pose on social media.

The third step is continuous monitoring of the effectiveness of policies and the risks presented by social media to the business. The social media world is fast changing, with new social media platforms being introduced on a daily basis. Technology should be utilized to monitor social media activity.

The fourth step is to update your social media policy to respond to new risks.

Conclusion

In an increasingly competitive market place, the effective use of social media to market products will become even more important to businesses. Protect your business by putting in place appropriate social media policies to respond to the potential risks presented by social media.

(Ms. Su Yin Anand: Partner, Hong Kong INCE & CO LLP International Law Firm)

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數個有趣的問題

林傑

1. Restricted Visibility 和 Poor Visibility 有什麼分別？

Restricted Visibility 在國際海上避碰規則內第 3 條內有如下的定義：

「The term “restricted visibility” means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or any other similar causes.」

“能見度受限制”一詞意指在任何天氣情況下，能見度因受霧、霾、下雪、暴雨、沙塵暴或任何類似因素而限制。

在避碰規則內並沒有提及 Poor Visibility 一詞，其實這詞的定義是由世界氣象組織界定的；無論任何天氣，透過大氣清晰度觀察物件，在某一距離外已不能看見該物件。這界定見於能見度級數表：

能見度級數表

級數	名稱	能見度
0	彌霧 Dense fog	能見度少於 50 米
1	大霧 Thick fog	能見度少於 1 鏈 (183 米)
2	霧 fog	能見度少於 2 鏈 (370 米)
3	薄霧 Moderate fog	能見度少於 $^1/_2$ 浬 (1,000 米)
4	霞 / 霾 / 視程甚差 Mist/haze/Very poor visibility	能見度少於 1 浬 (2,000 米)
5	視程不佳 Poor visibility	能見度少於 2 浬 (3700 米)
6	視程尚好 Moderate visibility	能見度少於 5 浬
7	視程良好 Good visibility	能見度少於 10 浬
8	視程非常良好 Very good visibility	能見度少於 30 浬
9	視程極佳 Excellent visibility	能見度在 30 浬或以上

註：一鏈 (Cable) 等於十分一浬 (等於英制 600 呎)。

霞和霧，一眼看上去並沒有什麼分別，因為它們的發生是相同的。當空氣達到飽和的階段時，繼續冷卻而低於露點溫度時，含於其中的水汽便會凝結成小水點，懸浮於空中。在高空中，稱之為雲；在近地面，稱之為霧。霞霧的分別，在於稀薄和濃密之分，在氣象學上，它們被界定如下：

(a) 霧 (FOG) ： 當能見度少於 1,000 米時，稱之為霧；

(b) 霞 (MIST)： 霞是稍為稀薄的霧，視程介於 1,000 至 2,000 米之間。

因此，上述表中的能見度級數，由 0 – 5 級都是「Restricted Visibility 能見度受限制」。

2. Bends，Hitches，和 Knots 有什麼分別？

以上三隻字，中文都統稱為「繩結」，但英文的繩結，三隻字均有不同的意義。

Bends 連接結，是用來連接兩條繩索於一起的。這種結是不會滑開，須於繩索末端纏紮在長繩的一方，例如單編結 / 單索花 SHEET BEND。

Hitches 綁物結，是用來將繩索綑綁在物件上，例如鐵圈 鐵鉤或將帆布綑綁在木條或鋼條上。這種結需要綁緊，但必須容易解開。一般上，其末端是以一易滑脫的圈子完成，以便容易解開，例如丁香結 CLOVE HITCH。

Knots 節結，是用作為提供不易滑脫的一個或多個繩圈。一個滑動的圈套可作為一活動眼環，例如八字結 FIGURE-OF-EIGHT KNOT。

3. 如何檢測計數機

航海助航儀器有很多種，值班駕駛員要時常檢測它們是否工作正常，甚至找出或算出其誤差值，以糾正及提高航行安全。

現今，計數機 (Calculator) 已成為我們的日常工具了。在購買計數機時，應如何去檢測計數機是不是正常運作？我們不需要帶備一大堆算式，來檢測計數機後才購買，而可以用下列簡單方法去測試這台計數機：

(a) 測試四則運算 (即先 ×÷，後 + –)

順序鍵入 1+2×3= 多少，若等於 7，這台計數機是依足四則運算原則製造；若等於 9，這台計數機可以擺去填海。若然要購買，便要小心使用，尤其用家是沒有數學根基的。

(b) 測試計數機有沒有損壞，或它曾否跌在地上，它能否仍能正常運作計算 。

鍵入 1.2345679×9 =11.111111，不要理會小數點在那位置，跟着按 9 的倍數， 即 18，27，36，45，54，63，72 和 81，你會在螢光幕上分別看到 22222222，33333333，44444444，55555555，66666666，77777777，88888888 和 99999999 或 100。 如果是的話，你可以放心購買。

請緊記，計數機是一件工具，提高我們的工作效率用的。不要過分依賴計數機，否則閣下一輩子也不懂得計數，最緊要閣下要有數學根基。

4. Ingenieur ("Ir") 是什麼？

海運學會中，很多會員的姓氏前有「Ir」的尊稱，而「Ir」是甚麼意思呢？有一天，我從 Weki Pedi 中看到了這隻字，它的發音是「engineer」，意思是「工程師」。特此，將 Weki 中的解釋與大家分享。

Ingenieur ("Ir"), Engineer, someone who practices the profession of engineering.

