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政務司司長出席兩岸三地航運物流研討會致辭
“香港海運業發展”

A Preliminary Study on Enforcement of Air Pollution Control on Ocean Going Vessels (OGVs) at berth in Hong Kong

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政務司司長出席香港海運學會兩岸三地航運物流研討會致辭

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以下是政務司司長張建宗今日（十一月二十日）出席香港海運學會兩岸三地航運物流研討會的致辭全文：

王主席（香港海運學會主席王德超）、朱主席（第十屆兩岸三地航運物流研討會召集人、籌委會主席朱志銃）、陳會長（深圳海運協會會長陳延）、各位嘉賓、各位業界朋友：

大家好！我很榮幸出席今天的研討會，與來自兩岸三地的航運業界領袖會面。「兩岸三地航運物流研討會」不但增進同業間的聯繫和溝通，更有助推動兩岸三地的交流，從而促進內地、台灣及香港之間的合作，對整個行業的持續發展有積極及重要的意義。

香港海運業發展

香港的海運業歷史悠久，至今已超過 150 年。海運及港口業向來都是推動香港經濟發展的重要支柱，支撐着香港的轉口、貨運、物流及貿易等多個領域的發展，是香港繁榮和經濟增長的動力和重要基石。時至今日，香港已成為享譽盛名的國際海運中心，是全球第五最繁忙的貨櫃港，去年處理的貨櫃吞吐量接近二千萬個標準箱。香港海運業有今天的成就，實有賴本地業界數十年來的努力耕耘，以及社會各界的支持。

為進一步發展香港的海運業，政府在去年四月成立香港海運港口局，提供一個高層次的官產學合作平台，讓業界和政府攜手制訂海運及港口發展的策略，合力鞏固和提升香港的國際海運中心地位。過去一年，香港海運港口局就便利營商、人才資源發展和宣傳推廣三個主要範疇向政府提出了不少建議，推行了多項改善措施和推廣計劃。就港口發展方面，為維持香港港口的活力和競爭力，政府落實了多項港口改善措施，包括把葵青貨櫃碼頭的港池和進港航道由 15 米挖深至 17 米，讓大型貨櫃船可不受潮汐影響進出貨櫃碼頭。另外，我們現正分階段為貨櫃碼頭提供六幅共約 18 公頃的港口後勤用地，以擴大貨櫃堆場空間及增設駁船泊位，提升處理貨物的效率，以支持港口運作。

除了船舶或港口等硬件設施外，政府也致力發展香港的高增值海運服務。現在香港有超過 800 間與海運服務相關的公司，為兩岸三地，以及海外業界提供多樣的海事服務，包括船舶管理、船務代理、船務經紀、船舶融資、海事保險、海事法律及仲裁服務等。其中，香港的船東和船舶管理公司所擁有或管理的商船船隊佔全球商船船隊百分之九點六，使香港成為亞洲首要的國際船舶融資中心。香港在海事保險和海事仲裁的範疇也發揮着區域性的作用，吸引到國際海事保險聯盟及多間國際仲裁機構來港設立分部，為世界各地的客戶提供專業海事服務。

在推廣海運業方面，政府積極參與大型國際海事展覽，並出訪有發展潛力的海運城市。作為年度盛事，香港海運港口局在這個星期舉辦第二屆的「香港海運週」，旨在團結業界，凝聚力量推廣香港為經營海運業務的理想地點。今屆海運週的活動非常豐富，有多達 57 個海運相關的商會、專業團體和學術機構積極參與，將舉行 50 個涵蓋不同範疇的海運及港口活動；而今天的「兩岸三地航運物流研討會」，正是「香港海運週」的精彩項目之一。

兩岸三地關係

海運業是國際化行業，面對世界眾多海運城市的激烈競爭，區域的交流及合作甚為重要。近年來，兩岸三地的關係持續提升，保持着緊密的貿易關係。在二〇一六年，內地分別是香港及台灣最大的貿易夥伴，而香港是內地的第二大及台灣的第四大貿易夥伴。

在兩岸方面，隨着《海峽兩岸經濟合作框架協議》（ECFA）的實施，兩岸經貿往來變得更為頻繁，台灣企業對金融、商貿服務等的需求亦隨之上升。香港長久以來是兩岸商貿合作的服務平台，憑藉在各項海事服務業的優勢以及在內地市場的經驗，可以為台灣企業提供不同的支援服務。在硬件方面，香港的港口設施及貨運配套服務完善，吸引不少台灣企業選擇香港作為地區配送及交通運輸中心。在軟件方面，香港鄰近內地市場，市場資訊發達、自由流通，又有不少經驗豐富的服務供應商提供內地市場管理、推廣等服務，是台灣企業管理內地業務及開拓內地市場的理想平台。

除此之外，香港與內地一直保持密不可分的經濟關係，尤其是在簽訂《內地與香港關於建立更緊密經貿關係的安排》（CEPA）之後，推行了多項金融業、貿易及物流業的開放措施，以及貿易投資便利化措施；加上香港擁有蓬勃的海運業群、完善的國際網絡和基礎設施以及穩健的法律制度，能夠為內地企業提供強大的支援。作為區域物流樞紐及國際金融中心，香港成為國際資本流入內地和內地資本走向國際的重要管道。

港澳大灣區發展規劃建設，會鞏固香港作為國際航運中心的地位，支持香港航運業向高增值發展，同時鼓勵內地企業充分使用香港的航舶融資，租賃及管理，海事法律及爭議解決，以及海事保險等高增值服務。

此外，香港會積極參與國家「一帶一路」的建展。我們有全面和高度發達的海運服務，連繫網絡極佳，是全球最繁忙港口之一，與「一帶一路」沿線約 45 個國家和地區有貨物往來。此外，香港在海運、金融、貿易、專業服務和基礎設施建設方面擁有豐富的國際經驗，內地及台灣的企業可透過香港接觸到不少國外大型企業，熟悉國際的交易慣例及尋找合適的商業夥伴。香港具備優厚的條件成為連接內地及世界的樞紐角色，向高端高增值的大方向尋覓新商機，為內地及台灣的企業提供一個「走出去」的平台，參與「一帶一路」的建設，促進兩岸三地的海運企業在國際市場持續發展。

經過多年的合作，兩岸三地已整合成一個優勢互補又緊密相連的經濟體，在全球貿易中佔據重要的位置。面對國際市場的激烈競爭，兩岸三地海運業各持份者應加強交流和協作，提升業界水平，在堅固的基礎上抓緊機遇，發揮更大的協同效應，鞏固三地在國際市場的競爭力。展望未來，三地的關係將會更進一步，為大中華地區帶來更多商機，令整個地區的海運業蓬勃發展。

最後，我祝願各位事業蒸蒸日上，貨如輪轉，亦祝願今天的兩岸三地研討會成功，海運業界的朋友繼續高瞻遠航。謝謝大家！

粵港澳大灣區建設帶來龐大機遇
鞏固香港國際航運物流中心地位

張建宗

2017 年 11 月 26 日

有意見認為香港的航運業正步入式微階段，事實是否如此？

香港是享譽盛名的國際海運中心，是全球第五最繁忙的貨櫃港，去年處理的貨櫃吞吐量接近二千萬個標準箱。香港的海運業大力推動經濟發展，海運及港口業支撐著香港的轉口、貨運、物流及貿易等多個領域發展。

上星期 (十一月二十日)，我出席「兩岸三地航運物流研討會」與業界代表交流。政府重視海運業發展，在去年四月成立香港海運港口局，提供一個高層次的合作平台，讓業界和政府攜手制訂海運及港口發展的策略和措施，合力鞏固和提升香港的國際海運中心地位。

國家「十三五」規劃《港澳專章》明確表示要「發揮香港獨特優勢，支持香港鞏固和提升國際金融、航運、貿易三大中心地位，並推動融資、商貿、物流、專業服務等向高端高增值方向發展。」

特區政府致力發展香港的高增值海運服務，香港現時有超過 800 間與海運服務相關的公司，為兩岸三地，以及海外業界提供多元化的海事服務，包括船舶管理、船務代理、船務經紀、海事保險、海事法律及仲裁服務等。香港亦是國際金融中心及區內的船舶融資中心。香港的船東和船舶管理公司所擁有或管理的商船船隊龐大，佔全球商船船隊百分之九點六。

為鞏固香港作為區內國際航運中心的地位，我們會朝著多元化的目標發展，不會單純追求貨櫃吞吐量及船隊等數字增長，而是著重發展高增值的海運服務為目標，並與世界知名的海運城市，例如倫敦等，緊密聯繫，加強合作。

海運業是國際化行業，面對世界眾多海運城市的激烈競爭，除了區域的交流及合作甚為重要，粵港澳大灣區 (大灣區) 的航運物流發展機遇更不容忽視。

大灣區擁有世界最具規模的港口和機場群，有潛力成為全球最大的航運和物流中心。而香港作為國際航運中心，提供高增值專業服務，熟悉國際貿易活動的營運和規則制定過程，並擁有大量海運業的人才和全球網絡關係。香港應充分發揮「十三五」規劃所明確的獨特定位及優勢，提升香港在國家經濟發展和對外開放中的地位和功能。

