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SEAVIEW

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Ship Owning: Changes & Challenges

安全速度



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Speech by the Director of Marine At the Joint Luncheon of the Hong Kong Shipowners Association and Hong Kong Marine Department 7 May 2018

Maise Cheng

Jack, Raymond, Sandy, members of the Hong Kong Shipowners Association, ladies and gentlemen.

I am most honoured to have the opportunity to address the distinguished professionals of the Hong Kong shipping community today.

2. The Government established the Hong Kong Maritime and Port Board (MPB) in 2016 to assist its formulation of strategies and policies to facilitate the growth of high value-added and professional maritime services in Hong Kong, foster talent development, and promote Hong Kong as an international maritime hub. Two years down the road, the MPB has taken effect in achieving the objectives gradually. The achievement is surely a joint effort of the shipping community and the MPB.
3. One of the major concerns of the maritime industry is the problem of manpower shortage. The Maritime and Aviation Training Fund (“the Training Fund”) which was set up in 2014 has played an important part in nurturing local talents required to sustain our maritime industry. The Fund provides funding for 12 maritime-related subsidy and incentive schemes.
4. By end of last year, over 2,700 students and maritime practitioners have been benefitted by the Training Fund. This involves an amount of \$31.0 million HK\$. Since the summer of 2014, non-final year students of local tertiary institutions have been invited to join the Maritime and Aviation Internship Scheme provided by our local companies engaged in the marine and aviation businesses. As at end of last year, over 550 students have undertaken the internship placements offered by about 120 maritime-related companies under the Scheme.
5. The Sea-going Training Incentive Scheme launched in 2004 to attract our graduates from the tertiary institutions to join the sea-going career is entering the harvest stage. As at end February this year, we have a total 506 youngsters who joined the scheme as cadets onboard sea-going ships. Among them, a total of 30 graduates have obtained the Master Mariner Certificate and 11 obtained the Chief Engineer Certificate. About 70 more are expected to obtain the Class 1 CoC in two years which will surely strengthen the workforce of our maritime industry.

6. I must thank our shipowners and ship managers who provide the places onboard their ships for the cadetship training for our graduates, the Hong Kong Shipowners Association and other stakeholders for the promotion of the sea-going career.
 7. Now let me turn to the Hong Kong Shipping Register (HKSR). The HKSR exceeded 116 million gross tons last month, accounting for more than 9% of the world's merchant fleet deadweight tonnage, and continue to rank the fourth in the world. As a result of the joint effort of shipowners, ship operators, ship staff and Recognised Organizations, Hong Kong registered ships are also among the best performers in the world. The global detention rate of ships flying the Hong Kong flag was around 0.7% last year, compared with the world average of 2.95%. We are delighted that the Hong Kong Flag is a reputable flag of choice and quality.
 8. Sustainability of the workforce in the Marine Department (MD) is of paramount importance to ensure safe operation of the port and the quality of the Hong Kong registered ships. The Marine Officer and Surveyor of Ships grades, which are the two core professional grades of the MD, have been facing persistent recruitment difficulties in recent years. With the green light of the Chief Executive in Council, we are now proceeding full steam on the Grade Structure Review (GSR) of the two professional grades.
- Under this Review, a new tier of Assistant rank would be created for the two grades. The purpose is to attract youngsters to join the MD at an earlier stage of their maritime career, and hence to resolve our manpower and succession problems in the long run.
9. I wish to take this opportunity to thank the Shipowners Association and classification societies for agreeing to provide attachment opportunities for these Assistant Grades Officers which are an essential part of their training programmes. If deliberation at the Legislative Council proceeds smoothly, MD hopes that the recruitment exercise for the Assistant Grades Officers could be conducted later this year.
 10. Riding on this new development, MD has stepped up briefings on career opportunities in MD for students undertaking relevant courses in our tertiary institutions, particularly the introduction of the new Assistant Grades, many participants indicated interest in the new job opportunities.
 11. To enable tertiary students to better understand the work of MD and the maritime industry, MD has started a Summer Internship Programme for Assistant Marine Officers and Assistant Surveyors this year. 20 places will be provided for students from universities and post-secondary institutions.

12. To nurture youngsters' interest in the maritime industry at their early age, we also started to arrange school visits to MD last year. Feedback has been encouraging and many students found that the visits to Government Dockyard and vessel traffic training centre were eye-openers for them.
13. MD believes the joint efforts from the government and the industry will cultivate more local talents for the maritime industry.
14. Last but not the least, I would like to congratulate those who will be presented awards later. Without your unfailing support of the Hong Kong Shipping Register, and excellent performance in your services, the Hong Kong registered fleet would not have had such a pleasing achievement last year.
15. Thanks you.