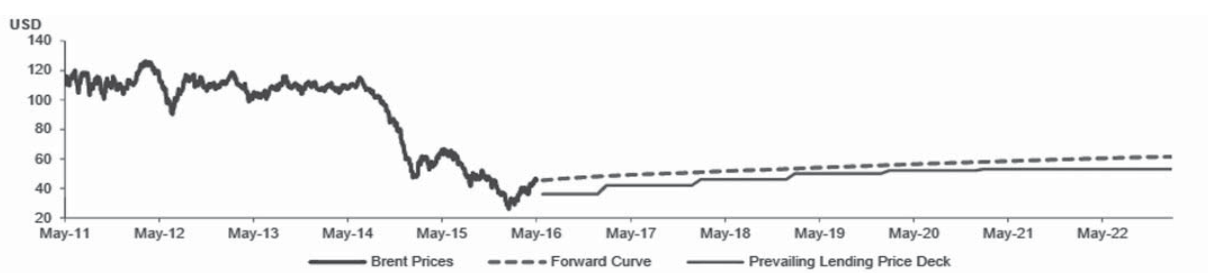
(林傑船長 : Master Mariner, M.I.S., MH.)

ICSHK Column - Oil Prices: fiscal breakeven and market forces

Jagmeet Makkar

In this article we will look at the hot topic of "Oil Prices: fiscal breakeven and market forces" and come back to the "Market Dynamics Part III" in the next issue.

Two years ago, it was said that since the fiscal breakeven price of oil was $100, the price of oil was unlikely to fall below this bench mark. We have seen in last 18 months, or rather since the infamous two tankers loaded in June 2014 from Middle East, how the oil prices have continued to fall. Fiscal oil price does not – and in a free economy cannot – dictate the market dynamics. OPEC's main member, Saudi Arabia (hereinafter SA) has its fiscal breakeven (according to the IMF) as $98. This in no way indicates that Saudi Arabia will lose money on its oil exports if the price falls below this so-called fiscal breakeven price. The budget surplus (circa 30% in 2014) neither reduces the price of SA's oil exports, nor does a budget deficit (circa -21% in 2015) increase the price. SA's reserves in fact have reduced from about $740 billion in 2014 to $640 billion in 2015. In the past, OPEC has been changing supply of oil by controlling the tap to manipulate the price. However, the new dynamics in the energy sector have had an impact here, thanks to the increased production of non-OPEC countries (estimated at about 55 mbpd (million barrels per day), with expected increase to 61.5 mbpd by 2025 and then tapering off to 59 mbpd by 2040 and shale gas with its enormous increase in production (from 2,500 bpd in early part of the century to 250,000 in 2012 and then to 750,000 in 2013 and more than a million tons in 2014/2015 with peak in April 2015). In brief, the fiscal breakeven price could neither control new supply reality of non-opec and the shale revolution. This article will briefly examine the supply, demand and the new market equilibrium with few examples from the prevailing price war between SA and the US shale drillers and the geopolitics in the middle-eastern region and its possible impact on the supply disruptions.



Sources: Bloomberg, Standard Chartered, Bank of America Global Index

(Presented by Standard Chartered Bank at the World Petroleum Council organized "Masterclass in Strategies and Techniques for Financing Oil and Gas Industry in Transition, London 10th – 11th May 2016)

In June 2014, in view of the geopolitical issues in the Middle East (Libyan oil production down from pre-war 1.1 million to a trickling 250,000 bpd in early 2014 and expected to further drop due to the strikes and social unrest; Islamic fighters running amok in northern Iraq, trying to capture the oil fields at and near Kirkuk), the market players betted heavily on the oil prices to go beyond the then prevailing $112 per bbl. However, in June 2014, the Libyan oil production increased to 900,000 (just about 1% of the global consumption of circa 93 mbpd) and the Islamic fighters failed to capture the Iraqi oil fields. The sentiments in the markets changed and the hedge funds and other financial institutions that were long up to a region of about 600 million barrels on paper, began to unwind/reverse their positions. Some of the traders did manage to reverse their position for the cumulative total of 400 million barrels, but at a cost of drop in oil price of about $15 per barrel by end of September, following which there was no end to the price downturn. Oil prices dropped to $57 per barrel by the end of 2014, and by end of January 2015, they stood at $47 per barrel. It would not be fair to say that the drop in oil prices was entirely due to the supply increase by Libya by just less than 1% of global consumption. It was more to do with the building up of oil supply by Shale drillers and other non-OPEC countries. Libya was just a tipping or triggering point of something bigger.

The recent Shale revolution in the US has been termed "the second shale revolution". The first shale revolution took place in the last decade of the previous century, which unfortunately died down due to the high cost of horizontal drilling and hydraulic fracturing and the low oil prices at the turn of the century. However, the high oil prices in the years of China's industrial boom and the improvements in the technology were motivating factors for the shale industry to try again, and this time it surprised the world and survived. The overall increase in the US oil and gas production is mainly attributed to the shale revolutions and this is helping the US to move towards energy independence. As an example, in 2005, the United States were importing close to a net 12.5 mbpd (60% of its needs) of liquid petroleum whereas in 1Q 2015 annualised, they imported circa 4.75 mbpd (which is 24 % of their requirement).

This increase in the supply threatened OPEC supremacy and forced them to try to maintain their market share. SA did not want to repeat its mistake of the 1980s when it cut down the production, losing market share and the revenue in the process as a result of oil prices not rising (thanks to increased production by the non-OPEC countries). The only solution, in their opinion, was to keep pumping out the oil to bring the oil price down. In various meetings, OPEC made it very clear that they will not reduce production. The variable cost of production of SA oil is just above $10 pbbl (Kuwait being the lowest at circa $10) and other ME countries such as Iran, Iraq and UAE in the mid-twenties. In severe contrast to this, the breakeven cost for Shale is anything between $30 to $75. Over a period of time, the drilling and fracturing equipment costs have reduced by about 32 and 38 percent respectively and the time to drill a well has fallen from 8.9 days to 7.7 days. Knowing this very well and that the Shale process is flexible with capability to quickly stop and start production, SA and the other OPEC

countries are on their way to prolong the oil price lows as much as possible. As per one of the main banks in US, Well Fargo (highest market capitalization): this time, the low prices cycle is "deeper broader and could last longer". The impact on the Shale producers can also be seen with the recent spate of bankruptcies and bad debt.