香港作為一個「走出去」的平台，應把握機遇，與大灣區城市「拼船出海」拓展國際領域。香港有着高度開放、高度國際化的優勢，可在大灣區擔當重要的角色，連接大灣區內的城市和國際社會，將帶動大灣區其他城市共建世界級港口群和空港群，以至成為亞太區的高端航運服務業群，並配合國家「一帶一路」策略。

在十一月十八日，行政長官率領港方代表團與廣東省省長馬興瑞率領粵方代表團，在香港舉行「粵港合作聯席會議第二十次會議」，定下未來的合作方向。

粵港合作的重點將會是共同推進粵港澳大灣區建設，將粵港合作推上新台階，進一步開展『先行先試』，推動重點領域政策創新和突破，促進大灣區的人流、物流、資金流、信息流暢通，並應以科技創新為未來發展的主要方向，打造大灣區成為世界級科技產業創新基地。大灣區建設為粵港兩地發展帶來龐大機遇，兩地除了深化互利合作外，更要服務『一帶一路』建設，貢獻國家發展。

為了配合粵港澳大灣區的發展規劃工作，政制及內地事務局將成立推進大灣區建設辦公室（「粵港澳大灣區發展辦公室」），與中央部委、廣東省政府及澳門政府聯繫及落實有關規劃，統籌及協調特區政府內相關政策局及部門，並與商會、專業界別及持份者一起推進計劃。

此外，為更好落實推進大灣區建設的工作，目前由政務司司長擔任主席的「與內地合作督導委員會」，會易名為「推進大灣區建設及內地合作督導委員會」，以期更聚焦發揮香港在大灣區的獨特優勢，及擬訂具體的工作計劃。

香港會積極參與國家「一帶一路」的建設。我們有全面和高度發達的海運服務，連繫網絡極佳，是全球最繁忙港口之一，與「一帶一路」沿線約 45 個國家和地區有貨物往來。

香港具備優厚條件，向高端高增值的大方向尋覓新商機。我相信，只要香港與大灣區城市「拼船出海」，高瞻遠航，業界持續提升業界水平，與時並進，在國際競爭的大環境中優勢互補，共同發展，必定會成為世界級航運和物流中心。

(張建宗先生 , GBM/GBS/JP：
香港特區政府政務司司長)
本文轉載自張建宗司長
於 11 月 26 日的網誌文稿

第十屆兩岸三地航運物流研討會

主辦單位

海運學會
(香港)

協辦單位

海運協會
(深圳)

中華航運學會
(台北)

支持單位

港主辦兩岸三地航運物流研討會
精英學者發表論文談見解看法
【香港海運周活動項目之一】

陸元華

【※※※】香港海運周開幕第二天，「兩岸三地航運物流研討會」已如期在香港跑馬地紀利華木球會多功廳舉行。筆者到場始得知，今次已是第十屆，輪到香港海運學會主辦，深圳海運協會、台北中華航運學會協辦。

由於相關團體成員主要由從事航運產業行政主管及相關大學或學系的學者組成，研討會的學術味較重，大會共收到 21 篇論文，多位港航專家、學者從不同題目、角度來介紹研究成果。

香港海運學會主席王德超首先致歡迎辭，他回憶 2002 年主辦第一屆時，三個友會都希望籍此研討會達到交流、友誼及發展的目的、一同為兩岸三地航運交流及振興航運事業而努力。因此，他特別感恩多年來大家的努力和堅持。

香港特區政府亦高度重視，派出政務司長張建宗到會，並以近十分鐘時間發表熱情洋溢的長篇致辭，聲聲鼓勵，音容並茂，語詞誠懇，措辭中有不少期盼，實際為業界打氣。

深圳市交通運輸委員會副主任溫文華、深圳市港航和貨運交通管理局副局長董燕澤親赴香港，代表深圳市政府祝賀研討會主辦成功。

至晚上閉幕時，主管香港海運及港口政務職能的運輸及房屋局副局長蘇偉文親臨口場致閉幕詞，代表政府慰勞各位。

一台研討會，兩位特區政府官員分早、晚兩次到場鼓勵打氣慰問，筆者還是首次有此見聞，十分罕見。這種改變，首先帶來的是氣氛活躍。對這種關懷，暄寒問暖，令在場台灣客人羨幕不已，甚至在會上公開講他們的感受。在他們眼裡，也很需要政府關懷，但現實與理想有距離，令各人在場情緒頗有起伏。

由港、深、台合作的研討會由於同屬地區經濟、市場結合，受貨物流向影響，討論關注題目不失有地區性「潮味」。總概來說，是圍繞住三地關注的台灣對外的「南向政策」，香港對港珠澳大橋通行、粵港澳大灣區建立等焦點題目進行討論。而深圳方談關注的是粵港合作融合。大家都認同，所有討論題目或內容，都離不開與「一帶一路」大戰略這一大背景有關。

台灣中華航運學會由理事長周淑敏女士率領，近三十名精英來港。與會者講解不同題目，有經濟政策也有碼頭經營情況。其中有學者對台灣政府的對外「新南向政策」實質運作進行介紹，透過台商投資設廠對貨運、物流的需求變化和供應鏈管理的設計及分析。尤以中華海運研究協會秘書長包嘉源的「兩岸三地航運物流在東盟市場合作契機」為典型題目。

他認為合作契機在於台灣的「新南向政策」與「一帶一路」，是兩岸根據各自之需要及戰略所推出的政策措施，已成為各自的重要經貿政策，但成功與否，與欲前往投資經營的企業息息有關。而東盟市場有危有機，進軍市場時，需要作評估與做規劃。

由於「新南向政策」與「一帶一路」的目標市場重叠，在運輸及港口投資建設營運合作方面，他認為最好透過兩岸合作，將有利於企劃爭取，而且兩岸也可能進軍東盟市場的共同議題開啟對話之窗。

香港學者在會上共有九篇論文，涉及航運中心發展、新科技和海事服務。其中有「潮味」的，是由理工大學物流及航運學系兩位學者合作研究「探討無人機為兩岸三地的物流業所帶來的商機及挑戰」題目，既創新又大膽但有現實意義的話題。

按他們見解，隨著兩地順豐物流、京東物流於今年取得無人機航空牌照、無人機送貨業務，未來無人機物流發展預期是一個方向。如果跳出傳統思維、加上客？的參與及支持，極有可能刺激需求量及打造新一代物式新模式和客戶社群。

由於無人機操作存有一定風險，兩岸三地各相？法例及條文尚處於初始階段，營運者一定要加倍留意及配合，確保一切符合法規及安全。

據高盛投資研究部的資料，2015 年全球民用無人機市場的價值為 15 億美元，預計到 2017 年將增加 3 倍至 50 億美元。 雖然無人機在商業應用上有巨大潛力，但如何在推動科技創新與保障公眾安全及私隱之間謀求平衡，將成為世界各地監管當局的新挑戰。

值得一提的香港海事律師劉洋在會上，提出「粵港航運業應攜手打造「一帶一路」航運中心」這一新名詞，筆者初始閱讀這一新名詞的論文內容，大體上應理解是首先在港深兩港口先搞合作，可以是聯盟也可以是對等二元結構起步，實現差異化服務。另在海事服務項目上探討共同合作。

深圳是該研討會第一個承辦方。協會現任會長陳廷率領二十名會員來港參加，大部份會員都是現職在航運企業工作。會上，北京大成 (深圳) 律師事務所合伙人黃素芳與合作夥伴張辰發表撰寫「電子提單的最新應用與發展及完善中國電子提單立法的建議」。

這是一個至今為止很冷門的題目，很少人會觸及。黃素芳等顯然以大無畏精神，敢為人先，做題目初探，通過大量資料搜集，研究分析其利弊得失，試圖找出規律性東西。她表示，通過調查，知悉中國航運實務中佔九成是使用紙質提單，使用電子提單只佔單證總量 2%，微不足道。究其原因，是電子提單在中國的發展尚處於初級階段，其證明力及法律地位還沒有得到確立，缺乏深厚的法律基礎。

她稱，全球 12% 的貨物貿易是通過電子商務方式處理。中國支付寶、微信等支付已蔚然成風。21 世紀的海上絲綢之路，其中一項重點為是以重要港口為節點，建設從中國沿海港口延伸至歐洲的運輸大通道，電子提單作為海上貨物運輸合約的電子單據，有省時省錢，安全等好處。

中國必須克服電子提單的技術和法律障礙，拓展法律服務領域，加快電子提單立法工作。為此，她提出四點建議，一是通過立法確認電子提單的證明力、二是立法確立電子提單的法律地位、三是立法明確貨物控制權問題、四是引入權利轉讓制度。

大會在上、下午兩節時間舉行了兩場小組討論，邀請上台演講者一起就相關題目展開討論，氣氛熱烈，分別由海事律師劉瑞儀和籌委會主席朱志統主持。

兩岸三地航運物流研討會是由深、港、台三地之海運團體協輪流主辦。2002 年第一屆由深圳海運協會主辦、第二屆在香港、第三屆在台北。香港作為東道主，今年已是第三次主辦，並獲得香港海運港口局、投資署及海運及空運人才培訓基金支持。

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「兩岸三地航運物流研討會」
第一屆 2002 深圳
第二屆 2003 香港
第三屆 2004 台北
第四屆 2005 深圳
第五屆 2006 香港
第六屆 2007 台北
第七屆 2009 深圳
第八屆 2012 台北
第九屆 2014 深圳
第十屆 2017 香港

(陸元華先生：香港航運研究中心高級研究員)

更正啟事

(Seaview 119 期有一文章“買舊船時要注意的事項”，正確作者姓名為陳仕權和朱志統，編輯委員會向讀者道歉。)

Environmental liabilities
A question of reasonableness

Richards Hogg Lindley

Editor's Notes: The following notes are contributed by Richards Hogg Lindley, Average Adjusters and Marine Claims Consultants.