(Maise Cheng: Director of Marine, Marine Dept., HKSAR)

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加拿大，一個對於香港人頗為熟悉國家的名字，位於北美洲，與美國一衣帶水，密不可分。從英屬哥倫比亞省 (British Columbia) 溫哥華 (Vancouver) 駕車穿越邊境前往華盛頓州 (Washington State) 西雅圖市 (Seattle) 也只需兩個小時左右。在上世紀的八十至九十年代，由於前途未明及政治風波所帶來的恐懼，部分香港人選擇移居外地，而加拿大是其中一個比較熱門的國家。回想過去，猶記得小時候身邊的同學突然申請退學移民，加拿大這個國家經常在耳邊迴響著，既熟悉又陌生。熟悉的是身邊的人談論著移居加國，陌生的是我不清楚她到底在哪裡，只聽父母及師長提到加拿大在世界的另一邊，與香港隔著太平洋。轉瞬間，香港已回歸二十載了，而今天我飄洋過海，終於有機會踏足這個遍地楓葉的國家，了解一下華人在當地的生活文化及習慣。

甫上岸後，並不急著去旅遊觀光，首要的「任務」是去探望堂兄。堂兄的家位於溫哥華市布納比區 (Burnaby)。初到，對於周邊的環境感到陌生，而碼頭距離目的地也相當遙遠，此時只能拜托海員俱樂部的職員幫忙電召計程車。上了車後，一邊注視車外的景色，一邊留意手機的導航軟件，看看甚麼時候能夠抵達目的地。大約

過了半小時左右，終於看到堂兄的身影。他在車房的坡道上佇候著，彷彿等待了很久。兄弟倆一見面，就打開話匣子閒話家常，有著說不完的話題。正當聊得興高采烈的時候，堂兄的兩個孩子放學回來。沒想到只是數載不見，他們卻成長了不少，不禁想起時間猶如白駒過隙一樣，一去不復返。回過頭來，堂兄問起我的事業路向，我表示盡快積累足夠的海上工作時間，然後報名參加證書考試，以便日後有更好的發展前途。當我說完後，堂兄點頭同意，並鼓勵我努力不懈，堅持下去，為將來的事業打下牢固的基礎。

上回提及航線週期約六週，換句話說相隔六週便可以停靠溫哥華兩至三天。在溫哥華停靠的時候除了探親以外，還可以抽空去市內觀光。碼頭位於溫哥華西南部的邊陲，光是坐出租車就要大半個小時，遇上交通擠塞更是令人懊惱不已。每次上岸的時候，為了爭取更多時間去參觀景點，自己的步伐不知不覺地加快了，盡力與時間競賽。不過，人總不能太貪心，每次上岸前就得預先安排好時間及計劃行程，考慮一下到底有哪些景點必須要去，點與點之間的交通時間及距離等。去不完的景點就留待下次再去，免得走馬看花，不能仔細欣賞及了解每一個景點。

約於五年前左右，香港電台曾經播放《華人移民史——金山客》紀錄片。除了講述華人遠渡重洋赴美國加州，還講述一批華人在第二次世界大戰中如何爭取加入加拿大軍隊保衛國家，繼而獲得公民身份行使公民權利。其中一個訪談片段是在加拿大華裔軍事博物館內拍攝。當時，心裡不禁萌生一個念頭，要去博物館一趟，從而了解一下當年的歷史故事及華人事蹟。加拿大華裔軍事博物館位於溫哥華市華埠的中華文化中心內，面積不大，只比船的駕駛台總面積稍大而已。麻雀雖小，五臟俱全，館內的展品令人目不暇接，全都是曾經保家衛國的老兵捐出，每一個細節彷彿在向世人傾訴當年的士兵如何在漫天烽火的日子裡奮勇抗敵。博物館的偏廳不定期舉行專題展覽，恰巧這次的專題展覽講述加拿大於 1941 年派軍支援香港保衛戰的事蹟，可見加拿大與香港的關係頗長，而且非常密切。1941 年加拿大政府派出加拿大來福槍軍團 (Royal Rifles of Canada) 及溫尼伯榴彈兵團 (Winnipeg Grenadiers) 支援香港抵抗日軍入侵。可惜，由於大部份軍人是剛入伍的年青人，加上沒有作戰經驗，他們在戰爭中傷亡慘重，葬身於血泊之中。當年一位任職中尉名叫羅景鑒的加籍華兵，經過三年的時間爭取入伍資格，成為加拿大皇家海軍一員，輾轉於 1945 年隨同英國艦隊到達香港，前往深水埗集中營解放戰俘，讓戰俘得以重見曙光。看畢館內的展品及每一塊展板所記載的故事，莫不教人為之感到動容。