SA has geopolitical reasons to ensure that they continue to produce as much oil as they can to keep Iran out of or at least minimum effective in the region. The desire for supremacy (refer to proxy wars in Yemen and Syria) is strong. In the end, they both may be the losers like the classic game theory (prisoners), and as John D. Rockefeller said, a "good sweating" battle.

I would like to end this brief article with a quote about situation in US shale gas industry:

"You've got oil that is down meaningfully in 2016, volumes are down, natural gas prices are low because of weather and there is very little in the way of hedging. Then you've got a lot of these companies that were very aggressively financed with debt," said Mark Hanson, an oil analyst with Morningstar in Chicago. "It can get pretty ugly."

The views expressed here are solely those of the author, and do not necessarily reflect the views of the organization he represents.

(Mr. Jagmeet Makkar: FICS, FRINA, FIMarE (I), MCIArb Past Chairman, Institute of Chartered Shipbrokers, Hong Kong Branch)

G.N. 3836

MERCHANT SHIPPING (SAFETY) ORDINANCE (Chapter 369)

GUIDELINES ON THE VERIFICATION OF GROSS MASS OF A CONTAINER WITH CARGO PACKED IN HONG KONG

Relevant Legislation

Pursuant to section 112A of the Merchant Shipping (Safety) Ordinance (Chapter 369), I hereby notify that the following guidelines are issued under section 3A(7) of the Merchant Shipping (Safety) (Carriage of Cargoes and Oil Fuel) Regulation, (Cap. 369AV) with effect from 8 July 2016 in Hong Kong for the purpose of providing guidance in respect of the safety management of containers carrying cargo.

Verification of Container Mass

2. Methods in Verification of Packed Container Mass

2.1 Shippers may opt for either one of the methods below for mass verification of packed containers:

- Method 1: weighing each packed container by using the approved weighing equipment;
- Method 2: weighing all packages and cargo items, including pallets, dunnage and other securing material to be packed in the container and adding the tare mass of the container to the sum of the single mass using a certified method approved by the Marine Department (MD).

2.2 When using above-mentioned Method 2, shippers must provide details of the container mass verification method for approval by MD in the registration process. For containers of which packing were completed outside of Hong Kong, MD accepts the competent authority of the State in which packing of the container was completed as the approving body.

3. Documentation

The verified gross mass obtained in accordance with paragraph 2 of these Guidelines must be declared in the shipping document. The declaration can be submitted to the carrier as a part of the shipping instruction or an independent document of proof. The declaration must be signed by the shipper's authorized

person. The signature can be in electronic form.

4. Shipper's Declaration

In the shipping document under paragraph 3, the shipper must declare as below:-

4.1 For gross mass obtained by Method 1, the declaration must consist of the following contents:

(a) shipper's declaration: "The gross mass of the packed container declared in the shipping document was obtained in accordance with Method 1 stipulated in SOLAS Chapter VI Regulation 2."; and

(b) signature of the shipper.

4.2 For gross mass obtained by Method 2, the declaration must consist of the following contents:

(a) shipper's declaration: "The gross mass of packed container declared in the shipping document was obtained in accordance with Method 2 stipulated in SOLAS Chapter VI Regulation 2. The procedure of this method has been approved or recognized by MD with registration number GMVXXXXXXXXX"; and

(b) signature of the shipper.

5. Submission of Information

5.1 The shipper must submit the shipping document with verified gross mass used in the ship stowage plan sufficiently in advance under paragraph 3 of these Guidelines to the carrier and the terminal operator via carrier by means of Electronic Data Interchange (EDI), Electronic Data Processing (EDP) transmission or paper copy for the purpose of formulation of stowage plan.

5.2 When the packed container reaches the terminal's facilities, the carrier must inform the terminal operator the verified gross mass figure for stowage planning.

6 Shipment and Transshipment of Consolidated Container

6.1 If a container is shipped to a terminal without VGM information, that unverified packed container must not be loaded onboard a SOLAS-compliant vessel unless the verified gross mass of the packed container has been obtained in accordance with the verification methods under paragraph 2, or directly weighed by the approved weighing equipment as arranged by the Master or terminal operator for efficient cargo operation.

6.2 Re-verification is not required for container in transshipment.

7 Deviation in Gross Mass Figures

7.1 The verified gross mass figure shall prevail if it is different from the figure declared prior to verification.

7.2 The verified gross mass figure obtained by approved weighing equipment in the terminal shall prevail if it is different from the verified figure obtained before the container reaches terminal.

7.3 The verified gross mass figure obtained by MD at a location where random check takes place shall prevail if it is different from the verified figure obtained by approved weighing equipment in the terminal.

7.4 Tolerance of +/-5% and +/-0.5 ton between the verified gross mass declared by the shipper and the verified gross mass obtained by MD, the carrier or terminal operator shall be acceptable for container's gross mass above 10 tons, and 10 tons or below respectively. There is no obligation for the carriers and terminal operators to verify the verified gross mass unless it is found necessary.