Situations in which pollution-related costs can be recovered in general average (GA) have been discussed in our previous article, Environmental liabilities: a question of motive. We will now consider when the costs of cleaning up pollution in dry-dock may be covered by particular average (PA).

Case study

A vessel, sailing in ballast, suffers a serious grounding. A diver's inspection reveals extensive bottom damage, however, the water pressure is holding the bunkers in the breached bottom tanks, and there is no actual leakage. The vessel is towed to a local shipyard for repairs, and enters dry-dock. Considerable expenditure is incurred to:

1. Carry out tank-cleaning in all areas adjacent to planned hot work

2. Remove bunker residues from undamaged areas of the exterior shell plating

3. Clean the dry-dock and its pumping facilities.

We will consider each cost in turn.

Tank cleaning

There is a long standing practice stating that is necessary to clean cargo or bunker tanks in order to do repairs, and it is now largely uncontroversial that these costs form part of the reasonable cost of repairs. The Association of Average Adjusters Rule of Practice D6 provides guidance on how these costs should be divided when both damage repairs and owners' work are being carried out. If bunkers have escaped and have formed a coating over parts of a hull, and this needs to be cleaned before hot works can be carried out, the cost of doing so would likely be recoverable as part of the cost of repairs.

Bunker residues

If undamaged areas of plating are covered with bunker residues, can the cost of removing those bunker residues be recovered? This question arose in the Orjula [1995] 2 Lloyd's Rep. 395, where several drums of acid began leaking

because they had been badly stowed. The shipowners sought to recover from the charterers the cost of cleaning the deck of acid, whilst the charterers argued that there had been no physical damage to the vessel because the acid did not penetrate the deck material, and so the cost should fall on the shipowners. The judge decided that the ship had been damaged 'by reason of her contamination'. It follows that the cost of cleaning bunker residues from undamaged areas of exterior shell plating is likely to constitute physical damage to the ship, and may be recoverable in PA on that basis.

A question of reasonableness

The final scenario involves the cleaning of a drydock and its pumping facilities. Unlike the other examples, the damage has happened to something other than the ship itself, therefore the recovery cannot be based on damage to the ship, and we must consider what the reasonable cost of repairs is.

A very significant case which assists is the Medina Princess [1962] 2 Lloyd's Rep. 17. The plaintiff owners were looking to prove a constructive total loss, and much of the several-hundred page judgment concerns which costs could be brought in as part of the reasonable cost of repairs. Mr Justice Roskill stated that the correct approach to adopt when calculating the reasonable cost of repairs is to consider "what would have to be expended to put the ship right". On the facts, a cost which must be incurred to put our ship right is to put it into dry-dock. Part of the expense of putting the ship into drydock would be the cost of tugs and mooring, which would form part of the cost of repairs. Additionally, we know that the vessel has damaged tanks and that they will leak oil into the dry-dock – this is foreseeable. The oil will need to be cleaned from the dry-dock walls and the pumping equipment. In this example, it is quite clear that the cost of cleaning the dry dock is as much a part of the cost of entering a dry-dock as the cost of tugs and mooring, and therefore forms part of the cost of repairs.

Points to note

- Whilst the above are all examples where pollution costs may be recovered in particular average the position is by no means straightforward, and each case will need to be reviewed on its own merits.

- When considering whether pollution-related costs may be allowable in particular average, regard must be had to how inextricably linked the costs are to the actual repair process, and not simply whether the costs are incurred as a consequence of the casualty.Cargo interests must take care in ensuring the general average security they provide meets with the shipowner's requirements in order for their cargo to be discharged without unnecessary delay.

(Richards Hogg Lindley: Average Adjusters and Marine Claims Consultants)

Law Column - Increased tonnage limitation figures set to be adopted in Hong Kong

Rory Macfarlane

Consistent with most maritime jurisdictions, Hong Kong allows ship-owners to limit their liability for both property damage claims and for personal injury or loss of life claims.

In May 2015, Hong Kong adopted the 1996 Protocol to the 1976 Convention of Liability for Maritime Claims. Shortly thereafter, on 8 June 2015, the State Parties to the Protocol agreed higher limitation figures which were to apply if adopted locally through domestic legislation. The effect, if enacted, was to increase the tonnage limits by a little over 50%. Hong Kong did not adopt those higher limits into its local law in 2015. That is soon to change.

The Present

On 11 October 2017, the Chief Executive tabled the Merchant Shipping (Limitation of Ship-owners Liability) Ordinance (Amendment of Schedule 2) Order 2017 with the Legislative Council. The effect of this is that the higher IMO limits for maritime accidents are to be enacted into Hong Kong law.

As at time of writing, the revised limits for maritime incidents are expected to come into effect on 4 December 2017. The previous limits will remain applicable in incidents that occurred before this date.

As a result of these amendments, a ship-owner's limits of liability for both property damage claims, as well as for personal injury or loss of life claims in Hong Kong, will be increased as follows:

Property Damage Claims

Gross Tonnage	Old Limit (SDRs)	New Limit (SDRs)
up to 2,000	1,000,000	1,510,000
2,001 – 30,000	+400 per tonne	+604 per tonne
30,001 – 70,000	+300 per tonne	+453 per tonne
>70,000	+200 per tonne	+302 per tonne

Personal Injury/ Loss of Life Claims

Gross Tonnage	Old Limit (SDRs)	New Limit (SDRs)
up to 2,000	2,000,000	3,020,000
2,001 – 30,000	+800 per tonne	+1,208 per tonne
30,001 – 70,000	+600 per tonne	+906 per tonne
>70,000	+400 per tonne	+604 per tonne

The daily conversion rate for Special Drawing Rights (SDRs) is available on the International Monetary Fund website.

Comment

It remains to be seen what effect this change has on casualty dispute resolution in the region. However, with some of the major maritime states in Asia now applying very different limitation regimes, we anticipate that forum shopping will become an even more critical aspect to resolve in the early stages of a casualty.

(Mr. Rory Macfarlane: Partner, Hong Kong INCE & CO International Law Firm)

《航海札記》2

方威

繼登輪首六週穿航於東南亞地區後，因航線重組的關係，公司安排我們去香港水域外的擔杆列島附近拋錨碇泊，等待適當時候開往深圳蛇口，準備投入新航線——太平洋西北一線 (Pacific North West 1)。新航線所掛靠的港口不多，只有七個而已，當中包括蛇口、香港、鹽田、高雄、溫哥華、西雅圖、釜山，完成一個航次只需六週。這次更換新航線對於我來說是莫大的好消息，到了溫哥華可以趁空餘時間去探望親友，另外西雅圖這名字經常從赴美留學的弟弟口中聽說，據說那裡旅遊觀光的地方蠻多，值得上岸走一走，看一看。

猶記得六年前第一次出海擔任實習生，航線在亞洲所掛靠的港口一個接一個，三天之內靠泊四個港口，日夜顛倒的工作時間的確令我感覺不大適應。為了讓自己得到充份的休息，用餐時間就隨便拿兩片白麵包塞進口裡，爭取時間閉目小睡片刻，盡快補充體力及恢復精神。目的是讓自己在靠泊及啟航的時候處於清醒的狀態，避免因為體力不足或精神不振而發生意外。如今作為一名三副，雖然休息時間多了，但是在靠泊及啟航的時候，要加倍留神，仔細聆聽並嚴格執行船長的指令。與此同時，在船艉利用絞車絞動纜索的時候，要眼看四周，耳聽八方，確保所有人員在安全位置及正確操作相關器械及設備。每當經驗不足的時候，就向資深的水手或大副請教，畢竟他們在甲板上的工作經驗比我還要多。經過多次在現場指揮操作後，累積經驗的同時也與其他水手建立了默契，相處的日子長了，工作效率也相應提高。

轉換航線的同時，我的工作也被船長重新安排了。上篇札記提到我本來負責港口文件報關、免稅品管制及銷售，後來因為姜二副在上海放船的緣故，船上的另一位周二副被安排接手航行及醫療的工作，而我則從周二副的手上接過救生與消防設備維修及保養。至於手頭上現有的工作，則留待新上來的二副在錨泊期間及長距離航程中慢慢交接。在交接的過程中，少不免會對某些地方產生疑問，這時候正好可以找上一位負責人請教一下，商量問題的解決辦法。另一方面，自己每天下班後得抽時間去翻閱各種設備的說明書，仔細看清楚並了解每種設備的特點、操作及保養方法。交接完畢後，發現未來數月的工作多不勝數，有部份年度檢查項目還需要岸上的服務供應商派人上船提供服務，得請求船長發電郵讓對方安排一下。把工作項目整理完畢後，就按緩急先後及航行日子的長短安排工作次序。另外，船長還指派實習生擔任副手從旁協助。實習生表面上協助三副進行維修保養工作，其主要的目的是讓他提早累積經驗，為將來擢升三副做好準備。

在進行維修及保養工作的過程中，除了要有良好的技術及工藝之外，還要有充份的準備及溝通。所謂充份的準備是指在工具、風險評估、人員等各方面要一切就緒，還要制訂相關應變措施，以策安全。至於良好的溝通，就是與各參與工作的人員進行討論，讓所有人對整個工作項目有充份的了解，而他們也可以提出不同的意見供其他人參考，從而令工作的效率有所提升及降低風險。有時候實習生所提出的意見比我自己的更好，自己要虛心接受並

對他作出讚賞。過去兩年多在船上擔任實習生的時候，一直是輔助的角色，從旁協助上級完成維修及保養工作。如今作為一名三副，則需要擔當一名決策者，不能在所有事情上動不動就找大副或船長解決，除非遇上束手無策的時候才能找他們提供意見，剩餘的要自己動動腦筋想辦法。

五年多前，香港電台曾經播放一套講述華人移民往外國及奮鬥史的紀錄片，名字叫作《華人移民史——金山客》，全套共五集，每一集的題目不一樣，但都是圍繞著華人如何艱辛，堅忍不拔地飄洋過海，遠赴他鄉奮鬥的故事為中心。金山客中的「金山」，其實是指華人對美國加利福尼亞州 (California) 三藩市 (San Francisco) 的稱呼。「金山」一詞的由來無從稽考，惟一比較可信的原由是因為在十九世紀中葉，北美地區出現淘金熱 (Gold Rush)，吸引全球的外籍人士如蟻赴膻地前往北美地區碰運氣，希望一夜致富。而「金山」一詞就不脛而走，直到上世紀五十至六十年代仍然有人提及，不過意義則產生變化。例如「金山莊」是指一些辦莊商號以與北美地區商戶經商貿易為主，而「金山阿伯」、「金山兵哥」則指一些來自北美地區的老華僑或華籍美國軍人，他們大多在戰後回鄉娶妻，在此暫不敘述。看過紀錄片後，記得其中一集講述華人在加拿大如何爭取入伍資格，參軍保衛國家，繼而獲得國家認同並給予公民權利，令人深受感動，故此內心決意要在停靠溫哥華的時候要按照紀錄片中的地點，逐一遊覽。除此之外，我的堂兄移居溫哥華多年，五年多前見過一面後再也沒重聚。基於上述兩個動機，就算碼頭距離市中心再遠也好，也堅決要上岸完成尋找華人足蹟及探親這兩項「任務」。

二零一七年五月十五日，第一次隨船抵靠溫哥華港。當天清晨的氣溫只有攝氏七度，船靠泊好後，先上駕駛台頂部的主桅把旗幟升起。第一面旗幟是到訪國家的國旗，即加拿大國旗。然後再把公司旗及相應的訊號旗懸掛，以按照海事傳統及符合當地規定。正當雙手拉動繩子懸掛國旗的時候，腦海想起每年十二月第一個星期天，加拿大駐香港總領事館舉行的和平紀念日所奏的加拿大國歌，其歌詞如下：

萬歲！加拿大，我們的家及祖國。

妳的子民是真正的愛國者。

我們看見熾熱的心正在升起，

真正的北方是強壯和自由。

無遠弗屆，願主護守國土。

上主保佑我們國土的光榮和自由。

萬歲！加拿大，願主護守妳。

萬歲！加拿大，願主護守妳。

在船上每一次升旗及降旗的時候，雖然沒有播放國歌，假如自己懂得當地的國歌，心中也會默默地唱，以示尊敬。另外，閒時也會細閱國歌歌詞了解其意義。值班完畢後，便收拾行裝準備上岸展開「任務」。至於在加國和美國漫步的經歷，則留待下次與各位分享。

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A Preliminary Study on Enforcement of Air Pollution Control on Ocean Going Vessels (OGVs) at berth in Hong Kong

Brian Sun / Owen Tang

1. Introduction

Despite of the importance of international shipping to world trade, we cannot deny its huge burden on planet Earth through various sources of pollution. It has been claimed that 50% of all pollutants actually come from shipping activities, which accounted for 54% of SOx, 33% of NOx, and 37% of PM concentrations measured in Hong Kong in 2011. The Civic Exchange reported that hazardous chemicals emitted from shipping results in 385 premature deaths per annum in Hong Kong, which constituted over 74% of total 519 premature deaths per annum in the Pearl River Delta (PRD) region. The Hong Kong government and the shipping industry have taken proactive measures to alleviate air pollution caused from shipping through the Fair Winds Charter and vessel emission reduction policy. The policy was later compared to what western countries did when its air pollution control regulation was finally enforced on OGVs from July 1, 2015.

The purpose of this paper is to conduct a preliminary assessment on the impact of enforcing air pollution control or emission control area (ECA) for OGVs in Hong Kong through qualitative analysis of views collected from some stakeholders. Through SWOT analysis, the major weaknesses and threats of setting up an ECA in Hong Kong are identified. This paper also suggests some measures to the related parties for consideration. In short, it is worthwhile to enforce air pollution control or set up an ECA in Hong Kong regardless of potential weaknesses and threats.

2. SWOT Analysis

a) Strengths:

1. Bringing benefits to the environment and public health
2. Improving public perception of the Hong Kong maritime industry
3. Strengthening the international status of Hong Kong's maritime industry
4. Benefiting from Hong Kong's free trade policy

b) Weaknesses:

1. Doubtful supply stability of compliant-fuel
2. Increase pressure towards stakeholders of maritime industry
3. Need for suitable technologies/ training for fuel switching or abatement
4. Dependence on only oil import
5. Air pollution index of Hong Kong almost double that of Singapore

c) Opportunities:

1. Arousing international community's awareness on green shipping
2. Establishing Hong Kong's leading role to pioneer the set-up of an emission control area in the region
3. Improving the image of the maritime industry to attract talent and leaders

d) Threats:

1. Uncertainty in adequate supply of ECA-compliant fuel in the short term
2. Prices of ECA-compliant fuel may increase due to tight demand
3. Threat to the competitiveness of Hong Kong port
4. Threat to safe marine engine operation

Strengths:

a.1) ECA designation requires all OGV's to comply with mandatory fuel switching with compliant fuel which has no more than 0.5% Sulphur-content, or to use an alternative compliance method, while they are at berth in Hong Kong. The mandatory pollution control improves coastal air quality and safeguards the health of people.

a.2) The maritime industry in Hong Kong has always been perceived as polluting and being unclean, leading to concerns about the sustainability of manpower development in the industry. Setting up an ECA can create a positive image of the industry and help her to attract new blood and talent.

a.3) If Hong Kong's maritime industry takes a leading role to set up ECA in the region, this would facilitate promoting Hong Kong as an environmentally-conscious city. Setting up ECA in Hong Kong could draw the attention of the global maritime community and strengthen the perception of Hong Kong as an International Maritime Centre.

a.4) Free trade policy could bring some advantages to shippers by maintaining no barriers on trade and by reducing the taxes and tariffs on import or export of goods within free trade zones. Simplified customs procedures and less documentation are required. By the end of 2015, Hong Kong extended the Free Trade Agreement Transshipment Facilitation Scheme (FTA Scheme) to allow shippers to continue enjoying a tax reduction when their cargoes pass through Hong Kong from respective FTA Scheme signatory jurisdictions. Disregarding the cost implications from fuel switching or alternative compliance methods, Hong Kong can maintain its competitiveness with the benefits of an open-door policy.