8 Overweight Container

The gross mass of a packed container must not exceed the *maximum operating gross mass* stamped on the container's safety approval plate issued in accordance with the requirements of amended Container Safety Convention (and its corresponding local enactment in section 10 of Freight Containers (Safety) Ordinance, (Cap. 506)). Any overweight container shall not be allowed to be loaded on board.

9 Unverified Container

If the shipper cannot provide the verified gross mass information upon a container's arrival at the terminal, that container shall not be loaded on board until verification of container mass is completed. The shipper may delegate to the Master or his representative and terminal operator in the carrying out of verification in the terminal or other places where approved weighing equipment are provided. The verified gross mass obtained in this way can be used for preparation of stowage plan.

Procedures for Adopting Method 1

10 Weighing Equipment

Verification of gross mass by way of Method 1 is to be done by the approved weighing equipment accepted by MD and listed in MD's web-page. To be acceptable, weighing equipment operators are required to submit weighing equipment annual calibration report in respect of the weighing equipment. For a container weighed by the approved weighing equipment, the shipper is required to have a weighing document showing the weighing equipment's approval number, the name of weighing equipment operator, the date of weighing, the container number and the seal number together with the signature of the weighing equipment operating staff and company stamp.

11 Application for the Acceptance of Weighing Equipment under section 3A(3)(a)(ii) of Cap.369AV

The weighing equipment operator in Hong Kong who is interested in obtaining MD's acceptance must submit the required application materials as follows:-

(i) the name of weighing equipment operator, contact details including phone numbers, fax number, email address and details of Person-In-Charge (both in English and Chinese);

(ii) relevant weighing experience of weighing equipment operator;

(iii) address where the packed container weighing is to be conducted by the weighing equipment operator (both in English and Chinese);

(iv) copy of Hong Kong Business Registration (BR) Certificate of weighing equipment operator;

(v) details of weighing equipment including:

- Maker
- Model
- Serial number
- Type (such as side loader, reach stacker or weighbridge, etc)
- Year of manufacture
- Maximum capacity
- Accuracy
- Photos of the weighing equipment;

(vi) calibration proof of the weighing equipment for the calibration done within the past 12 calendar months (including tolerance report). The testing weight applied should be progressively increased from 0 kg to 50,000 kg. The proof should be issued by Registered Professional

Engineer (Mechanical or Marine and Naval Architecture discipline);

(vii) list out auxiliary mechanism such as side loader, reach stacker or derrick.

Procedures for Adopting Method 2

12 Shipper's Registration

12.1 Shipper that adopts Method 2 to obtain the verified container mass is required to submit its procedure for approval by MD. Shipper is solely responsible for the practicality of the procedure, the accuracy of the calculated mass, the record of the verification process, and the maintenance of the records. Shipper is solely responsible for updating any change in their procedure and equipment.

12.2 Shippers within Hong Kong shall submit application of shipper's registration to MD before adopting Method 2, regardless of whether packing of the container is completed within Hong Kong or not.

12.3 Shippers outside of Hong Kong shall submit application of shipper's registration to MD before adopting Method 2 if packing of the container is completed within Hong Kong.

13 Application of Registration of Approved Method under section 3A(3)(b)(ii)(B) of Cap.369AV

13.1 Companies using method 1 do not require registration.

13.2 Shipper adopting Method 2 must provide the following information during their applications of shipper's registration to MD:-

(i) The name of shipper and contact details including phone numbers, fax numbers, email addresses and details of Person-In-Charge (Both in English and Chinese);

(ii) Post title(s) of staff authorized to sign the shipper's declaration;

(iii) Post title(s) of staff of internal auditing (if applicable);

(iv) The location of carrying out the mass verification (in particular, if it differs from the address on BR Certificate);

(v) Name and relevant details of the outsourced entity carrying out verification of a container carrying cargo (if applicable);

(vi) Procedures of container mass verification;

(vii) Copy of Hong Kong BR Certificate (for a corporation registered outside Hong Kong, it must submit the equivalent document or Certificate of

Incorporation issued by the authority of the country with which the company is registered.); and

(viii) Training certificates and/or details received by the persons engaged in the container mass verification (optional).

14 Completing the Registration

14.1 After receiving the application of a shipper, MD will scrutinize the documents and perform a preliminary assessment of the practicality of the submitted container mass verification procedures. If the submission is found to be in order, MD will issue a confirmation of registration together with the registration number to the shipper.

14.2 MD has the right to inspect and witness the shipper's conduct of the procedures before granting the registration.

Supervision and Inspection

15 Supervision and Inspection

MD may exercise the power to:-

(i) enter the companies' premises to check the documents or records confirming their compliance with either Method 1 or Method 2 under paragraph 2; and

(ii) weigh packed containers by making use of approved weighing equipment if deemed necessary.

16 Document and Record Keeping

The stakeholders, including but not limited to shippers, the weighing equipment operators, carriers and terminal operators must retain all the documents and records related to verification of gross mass of all packed containers for a period not less than 1 calendar year.