Weaknesses:

b.1) The Sulphur-content requirement of an 0.5% cap for Hong Kong is currently not aligned with the new requirement of 0.1% Sulphur-content cap for the ECAs after 1 January 2015 in many western countries. A stable supply of LSF with 0.5% content is doubtful since fuel suppliers and bunkering ports may mainly focus on increasing the productivity of LSF with 0.1% content.

b.2) Use of compliant-fuel imposes pressure on stakeholders in the industry. For the ship owners, they are required to complete vessel modification or purchase new vessels which are specifically designed to use LSF. Vessels spending longer time within ECA areas will incur higher engineering and operational costs.

b.3) Ship operators either comply with fuel switching requirement or use scrubbers to reduce Sulphur-dioxide emission when their ships are berthing in Hong Kong waters. That requires suitable technologies/ training to resolve technical problems and increased initial investment cost for those carriers who have less experience in fuel switching or abatement technologies. Careless mixing between normal fuel and low Sulphur fuel is already an administrative burden.

b.4) Lack of oil refining facilities in Hong Kong may pose difficulty in enforcement of ECA legislation, therefore Hong Kong must rely purely on LSF oil imports.

b.5) After two years enforcement of air pollution control in Hong Kong, the air pollution index in Hong Kong was 68.46 in June 2017, which was rated as 'high', whereas Singapore was more successful with a lower index of 34.72 in July 2017, even though Singapore's container throughput ranked 3 ports higher than Hong Kong's in 2016. However, measurement of SOx concentration at Kwai Chung recorded an improvement of 50% downwind of the container terminal.

Opportunities:

c.1) ECA legislation can arouse awareness in the national and international community on green shipping and environmental protection for the goal of sustainability worldwide. Singapore, Japan and some countries in the Mediterranean region are planning to set up ECAs. Moreover, Singapore launched a voluntary emission control initiative in an effort to prepare for the establishment of an ECA.

c.2) The existing ECAs are located in Europe and America; Hong Kong will position herself as a leader in Asia to address environmental impact of shipping if the Hong Kong government creates an ECA in her waters. And the government can cooperate with its mainland counterparts to create a PRD-wide ECA, which would bring maximum emissions reduction benefits to a number of cities, such as Shenzhen, Zhongshan and Zhuhai.

c.3) The maritime industry in Hong Kong has been suffering from a difficulty in attracting young people to its workforce because of a traditional bias against maritime occupations and little marketing of the industry. Hong Kong can make use of setting up an ECA as a non-traditional marketing strategy to shape a new image of the maritime industry. This can be accompanied by soft marketing on social media to promote Hong Kong as a sustainable international maritime

centre. Hong Kong may attract more young talent and commercial leaders through this marketing interface with the maritime world.

Threats:

d.1) If ECAs are eventually set up in Hong Kong and the PRD, the demand for LSF will increase because most of the intra-Asia carriers are not using LSF. There may be a lack of LSF supply in the PRD market, therefore the availability of ECA-compliant fuel would be a concern in the short term.

d.2) A Hong Kong ECA will pose an additional demand of LSF which will put pressure on its supply. As a result, the bunker supplier may increase the price of ECA-compliant fuel and it will present new challenge to shippers and ship owners with higher operating costs. It is likely that the increased costs would ultimately be transferred to the users of the transportation service.

d.3) There was an almost 14% decline in the throughput (in tonnes) in the port of Hong Kong in 2015 and only a very little rise (0.1%) in 2016. If only Hong Kong sets up an ECA with no followers from neighboring ports, it may threaten the competitiveness of the port of Hong Kong since vessel operational costs would be higher when entering into Hong Kong's ECA.

d.4) The inherent instability of LSF poses four critical threats to safe marine engine operation, namely degraded ignition quality, excessive engine deposits, an increase in visible particulate emissions and excessive sludge production and fuel system fouling.

3. Suggestions

a) Demand for ECA-compliant fuel would increase sharply after setting up ECAs in the PRD area, which would increase pressure on fuel suppliers. Variation of fuel availability could present challenge to shipping companies. To maintain stable fuel supplies, Hong Kong should develop a fuel oil management plan to facilitate fuel oil provision system and predict bunker consumption of vessels by collecting data from shipping companies. Our government may liaise with Singapore regarding a priority right of purchasing ECA-compliant fuel in the case of a shortage in supply. Even Singapore makes great efforts to enhance oil production, when fuel availability is doubtful.

b) In recent years, there have been an increasing number of incidents regarding machinery space fuel leakage during fuel switching process in ECAs. This is due to the fact that a number of ship owners or operators have a lack of knowledge on fuel switchover procedures. Ship owners or operators should be aware of potential risks and provide their fleets with necessary contingency plans/

instructions as a part of their safety management systems. Furthermore, some of the small-sized shipping companies may not provide training to ship operators and crew members in fuel changeover procedure because of limited resources or budgets. The Hong Kong government may consider the feasibility of subsidizing small-sized shipping companies to develop comprehensive personnel training program, which allows them to get well-prepared before the effective date.

c) Fuel switching also brings a challenge to inspectors when checking whether the vessels fully comply with the legislation. The Environmental Protection Department (EPD) identified only 4 non-compliance cases after conducting surprise inspections to 166 OGVs. Does this result imply a good number of non-compliant cases and successful enforcement of the regulations? In comparison with the air pollution index of Singapore, there should be some room for improvement, like tightening the requirement from a 0.5% to a 0.1% cap of Sulphur content, or developing effective plans to avoid potential breaches of the legislation to achieve the target of emission reduction. It is suggested that the Hong Kong government can enact regulations on requiring vessels to install a permanent sampling valve in the returning line of the engine with a temperature sensor. Since the temperature of LSF and HFO are different, the inspectors can collect data regarding the temperature of fuel supplied to the engine of vessels to determine whether the vessels have properly switched over to ECA-compliant fuel for propulsion.

d) The proposed ECA covers two main areas: (1) the port of Hong Kong and (2) the PRD region. Consistent policies between the two areas could avoid confusion to ship masters. On a positive note, China has announced the implementation of at-berth regulations on the mainland with effect from 2017, whereas Hong Kong has announced it will enforce China's new ECA regulations in the PRD region once they come into effect in 2019. It would be good if the mainland and Hong Kong can reach a consensus on law enforcement and inspection procedure etc.

e) In order to keep engaged with different stakeholders and at the same time keep them informed about developments in ship emissions regulatory controls, international best practice, emission reduction technologies and the challenge faced by the industry regular meetings should be held amongst all stakeholders.

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在海上航行如何知道自己的位置

林傑

我們到街上逛逛，或者駕車，都會隨時知道自己身在何方，例如，XX 街 YY 號或 AA 地段，這樣就不會迷途啦！一艘輪船在海上航行時，尤其是遠離陸地，身處在茫茫大海中，載浮載沉，又如何知道身在何處？應去日本卻是否去了南極洲？

在帆船時代，航海活動肯定百分之百是探險歷程。經過這麼多年的航海發展，相信探險歷程已經再不存在了。相反，航海人員的高超技術和良好素質，航海可說是再沒有什麼險可給你去探了。

當輪船離開一個國家的港口，朝著目的地航行時，船上的駕駛員（即船長和伙長）便要時時刻刻地監察著船的動向，找尋輪船身在地球那個位置，日以繼夜，監察安全航行，直至抵達目的地。究竟駕駛員用什麼辦法去找尋和確定輪船的位置呢？現在我把我的經驗寫下。

其實，找尋和確定輪船的位置是將代數、幾何、平面三角和球面三角之數學運用於航海計算上，需要的工具包括海圖、平行尺、圖規和 2B 鉛筆，就可以在海圖上定出船舶的位置，內行人叫做「定位」。定位的方法有很多種，主要是基本方法和現代方法，每一方法的運用需視乎環境、設備和定位條件。現代電子導航極為發達，可以協助航海駕駛員的駕駛工作。

基本方法，又分為地文航海和天文航海兩種。這兩種方法也是扎馬工夫，沒有電子助航儀器也可大派用場；帆船時代也是用這兩種方法的。

(1) 地文航海是利用陸標，如山岬、山峰、地形、島嶼、燈塔等，作為方位觀測對象。經計算後，在海圖上相應的陸標符號上畫出方位線，兩條適當角度的方位線或（三條方位線）相交於一點，便可定出船舶的位置，再從海圖的座標處，量度出經緯度。

(2) 天文航海乃是輪船遠離陸地，沒法再觀測陸標時採用的。航海駕駛員通過觀測天體（即天空上的星體、月亮和太陽），計算後在海圖上畫出天體位置線，多條適當角度的天體位置線相交於一點，便可定出船舶的位置了。

除基本方法外，現代的定位方法是採用電子助航儀器來協助定位，這些助航儀器包括：

(甲) 雷達

雷達是利用極高頻（UHF）間斷地發射電磁波脈衝，撞擊到物體反射回接收器，並在螢光幕上顯示物體的方向和距離。它主要用來在霞霧中航行探測來船的動向，防止碰撞。所以它亦能探測到附近的陸地所在，可以輔助為定位儀器。

(乙) 無線電探向儀

接收由陸上的無線電導航標桿，發出的中波無線電波，並確定電波來源方向。駕駛員經計算後，便可確定無線電波的方位線來定位了。它主要是在視野不良或霞霧中，而又近岸航行時使用。最大作用是探測他船求救訊號的無線電波來源方向。

(丙) 康索〔已廢除〕

是在北歐岸上有利位置，設立中波聲音發射站，可用中波收音機接收。以收到聲音訊號的點音數目或長音數目，配以康索海圖，定出位置，其準確性極之差。

(丁) 台卡〔已廢除〕

是在岸上有利位置設立低波電波發射站，用台卡接收器接收並分別出主、副發射站的電波相形的差別，顯示出台卡位置線讀數，配以台卡海圖定出位置。台卡適合沿岸航行，主要設立於西歐、波斯灣、南非和日本；甚至作為引水用。（荷蘭鹿特丹港入口便是）

(戊) 勞蘭 A〔已廢除〕和 C

在岸上有利位置設立勞蘭電波發射站，用勞蘭接收器接收並分別出主、副發射站到達接收器的電波時差，以讀數顯示出，配以勞蘭 A 或 C 的海圖定出位置。勞蘭 A 因準確性差而被廢除，勞蘭 C 適合近岸航行，準確性不錯，主要設立於美國沿岸。

(己) 奧米茄〔已廢除〕

在地球上的有利位置，設立了六個低波電波發射站，六個發射站可以互相成為或主或副發射站，用奧米茄接收器接收，並分別出電波到達接收器的時差，顯示出讀數，駕駛員將讀數修正後，得出奧米茄位置線便可定出船位。奧米茄是覆蓋全球的，祇適宜於大洋航行。

(庚) 海軍衛星導航系統 NNSS〔已廢除〕

由美國發射六顆人造衛星繞兩極而運行，用 NNSS 衛星接收器接收一顆衛星發射的訊號，以多普勒效應方式計算，顯示出地球上的經緯度。這系統已被新一代的全球衛星定位系統所取代，因為它祇適宜在大洋航行時使用，飛機不可依靠它，而且接收衛星時間間距由二小時至十六小時不等。

(辛) 全球衛星定位系統 GPS

在電子定位系統中，相信這個系統是全球都適用的，包括沿海航行；海陸空甚至水底都可用。這個系統全部使用時，是以 24 顆衛星發射訊號，所以在任何時間用 GPS 衛星接收器接收其中三顆衛星訊號便可定位，準確度達 100 米。現時有些航海國家在地面設立了一些 GPS 接收站，將結果和該站的真正位置相比，發出修正訊號，用較為精密的 DGPS 衛星接收器接收衛星訊號和地面站的訊號，得出的結果已達到 1 公分的準確度。所以可用來作陸地和海事測量、挖泥、填海等工程用，真的非同凡響。

無論電子儀器多先進、多發達，始終仍是一副機器，在沒有任何預先通知的情況下，有可能損壞而無法使用。所以精幹的航海人員會不時用不同的方法去確定位置，達到安全航行的效果。有一位經驗豐富的船長曾說過，最準確的東西是你的雙眼，最先進的儀器也靠不住。

(林傑船長 : Master Mariner, FIS, MH.)

California's Modified Biofouling Regulations

David Tong

Introduction

With respect to the prevention of non-indigenous marine invasive species ("NIS") introductions, the regulation of ballast water management has garnered the lion's share of attention. However, there is now another front to the regulators' war against NIS introductions: Biofouling of the wetted surfaces of vessel hulls and niche areas such as sea chests, thrusters and propeller shafts. For example, in March of this year, New Zealand authorities ordered a bulk carrier to leave its waters upon discovering dense fouling of barnacles and tube worms on the vessel's hull.

California (by and through the State Lands Commission ("SLC")) regulates biofouling aboard all vessels of 300 gross registered tons or more arriving at California ports which carry, or are capable of carrying, ballast water. The SLC has authority to regulate biofouling pursuant to California's Marine Invasive Species Act, or "MISA." (California Public Resources Code §§ 71200 – 71271). The SLC announced on August 15, 2017 that modifications to its biofouling regulations will soon take effect. These "Biofouling Regulations" will be codified at 2 Cal. Code Reg. §§ 2298.1 – 2298.9.1 (the "Biofouling Regulations").

The Biofouling Regulations' new reporting, recordkeeping, and management requirements

Highlights of the Biofouling Regulations include:

- **Reporting requirements:** Beginning October 1, 2017, vessels should no longer use the SLC's Hull Husbandry, Ballast Water Treatment (Annual), and "Ballast Water Treatment (Supplemental)" reporting forms. Vessels must now use the SLC's "Marine Invasive Species Program Annual Vessel Reporting Form," which essentially consolidates the foregoing forms into single report. This form must be submitted at least 24 hours in advance of a vessel's first arrival at any California port each calendar year.

- **Recordkeeping & Management requirements:** These requirements take effect on a vessel-by-vessel basis. For existing vessels, the requirements apply after the first dry-docking on or after January 1, 2018. The requirements also apply to vessels delivered on or after January 1, 2018.

- **Recordkeeping Requirements.** The following records must be made available to the SLC's inspection and review upon request. Vessels which do not maintain records consistent with the Biofouling Regulations' requirements, will have 60-day "grace period" to create compliant records.

  - **Biofouling Management Plan.** The Biofouling Regulations incorporate by reference the IMO's 2011 guidance on minimizing biofouling. Vessels must have onboard a written biofouling management plan that is at least consistent with the IMO's guidelines and which discuss certain information depending on the biofouling management practice employed by the vessel (e.g., anti-fouling coatings, anodes, injections systems, or electrolysis).

  - **Biofouling Record Book.** Vessels must have onboard a biofouling record book that is at least consistent with the IMO's guidelines for such records and which contains details of all inspections and biofouling management measures undertaken on the vessel since the vessel's most recent dry docking, or since the beginning of a newly-delivered vessel's service.

- **Mandatory biofouling management requirements.** Vessels employing anti-fouling coatings must ensure the coating are not aged beyond its effective lifespan. Vessels which do not employ anti-fouling coatings must demonstrate how they have adhered to their Biofouling Management Plan. With respect to niche areas, the anti-fouling practices used by a vessel should be listed in its Biofouling Management Plan. There are additional requirements for vessels remaining in any port for 45 days or more. All instances of biofouling management must be recorded in a vessel's Biofouling Record Book. Furthermore, the Biofouling Regulations expressly permit propeller cleaning in California.

Enforcement & penalties

The Biofouling Regulations are silent on how SLC will enforce them and what penalties arise from their violation. However, MISA requires the SLC to annually inspect 25% of all California arrivals. In its "Final Statement of Reasons" for the Biofouling Regulations, the SLC advised: "[SLC] inspectors will add biofouling management enforcement to their existing inspection regime .... the [SLC] recently adopted related **enforcement regulations** that include a framework for violations and penalties." (emphasis added). The referenced "enforcement regulations" are the ones which took effect on July 1, 2017. The enforcement regulations primarily pertain to penalties for violations of the SLC's ballast water exchange, reporting and recordkeeping requirements.

Under the enforcement regulations, violations of the Biofouling Regulations' recordkeeping requirements are likely "Class 2" violations and violations of the reporting requirements are likely "Class 3" violations, which are penalized accordingly:

Recordkeeping Violations	Reporting Violations
• First Class 3 Violation = Letter of Noncompliance • Subsequent Class 3 Violation = $10,000 penalty	• First Class 3 Violation = Letter of Noncompliance • Subsequent Class 3 Violation = $1,000 penalty

Whether the enforcement regulations provide penalties applicable to violations of the Biofouling Regulations' management requirements is not so clear. However, the enforcement regulations' penalties for violations of the SLC's ballast water exchange requirements establish that the agency takes violations of management requirements far more seriously than recordkeeping and reporting requirements. Under the enforcement regulations, SLC may pursue penalties of up to $27,500/tank for violations of its ballast water exchange requirements. $27,500 is the maximum per violation penalty the MISA authorizes the SLC to collect

In its Final Statement of Reasons the SLC observed that "…. the enforcement regulations may be amended to include penalties associated with [violations of the California Biofouling Regulations]." Thus, perhaps the SLC is taking a "wait and see" approach to determining what it believes is an appropriate penalty dollar amount for violations of the Biofouling Regulations' management requirements.