8 July 2016 Maisie CHENG *Director of Marine*

索賠率高不僅與船舶建造品質有關

李曉川、王思佳

拋開 Cefor 計算方法中的一些不完美，我們更應該多方面審視中國造船舶索賠率高的問題， 尤其是不能忽略造船產業周邊存在的問題……

2016 年 4 月中旬， 有國外媒體刊出“北歐海上保險協會 ：中國造船索賠率比日韓高約 90%”一文，通過國內媒體轉載，立即引起業界關注。文章表示，北歐海上保險協會（Cefor）最新研究發現，中國造船數量居年報第一，但索賠率卻比日韓高出 89%。問題有，但非來自主流船企大約從 2004 年開始，世界進入造船市場興旺高峰期，中國造船業發展迅猛。文中指出“Cefor 分析比較了 2007-2015 年間的三國造船記錄（主要集中在油輪、成品油輪、化學品船、散貨船和集裝箱船）”，索賠額超過 5 萬美元的概率比日韓高出 75%，超過 200 萬美元的索賠率則比日韓高出 52%。那麼，文中所報現象事實如何，統計結果是全面調查還是抽樣調查，結論是否客觀？總之，中國造船界需要一個答案，國際航運界及相關業界更期待一個客觀公正的真相。

問題有，但非來自主流船企

大約從 2004 年開始，世界進入造船市場興旺高峰期，中國造船業發展迅猛。文中指出“Cefor 分析比較了 2007-2015 年間的三國造船記錄（主要集中在油輪、成品油輪、化學品船、散貨船和集裝箱船）”，敏感的時間階段很容易讓人聯想到高索賠率是造船高峰時期的產物。那麼，事實真的是這樣嗎？

記者帶著問題採訪了業界多位人士，希望能夠得到一個相對客觀的解答。“我個人並不認同高索賠率是造船高峰時期的產物。”香港船東協會助理董事馮佳培就表示，“應該說，中國造船的高峰期是由於中國經濟發展、航運市場發展、當時人民幣匯率相對比較低、中國造船技術提高以及國際上普遍接受造船品質等因素造成的。過去半年來，香港許多船東轉到日本訂造新船，同樣不是因為中國造船品質的問題，而是日本匯率降低，造成成本相對降低的原因。業界普遍公認，日韓中造船品質和穩定性的排名是日本第一，韓國第二，中國第三。中國造船和日韓造船的品質和穩定性方面有一定差距，但差距不是很大。”

中國造船業進入發展快車道，造船品質是否因此而下降？這幾年，中國造船行業正在努力改進技術，吸取國際先進的管理經驗，中國造船的品質已經達到很高的水準。業內有不願透露姓名的專家告訴記者：“這些年來，中國造船在產出規模上取得顯著成績，但中國造船品質並沒有因為市場高峰期出現明顯下滑。總體來講，也不會與日韓一些船廠有較大的差距，尤其是到後期船東接船困難的情況下，船廠更是沒有理由不重視品質問題。並且，市場後期存在部分船東為了延遲接船和棄船找一些藉口提起索賠的現象，從而也導致索賠率高。”

香港禮德齊伯禮律師行（Reed Smith Richard Butler）合夥人李連君律師認為北歐海上保險協會相關對比資料在潛意識裡

比較符合大眾的心理 ：“如果反過來說日韓造船索賠率比中國高出約 90%，或許大家會更覺得不可思議。可以肯定地說，中國造船產業的主流以及大部分船廠的建造品質是沒有問題的。至於說一些小的船廠可能在建造過程中出現問題，但這是任何階段都會有的情況，並非是高峰期的唯一存在。” 江南造船（集團）有限責任公司總工程師胡可一則表示 ：“中國 2007 年完工的船舶中有一些可能存在問題。但關於索賠率問題，江南船廠以及南北兩大造船集團並沒有因為什麼大的事故導致索賠的事件”。

總之，問題有、差距也存在，但並不是想當然地說數位。業內人士普遍願意正視那段“瘋狂”擴張的階段，尤其是當時湧現出大批新的造船廠，“三新”（新訂單、新員工、新平臺）狀態下開工造船讓外界對這些船廠的建造品質存在擔憂，加上市場大好情況下出現趕工現象，高強度工作壓力也可能會出現一些潛在的事故和障礙在船舶後期運營過程中體現出來。

無論如何，這些問題若後期產生索賠問題幾乎悉數回饋在 Cefor 2015 年報的報告中。據瞭解，統計公佈的 cefor 資料，來自北歐的海洋保險資料庫，涵蓋了大約 40% 的全球遠洋船隊 , 中日韓三國建造的船舶數量在北歐海上保險協會船隊中的份額分別為 42%、33%、14%，其他國家 11%。該資料庫包括所有索賠的船體保險覆蓋，即任何物理損壞的船舶（包括全損以及所有的小修理）。

比例高，以偏概全有失公允

“對於 Cefor 報告的內容，我們認為基本屬實。當然，以這些資料做橫向比較得出中國造船索賠率比日韓高 90% 的結論，對中國造船界來說有失公平，至少是不夠嚴謹的。”馮佳培告訴記者，“造成中國造船索賠率比日韓高的錯覺主要是在於計算的方式不同。通常情況下，影響索賠率的因素包括船舶品質的好壞，船舶管理和維護的好壞，以及保險免賠額的高低等。日韓建造船舶由於相對較高的免賠額，船東提出索賠的概率也就相對低。”

文中提出“過去 10 年，中國新船交付快速增長，特別是來自新船廠的船舶引起一些保險商的質疑 ：他們的船舶建造品質是否存在高風險？”北歐保險界對中國造船舶品質穩定性較差的心理狀態再加上國情不同等原因，就有可能造成中國造船舶免賠額被差額對待。據悉，中國造船舶的機械設備保險免賠額比較底，通常在 5000 美元左右，而日韓國家包括香港地區、新加坡等的船舶機械設備保險免賠額相對很高，通常在 10 萬美元左右。低免賠額就會造成高保費，而高免賠額的保費就相對低，同時低免賠額更容易造成高索賠率。因此，從這個角度得出中國造船舶的索賠率普遍比日韓建造船舶的結論是不公正的。

此外，Cefor2015 年報選擇了從船舶建造國家來分析索賠情況也被業界詬病。此前，中國船廠此前基本以建造散貨船為主，而韓國以建造油輪為主，日本造船的優勢是化學品和液化 天然氣船。按照船型分析，中國索賠率最高的集中在小於 1 萬噸和 2 萬噸的散貨船、化學品 / 成品 / 油船和集裝箱船。而中國建造的船的機械設備方面索賠率特別高，很大程度是因為小船數量比韓國和日本多。

索賠還可能出現在每一個環節。李連君認為 ：“即使是出現事故，進而出現索賠，也應該看看是因為什麼原因造成的，

哪家船廠，因為什麼船型，在什麼階段出現了索賠案件。沒有經過細化、更加準確的分析就得出‘中國船舶’存在品質問題是有失偏頗的。”

據瞭解，船廠很大一部分工作是組裝，除了造船工藝，導致索賠事件還包括如船殼的索賠、建造設備導致的索賠、保養的索賠、後期維修的索賠、人為因素導致的索賠等原因，所以高索賠率的統計資料並不完全取決於造船方。舉個簡單的例子，中國一個小造船廠，船東聯繫好吊機供應商，如果吊機出現問題造成船體損失能說是船廠的問題嗎？另外，價格相對低廉的船廠面對的自然是比較小的船東，如果雙方在管理上都存在品質不過硬的情況，產品索賠率自然也就高，但索賠責任也得重新考慮。

查看 Cefor 的報告，隨著時間的推移，船舶的滅失無論從數量和噸位都是下降趨勢。並且，中國船舶索賠案件中索賠額超過 50 萬美元索賠數額中，高於韓國 1 倍，但在超過 200 萬美元的，與韓國很接近。因此絕大多數案件對保險協會的影響可能是金額不高，但麻煩很多。所以，總體來說，中國主流船廠在品質上經得起市場的考驗，船級社的工作在各方配合下也沒有問題。然而，拋開 Cefor 計算方法中的一些不完美，我們更應該多方面審視中國造船舶索賠率高的現象，尤其是不能忽略造船產業周邊存在的問題，很多案例都發現正是因為這些所謂周邊問題嚴重阻礙了中國造船行業的國際化發展，也從某一方面造成了“中國船舶”索賠率比日韓高的“事實”。

穩品質，多管齊下是良策

造船業作為一個集群產業，品質作為核心指標卻並非孤立存在，在國際大環境還不太明朗的情況下，風險無處不在，如何凝聚產業各方力量為中國造船品質護航就越發顯得重要。

2016 年 5 月 11 ～ 20 日， 國 際海事組織 (IMO) 海上安全委員會第 96 屆會議在英國倫敦召開。在此次會議上，IMO 宣佈，中國船級社（CCS）和國際船級社協會其他 11 家成員船級社送審的散貨船與油船結構規範，符合該組織制定的散貨船和油船目標型船舶建造標準的目標和功能性要求，並以通函形式通告所有 IMO 成員國與相關方。這是 IMO 首次組織對船級社船舶結構規範進行審核，以確認這些規範滿足該組織設定的安全目標。標準建設一直是提升船舶建造技術水準和品質水準的利器。CCS 散貨船和油船結構規範或 IMO 審核通過，將進一步提升其為中國造船服務的能力，有利於造船產業品質的全面提升。與標準促進產業發展相似，李連君認為國內船廠在提高品質的路上還需要注意風險規避，尤其在法律方面應加強力度，“在過去，中國造船企業普遍不如日韓企業重視法律風險領域的投資，這在平常可能並沒有多大的影響，一旦市場發生變化，就會造成巨大損失。金融危機後期，不少中國船廠遭遇了因合同簽訂不嚴謹等原因引起索賠與法律糾紛，對急轉直下的中國造船市場猶如雪上加霜。如今吃一暫長一智，大陸企業的法律意識正在慢慢提升。”

再次，人仍然是保證船舶品質穩定發展的關鍵因素。不難理解，人自始至終貫穿在船舶的整個生命週期，包括船隻操作、安全標準執行、安全文化養成、遵守法律法規等等。據不完全統計，船舶事故中 90% 都是人為因素，而不是設備。重視人為因素，一直是 IMO 的主要理念。在日前召開的 IMO 海上安全委員會第 96 屆會議上，中國代表團“有效利用事故經驗教訓，改進海員培訓教育”的提案得到與會各國代表的積極回應並獲得全票通過。該提案是我國首次針對 IMO 工作機制提出的重大改進建議，將我國以海事調查推動海上安全管理鏈建設的理念推薦給國際業界。

最後，針對造船高峰期時期遺留下來的一些問題，中國造船界也積極尋找有效的解決措施，其中包括以供給側結構性改革破解造船產業發展難題。近兩年來，國家多次針對船舶行業出臺加快產業轉型升級、淘汰落後產能的政策，鼓勵大型船舶企業兼併重組、海外並購，加快中小船廠業務轉型和產品結構調整，同時也從金融支援的角度加快整個行業的結構調整。目前，造船業“先破後立”已發展為行業大趨勢。

前不久，工信部日前組織船舶行業相關人士交流討論了《關於推進船舶智慧製造指導意見》的徵求意見稿，徵求意見稿明確提出，到 2020 年，我國造船效率和製造品質要接近日本和韓國的水準。工信部副部長辛國斌在研討會上表示：“十三五”時期是我國船舶工業由大變強的關鍵期，產業發展已經進入增速減緩期、結構調整期和優勢重構攻堅期三期疊加階段。接下來，加快推動新一代資訊技術與先進船舶製造技術融合，大力推動智慧製造，能夠快速提升船舶建造品質和效率，降低成本和資源能源消耗，是增強我國造船企業核心競爭力的有效途徑。

（作者均為《中國船檢》雜誌記者。王思佳現在中國船級社香港分社工作）

AA TALK

More about the York-Antwerp Rules

Raymond T C Wong

It is not surprising to note that many contracts of carriage incorporate the York-Antwerp Rules 1974, as amended 1990. Following our briefing on the newly adopted York-Antwerp Rules 2016 summarizing the major changes from the 1994 version, we have received enquiries with request to outline the major differences between the 2016 and the 1974 as amended 1990 versions.