(Mr. David Tong: Keesal, Young & Logan)

「香港 - 上海航運業界」交流午宴
（2017 年 12 月 5 日）
香港海事法律和仲裁服務

李連君

各位嘉賓，女士們，先生們，中午好！

非常榮幸今天有機會在此為大家就香港海事法律和仲裁服務做一介紹。希望通過我的介紹，大家能夠對香港的航運法律和仲裁制度有大致的了解。

香港社會發展及海事服務介紹

首先，如大家所知，香港在回歸的 20 年中經濟社會迅速發展：

（1）香港人均 GDP：1997 年為 21.16 萬港元，2016 年為 38.88 萬港元；

（2）香港人口：1997 年為 650.21 萬人，2016 年為 737.49 萬人；

（3）香港進口額：1997 年為 1236 億港元，2016 年為 3395.2 億港元；

（4）香港出口額：1997 年為 1055 億港元，2016 年為 3053 億港元；

而香港的國際競爭力也處於世界的領先地位，根據 2017 至 2018 年度的全球競爭力報告，香港在司法獨立，糾紛解決效率，政府政策透明度，投資者保護力度等都位於前列。

Item/Region 項目 / 地區	**Hong Kong 香港**	**Singapore 新加坡**	**India 印度**	**Greece 希臘**	**Philippines 菲律賓**	**United Arab Emirates 阿聯酋**
Judicial Independence 司法獨立	13	19	53	71	88	16
Efficiency in Dispute Resolution 糾紛解決效率	4	1	35	133	113	5
Transparency of government policy 政府政策透明度	6	2	50	122	81	10
Investor Protection 投資者保護力度 (0-10 best)	3	1	13	41	111	9

同時，香港是地理優越的航運中心。香港共有九個集裝箱碼頭，由五間碼頭營運商管理和營運。碼頭營運商不斷提升他們的設備及系統，以提高作業效率處理不斷增長的需求。香港是全球最繁忙和最高效率的國際貨櫃港之一。

香港也擁有世界級船舶註冊和海事服務。香港船舶註冊現有 2,540 艘船，超過 1.1 億總噸，全球位列第四。香港的船旗國品質管理效率高，兼具成本效益。香港與 45 個貿易伙伴已簽訂涵蓋航運入息的雙重課稅寬免安排。

海事服務包羅萬有：香港有 800 多間與海運相關的公司，包括船舶管理、船舶經紀及租賃、船舶檢驗、船務代理服務等。全球不少具規模且歷史悠久的服務業群，均在香港設立據點，為船東提供各種船舶必要的設備及支援服務。船舶融資、海事保險、海事法和仲裁中心，更是成熟的業群。

香港雲集眾多船東：香港船東會的會員管理或擁有 2,123 艘船舶，總載重噸位為 1 億 4 千多萬噸，約佔全球商船 9% 總載重噸。

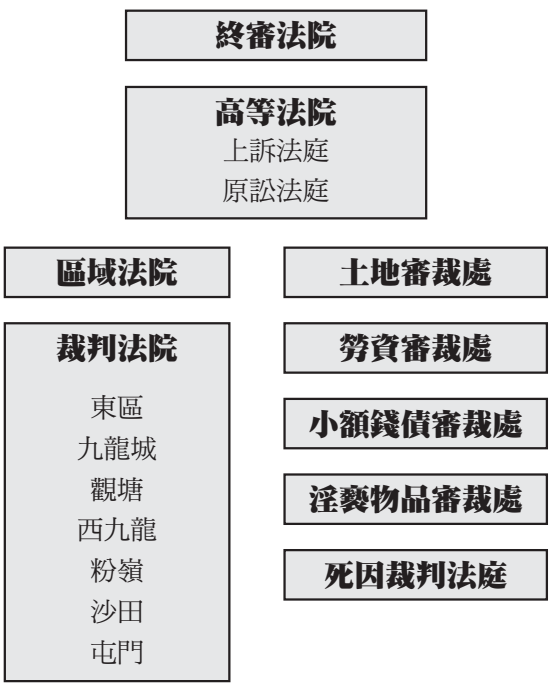
香港沒有對國際航運企業徵收利得稅。只對在香港進行租船或營運船舶業務的船東，施加利得稅。目前，香港關於應評稅利潤的利得稅為 16.5%。香港沒有增值稅、利息稅、遺產稅等。

香港法律制度簡介

1997 年前，香港採取英國的法律制度。香港回歸後，在一國兩制的體制下，香港仍保留普通法系的制度，香港的法律採取以成文法和判例法結合的方式，法律來源包括基本法，普通法和衡平法，成文法，國際公約等。

香港法律的文本和法律程序，基本上採用中文和英文兩種語言，方便多個國家以及中國大陸的當事方在香港進行法律程序。

香港的法院體系，由終審法院、高等法院，區域法院和其他法庭組成。高等法院由上訴法庭和原訟法庭組成。



香港的航運法律

香港作為一個歷史悠久的航運中心，其擁有完備的海事法律體系，並加入了諸多海事國際公約。

香港的主要航運法律包括:商船條例，海上保險條例，商船（安全）條例，商船（防止及控制污染）條例，商船（限制船東責任）條例，海上貨物運輸條例等。

香港已參加的海事方面的國際公約，包括《海牙維斯比規則》，1910 年《統一船舶碰撞某些法律規定的國際公約》，《1952 年扣船公約》，《1972 年國際海上避碰規則》，《國際海上人命安全公

約》，《海事賠償責任限制公約 1996 年協定書》，1989 年《國際救助公約》等。

就海事法律制度而言，香港與大陸最不同的一點，就是香港的對物訴訟制度，為扣船索賠帶來了便利。「對物訴訟」是指，原訴法庭的海事司法管轄權，在對物訴訟 (Res) 的法律程序中，如果該案件所針對的船舶，出現在該法庭的司法管轄區內 (即香港境內)，法庭可下令扣押該船舶。

- 在香港申請扣船時，無需提供反擔保。香港的法院及海事律師，均提供每周七天 24 小時的服務。

香港仲裁服務簡介

香港的仲裁由《仲裁條例》規範。香港新的《仲裁條例》（第 609 章）於 2011 年 6 月 1 日起生效。《仲裁條例》於 2013 年經修訂，新增兩個部分：緊急臨時救濟（第 22A 和 22B 條），以及香港與澳門的仲裁裁決的強制執行（第 98A 至 98D 條）。

1958 年《承認及執行外國仲裁裁決公約》（紐約公約）對香港適用。（《仲裁條例》第 10 部第 2 分部）。關於大陸與香港特別行政區仲裁裁決的相互強制執行的安排，也併入《仲裁條例》第 10 部第 3 分部中。

香港國際仲裁中心是香港最大的仲裁機構。香港的其他仲裁機構，包括國際商會國際仲裁院、中國國際經濟貿易仲裁委員會香港仲裁中心、中國海事仲裁委員會香港仲裁中心。

香港是理想的海事仲裁地點，因為：

(1) 香港的《仲裁條例》框架比較人性化 ;

(2) 香港法院對仲裁表示支持，並在最小程度上干涉仲裁 ;

(3) 在香港做出的仲裁裁決，可在多個國家強制執行 ;

(4) 香港地理位置優越，便於從世界各地前往香港進行仲裁 ;

(5) 雙語制 – 英文與中文均可使用 ;

(6) 香港國際仲裁中心，能提供卓越的設施與協助性服務。另外，ICC、中國國際經濟貿易仲裁委員會及中國海事仲裁委員會香港仲裁中心，也能提供卓越的仲裁服務。對於臨時仲裁，在香港也有多名可從事海事仲裁的著名海事仲裁員 ;

(7) 有許多著名的專業人士和機構，包括海商法律師行、會計師行、保險公司，調查人員及專家，均已在香港建立其辦事處 ;

(8) 香港被譽為著名的海事仲裁訴訟地。英國高等法院的法官 Justice Hamblen 先生，在沙鋼一案的判決中說：「香港的地理位置便利，這是毋庸質疑的。另外，香港也能維持其中立的立場，成為眾所周知且受人推崇的仲裁地。」

作為香港的專業海事律師，我歡迎內地航運界，包括上海航運界的朋友們，多多使用香港的海事及仲裁服務。

(李連君先生：禮德齊伯禮律師行合伙人及航運部負責人)

AA TALK

Can Law be determined by reference to Practice?

Raymond Wong

"..., the law cannot be decided by what is understood among writers and practitioners in the relevant field ... Experience shows that in many areas of practical and professional endeavour generally accepted points of principle and practice, when tested in court, sometimes turn out to be unsustainable. I accept that it may be right for a court to have regard to practices which have developed and principles which have been adopted by practitioners, but they cannot determine the outcome when the issue is ultimately one of Law."

Lord Neuberger in "The Longchamp" [2017]

"THE LONGCHAMP"

Included in Issue No.118 is "An Adjusters' Note on Substituted Expenses and Ransom Payments" contributed by Richards Hogg Lindley following the Commercial Court judgment on "The Longchamp" case having been reversed by the Court of Appeal, highlighting that the position under English law with regards to Rule F of the York-Antwerp Rules reverted to the position being in line with the views of the majority on the Advisory Committee of the British Association of Average Adjusters.

The Editor, however, did mention in this column that "Readers are reminded that the "Longchamp" case where the Court of Appeal has reversed the 2014 High Court judgment is coming up for trial in the Supreme Court."

The Supreme Court, on 25th October 2017, allowed the Appeal, thus overruling the decision at the Court of Appeal.

The case has been widely reported but for sake of completeness and easy reference, the Editor would repeat briefly summary of the factual backgrounds and decisions.

The casualty

On 29 January 2009 the chemical carrier *MV Longchamp* ("the vessel") was transiting the Gulf of Aden on a voyage from Rafnes, Norway, to Go Dau, Vietnam, laden with a cargo of 2,728.732 metric tons of Vinyl Chloride Monomer in bulk ("the cargo"). The cargo was carried under a bill of lading dated 6 January 2009 which stated on its face that "General Average, if any, shall be settled in accordance with the York-Antwerp Rules 1974".

At 06.40, seven heavily armed pirates boarded the vessel. The pirates

commanded the master to alter course towards the bay of Eyl, Somalia, where she arrived and dropped anchor at 10.36 on 31 January 2009. At 14.05 on 30 January 2009 a negotiator for the pirates boarded the vessel and demanded a ransom of US$6m. The vessel's owners ("the owners") had meanwhile formed a crisis management team who had set a target settlement figure of US$1.5m. On 2 February 2009 an initial offer of US$373,000 was put to the pirates. Negotiations between the pirates' negotiators and the owners' crisis management team continued over the following seven weeks with various offers and counter-offers being made.

Eventually on 22 March 2009, after a negotiation period of 51 days, a ransom was agreed in the amount of US$1.85m. On 27 March 2009 the ransom sum was delivered by being dropped at sea. At 07.36 on 28 March 2009 the pirates disembarked and at 08.00 that day the vessel continued her voyage.

It is worth noting that the cargo was subsequently valued at destination at US$787,186 and the value of the ship was assessed at US$3,947,096. That is to say, the total value of the property at risk amounts to US$4,734,282 which sum is less than the ransom of US$6m initially demanded.

The relevant York-Antwerp Rules

Rule of Interpretation

In the adjustment of general average the following lettered and numbered Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.

Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.

Rule A

There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

Rule C

Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

Loss or damage sustained by the ship or cargo through delay, whether on the voyage or subsequently, such as demurrage, and any indirect loss whatsoever, such as loss of market, shall not be admitted as general average.

Rule E

The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

Rule F

Any extra expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

Adjustment dated 31 August 2011

The Adjusters allowed in general average the following expenses incurred during the negotiation period, which the cargo disagrees:

i)	Media response service	US$ 20,639.30
ii)	Crew wages	75,724.80
iii)	High-risk area bonus	70,058.70
iv)	Crew maintenance	3,315.00
v)	Bunkers	11,115.45
vi)	Telephone re negotiations	751.00
		US$181,604.25

Commercial Court decision [2015]

The Court found that:

(a) the expenses ii) – v) incurred during the negotiation period were allowable in general average under Rule F as "substituted expenses" (in lieu of US$4.15m saving);

(b) the expenses i) and vi) were allowable in general average under Rule A;

(c) payment of the original ransom demand of US$6m without negotiation would have been reasonable.

Court of Appeal decision [2016]

The cargo appealed challenging to the judgment on expenses i) – v) and the Court agreed that:

(a) payment of the original ransom demand of US$6m without negotiation would have been reasonable;

(b) the media response costs, i) are allowable in general average under Rule A;

(c) consumption of bunkers is treated as an expense for the purpose of Rule F;

but found that:

(d) the negotiation period expenses, ii) – v), did not fall within Rule F holding that negotiating a reduced ransom of US$1.85m (and the saving of US$4.15m) was not "an alternative course of action" to the payment of the original sum demanded – merely a variant (which decision apparently followed the reasoning supported by the leading textbooks and was in line with the conclusion made by the majority of the majority of the Advisory Committee of the British Association of Average Adjusters, reflecting the almost universal practice not to allow these items under Rule F in the circumstances).

Supreme Court decision [2017]

The owners appealed to the Supreme Court submitting that the negotiation period expenses, ii) – v) amounting to US$160,213.95, fell within the expression "expense incurred" by them within Rule F and those expenses were incurred "in place of another expense", i.e. the saving of US$4.15m resulting from the negotiations. Since the negotiation period expenses were less than the "general average expense avoided", they were accordingly allowable in general average under Rule F.

The Supreme Court (by a majority of 4 to 1) reversed the Court of Appeal decision, allowing the negotiation period expenses, ii) – v), in general average under Rule F and finding that:

(a) the language of Rule F did not require that the expenses were incurred following an alternative course;

(b) it was not necessary to consider whether the initial ransom demand was reasonable under Rule A;

It is worth noting the issues considered by the Supreme Court, which are highlighted as follows:

1. The Court found that it would not be necessary, and it would be wrong to assume that it would be necessary, to establish that it would have been reasonable to accept the initial ransom demand in order to justify the contention that the negotiation period expenses were allowable under Rule F. Such assumption would mean that, "if a ship-owner incurs an expense to avoid paying a reasonable sum, he can in principle recover under Rule F, whereas if he incurs expense to avoid paying an unreasonable sum (i.e. a larger sum), he cannot recover. The more obvious his duty to mitigate, and the greater the likely benefits of such mitigation, the less likely he would be to be able to recover."

2. The Court considered that the words in Rule F "another expense which would have been allowable as general average" were a reference to an expense of a nature/type which would have been allowable (rather than its' quantum) under Rule A, under which a ransom would be allowable in general average.

3. Lord Neuberger favoured the interpretation of Rule F which "produces an entirely rational outcome: whenever an expense is incurred to avoid a sum of a type which would be allowable, that expense would be allowable, but only to the extent that it does not exceed the sum avoided." Accordingly, the negotiation period expenses in the amount of US$160,213.95 fell under Rule F as they were incurred to avoid paying US$6m, resulting in a saving of US$4.14m.

4. The Court found that Rule C only applies to loss consequential on a general average act defined by Rule A. It does not apply to expenses covered by Rule F, which is concerned with sums expended in avoiding expense otherwise allowable as general average.

5. The Court disagreed to the payment of a reduced ransom being not "an alternative course of action" to paying the original ransom demand but merely a "variant". The Court found that incurring the negotiation period expenses was an alternative to paying a higher ransom; "the former involved incurring vessel-operating expenses whereas the latter involved paying a ransom".

6. The Court saw no reason for restrictively interpreting the word "extra" so as to require an expense to be if a nature which would not normally have been incurred in response to the peril threatening the adventure. The Court was of the opinion that the natural contextual meaning of "extra expense" was "simply an expense which would not otherwise have been incurred (but for the saving of the "other expense")".

The following comments made by the Supreme Court in the judgment are well worth noting:

A. The York-Antwerp Rules are an international agreed sets of rules. In para 29 of the judgment, Lord Neuberger states: "Given that the Rules represent an international arrangement, it is particularly inappropriate to adopt an approach to their interpretation which involved reading in any words or qualification. As already mentioned, it appears to me that, as a matter of ordinary language, Rule F applies to the negotiation period expenses for the reasons given in para 26 above. To imply some qualification such as the requirement that those expenses must have been incurred so as to achieve an "alternative course of action" appears to me to be very dangerous. In the same way as an international convention or treaty, the Rules should be interpreted by a United Kingdom court "unconstrained by technical rules of English law, or by English legal precedent, but on broad principles of general acceptation".... "it is the unadorned language of the article to which attention must be directed"."

B. Lord Neuberger is not convinced that, as a matter of language, the passages in the leading textbooks support the conclusion that Rule F can only be invoked when the claimant has taken an "alternative course of action", and he states in para 25 of the judgment: "... the law cannot be decided by what is understood among writers and practitioners in the relevant field

... Experience shows that in many areas of practical and professional endeavour generally accepted points of principle and practice, when tested in court, sometimes turn out to be unsustainable. I accept that it may be right for a court to have regard to practices which have developed and principles which have been adopted by practitioners, but they cannot determine the outcome when the issue is ultimately one of Law." The obvious precedents are the *The Makis [1929] and The Alpha [1991].*

The English Supreme Court judgment is in contrast with the current practice of most average adjusters to disallow such negotiation period expenses and will no doubt affect the future English general average adjustments of substituted expenses under the York-Antwerp Rules. It will be interested to see if the market would, like what it had done following "The Makis" case, seek to revert to the long accepted practice.

MARINTEC CHINA 2017

This was held in Shanghai on the 5th/8th December 2017. A delegation of the Hong Kong Maritime Port Board, lead by Mr. Frank Chan JP, Secretary for Transport and Housing, attended the opening ceremony and spoke at the Hong Kong SAR Pavilion.

Mr. Lianjun Li of Reed Smith Richards Butler and Mr. Timothy Lee of MS Amlin Asia Pacific Pte. introduced the maritime legal & arbitration services and marine insurance business development in Hong Kong respectively. In this issue, we would produce the text (in Chinese) of the speech by Mr. Li and that of Mr. Lee will appear in the next issue.

(Mr. Raymond T C Wong: Average Adjuster)

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