Accordingly, we consider it being advisable to highlight the major differences from the YAR 1974/1990 whilst noting minor amendments made to "tidy up" the text, modernizing some terms and providing a more coherent numbering of paragraphs.

RULE OF INTERPRETATION

The difference is the inclusion of a reference to the Rule Paramount in the second paragraph.

RULE PARAMOUNT

Under this Rule (included since the 1994 version) it will be necessary for those claiming an allowance in general average to prove, on the basis of Rule E, first paragraph, that both the general average act and the quantum of allowances are reasonable.

RULE B

The 1974/1990 Rule B having been inserted as a second paragraph of the Rule A, a new Rule B was introduced (in 1994) to achieve uniformity for general average involving tug & tow in commercial activities, i.e. not in a salvage operation.

RULE C

The 2016 Rule C (same as 1994) provides for general exclusion from general average the allowances in respect of pollution and damage to environment.

Also, the second paragraph of 1974/1990 Rule was reworded (3rd paragraph in the 2016 Rules) to take into account that loss of market should not be regarded as an indirect loss (in accordance with the decision of Czarnikow (C.) Ltd. v. Koufos – 1969).

RULE E

The 2016 Rule E provides clear time-line for the notification of a claim in general average and provision of documents and evidence with the intention to help speed up the adjusting process, and paragraph 3 allows:

a) For notification or particulars in support a claim – 12 months

from the termination of the common maritime adventure or payment of the expense;

b) For particulars of value – 12 months from the termination of the common maritime adventure.

The Rule provides for average adjuster's liberty to make an estimate of allowances or contributory values upon expiry of the 12 months of his requesting for such evidence and particulars. The adjuster's estimate may be challenged only on grounds that it is manifestly incorrect. The parties are allowed to challenge the adjuster's estimates within 2 months of receipt of same.

Paragraph 4 of 2016 Rule E is a new provision that any party pursuing a recovery from a third party shall advise the average adjuster and supply full particulars within 2 months upon receipt of the recovery achieved. The adjuster should take note ensuring that any allowable credit to the general average is made in the appropriate manner.

RULE G

The 2016 Rule G includes a non-separation wording (first introduced in 1994) based on the Standard Non-Separation Form (used for many years as an attachment to security documents), but with the inclusion in the text of the "Bigham" clause acting as a ceiling on allowances made under this Rule. [Reference is made to an example illustrating the working of the "cap" in the Seaview Issue No.114.]

RULE II. LOSS OR DAMAGE BY SACRIFICE FOR THE COMMON SAFETY

RULE V. VOLUNTARY STRANDING

RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE, AND CONSEQUENT DAMAGE

The inclusion of the wording "property involved in the common maritime adventure" is to emphasise that pollution liability falling on such property are not covered.

RULE III. EXTINGUISHING FIRE ON SHOPBOARD

Under the 2016 Rules, only those losses caused by the heat of the fire will be excluded; other losses resulting from heat so long as they are a direct consequence of the extinguishing measures will be allowable.

RULE VI. SALVAGE REMUNERATION

The wording of Rule VI paragraph b) is new to the YAR 2016, which concerns the treatment of Salvage. [Reference is made to the CMI Guidelines quoted in the *Seaview* Issue No.114.]

RULE IX. *CARGO*, SHIP'S MATERIALS AND STORES USED FOR FUEL

Under the 2016 Rules allowances can be made for cargo sacrificed when used as fuel. No investigation will need to be

made by the average adjuster as to the adequacy of the quantity of fuel provided. A credit will have to be made only when ship's materials and stores are used as fuel.

RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES PUTTING IN TO AND AT A PORT OF REFUGE, ETC.

New words "entry or detention" are added to paragraph (b)(i) to specify that allowances at a port of refuge are only made possible either when the ship and cargo remain in peril after arrival at the port of refuge or when repairs necessary for the safe prosecution of the voyage are being effected.

The definition of "port charges" is newly added under paragraph (c) (ii) in view of the comments made in the "Trade Green" (2000), which are contrary to the established practice and intentions of successive versions of the York-Antwerp Rules.

In place of the deleted 1974/1990 wording dealing with overtime, a new text of paragraph (d) is introduced to specify the circumstances in which allowances might be made in general average, the new paragraph of Rule C notwithstanding, for costs incurred to prevent or minimize environmental damage.

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.

The wording in the 1974/1990 Rule, "caused in the act of", being considered too wide, was altered to "sustained in consequence of". Accordingly, for an allowance to be made under this 2016 Rule, a casual connection will have to be demonstrated between the act in question, handling, etc. and the damage sustained.

RULE XIII. DEDUCTIONS FROM COST OF REPAIRS

Paragraph (c) provides that the costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the *24* months (against 12 months as specified in YAR 1970/1990) preceding the date of the general average act in which case one half of such costs shall be allowed.

RULE XVI. AMOUNT TO BE ALLOWED FOR CARGO LOST OR DAMAGED BY SACRIFICE

Wording is added in paragraph (a) (i) to deal with issue arising from place of final delivery not being port of discharge, giving express sanction to the long-established adjusting practice.

RULE XVII. CONTRIBUTORY VALUES

Recognition of the adjusting practice that low value cargo may be excluded from contributing to general average is now expressed in paragraph (a) (ii).

Furthermore, salvage payment which is not included in general average under

the terms of Rule VI (b) would form "an extra charge incurred in respect thereof subsequently to the general average act" and a deduction in order to establish the contributory value of the property. Additional wording in paragraph (b) makes it clear that the deduction in this respect is limited to the actual salvage payment made including interest and salvor's costs.

Provision is made for the calculation of the contributory values of ship and cargo in the circumstances where Rule G, 3rd and 4th paragraphs concerning Non-Separation agreement, is applicable.

The 1974/1990 Rule only excludes passengers' luggage and personal effects not shipped under a Bill of Lading from contribution. The 2016 Rule excludes also mails, accompanied personal effects and accompanied private motor vehicles. Unaccompanied personal effects, such as a container full of house-hold goods being moved to another country are liable to contribute to general average.

RULE XX. PROVISION OF FUNDS

There is no provision for Commission at 2% to be allowed on general average disbursements.

RULE XXI. INTEREST ON LOSSES ALLOWED IN GENERAL AVERAGE

Under the YAR 2016, interest will be fixed annually at ICE LIBOR on the first banking day of each year in the currency of the adjustment plus 4%. The interest is to run for 3 months after the date of adjustment.

For interest, it is noted that for a US$ adjustment that would produce a rate of 5.17% for 2016 as opposed to 7% under YAR 1974/1990.

RULE XXII. TREATMENT OF CASH DEPOSITS

A significant change is made to the treatment of cash deposits. Removing the joint account requirement, the new rule sets out more clearly how the average adjuster should handle such funds. [Reference is made to the CMI Guidelines quoted in the Seaview Issue No.114.]

RULE XXIII. TIME BAR FOR CONTRIBUTING TO GENERAL AVERAGE

The YAR 1974/1990 does not include this time bar rule (which was first introduced in 2004) to provide for any rights to general average contributions to be time-barred after a period of

(a) 1 year after the date of the general average adjustment or

(b) 6 years after the date of the common maritime adventure, whichever comes first.

As recognized in the opening words of the Rule, its provisions may be invalid in some countries.

Note:- Whilst the text of the YAR can be viewed via the CMI website, the text of YAR 2016 and YAR 1994 compared, and that of YAR 2016 and YAR 1974 as amended 1990 compared, in tabular format can be viewed on the "AA Talk" page of www.averageadj.com

SUBSTITUTED EXPENSES

We reported in the *Seaview* Issue Nos.109 & 110 the judgment of the "LONGCHAMP", Mitsui & Co. Ltd. & Others v. Beteiligungsgesellschaft LPG Tankerflotte MbH & Co. KG & Anor, handed down on 24th October 2014. The case was a claim for substituted expenses under Rule F of the York-Antwerp Rules 1974. The vessel was forcibly taken by pirates in the Gulf of Aden and there was an initial ransom demand of US$6 million. Following a period of negotiation lasting roughly 50 days a ransom was agreed in the amount of US$1.85 million. During the negotiation period, and during which the initial ransom demand was reduced by US$4.15 million, certain expenses, including wages and maintenance of crew, continued to be incurred by ship interests and it was these costs that were claimed under Rule F of York-Antwerp Rules in substitution of a higher ransom cost which would otherwise have been admissible in general average. The Court agreed that the substituted expenses, ie wages of crew, etc., were properly recoverable under Rule F. Stephen Hofmeyr QC, sitting as a Deputy District Judge, considers the operation of Rule F and the principle of substituted expenses; permission was however given to the cargo interests to appeal to the Court of Appeal.

In the Appeal Judgment delivered on the 13th July 2016, it is held that the negotiation period to reduce the ransom was not a genuine alternative within the meaning of Rule F. It is worth noting what Lord Justice Hamblen has put it: "The Judge did support the overall conclusion he reached on the grounds that it accorded with equity and natural justice. The Respondents support this, stressing that all those interested benefited from the saving in ransom achieved and that it is fair that the cost of general benefit should be generally shared. However, whether or not General Average is recoverable depends on the proper interpretation and application of the Rules. They reflect what is recognized as representing a fair apportionment of benefit and costs. Further, the expenses claimed are ordinary operating costs incurred by reason of delay. Generally there is no recovery in General Average for ordinary expenditure (Rule A) or for loss or damage sustained through delay (Rule C). Delay will often cause loss to both ship and cargo but generally that loss lies where it falls. Whilst such owners' expenses may on occasion be recoverable under Rule F, that Rule presupposes some real choice being made, which it was not [in this case]"

On the other (3) issues the Court of Appeal was asked to consider, it was held that:

1. The High Court was not wrong to conclude that payment of the original US$6m ransom demand without negotiation would have been reasonably incurred;

2. The High Court did not err in law in concluding that the consumption of bunkers was an "expense" for the purposes of Rule F;

3. The High Court was not wrong to conclude that the media response costs were recoverable under Rule A, finding that "the owners had established that the purpose of preserving the property from peril was one of the reasons why it engaged the media response costs and that that suffices"

HONG KONG MARITIME INDUSTRY WEEK

There will be a number of activities during the Week, 20th/27th November 2016 and the Institute of Seatransport will be co-organizing evening seminars on the 21st and 25th November with the Institute of Chartered Shipbrokers and the Marine Insurance Club respectively. Full details will soon be made known.

(Mr. Raymond T C Wong: Average Adjuster)

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集團總部位於香港，業務分佈於香港、中國內地、東南亞等極具活力和潛力的新興市場，被列為香港『四大中資企業』之一，在國際工商界有著廣泛影響。

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