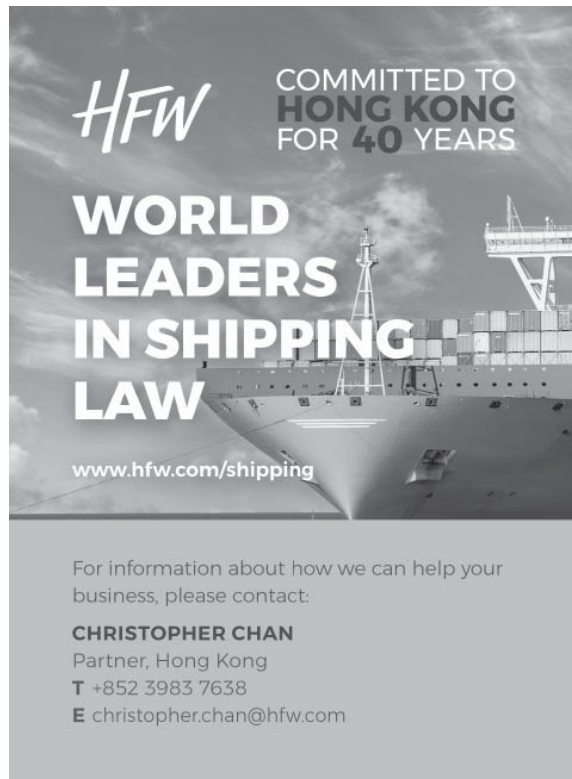
隨著船離開溫哥華後，航行約十小時左右，船抵靠美國西雅圖。西雅圖在美國有著舉足輕重的位置，除了她是某大型咖啡連鎖店的發源地之外，她還是聞名全球的波音飛機製造廠的所在地。在波音飛機製造廠的旁邊，有一個飛行博物館 (Museum of Flight)，距離碼頭只需十五分鐘車程左右，據說內有各式各樣的飛機，而且全部都曾經於藍天白雲中翱翔，是飛行愛好者的朝聖地。在中學時期，曾經參加一家航空公司舉行的飛行體驗活動計劃，表現優秀者可獲得免費參觀波音飛機製造廠及飛行博物館。可惜由於表現平平，未能獲得此寶貴的機會，實為憾事。正當船上同仁去超市採購各式各樣保健品及食物的時候，我卻獨自一人去參觀博物館及飛機製造廠，以一圓當年曾經落空的願望。

進入博物館後，就被懸掛半空的各式各樣飛機吸引著，從複製由萊特兄弟 (Wright Brothers) 所研制的第一架飛機到波音 787 原型飛機，以至中、日、美、德等國家的戰機，皆可以在館內找得到。此外，部份在歷史上比較重要的飛機也被博物館保存著。當中一架已退役的美國總統專機——空軍一號 (Air Force One) 曾經被前總統尼克遜 (Richard Nixon) 使用，她曾於 1971 年乘載美國總統赴往中國北京，為中美雙方僵持的關係破冰，而美國訪華之行則透過著名的「乒乓外交」所促成的。而另一架使我印象深刻的飛機，就是在二

戰中協助中國抗日的飛虎隊 (Flying Tiger) P-40 型戰鬥機「奧瑞利之女」(O' Riley' s Daughter)。她最特別之處是在駕駛艙艙邊貼了六個小小的日本國旗，據展板介紹是指每逢擊落一架日本戰機後，就可以貼上此小國旗，以表揚其功績。不過，戰爭總是殘酷無情，回想起當年有無數的生命因此而無辜地被殺害，而國家之間卻鬥爭不斷，戰爭的代價實在太沉重了。

不經不覺，在我的航海日子裡隨船飄洋過海到訪過十數個國家及地區。每一個地方都有她的吸引之處，而每次上岸作短暫的旅遊的時候，不光是去印證紀錄片及書本所記載的人和事，還可以讓我親身體驗當地的風土人情。這些機會實在難能可貴，它將會成為我回憶的一部分。假如將來再看看照片及文字，回想一下那時候的遊歷故事，實為是美事一樁。

(方威：東方海外貨櫃航運有限公司
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Imagine the scenario: A shipper has arranged for a cargo of frozen food goods to be shipped from Europe to Asia by sea. On arrival in Asia, the goods are found to be defrosted and no longer fit for human consumption. On closer inspection, it becomes clear that the reefer container temperature was set at +10°C rather than -10°C as instructed to the Carrier in the booking note. The consignees claim under their cargo insurance and the cargo underwriters sue the Carrier under the sea waybill to recover the losses. The Carrier wants to know what, if any, defences it has to the claim.

On a first reading, you might think that's a tough one for the Carrier to escape from given that the booking note expressly gave instructions for the cargo to be carried at a minus temperature but the reefer was set at a positive temperature. But, as with all contracts, it's important to look more closely at the terms and conditions to determine exactly where liability lies.

In this case, the standard terms and conditions incorporated into the sea waybill were clear: setting the temperature of the reefer container and ensuring that the temperature was correct was exclusively the shipper's responsibility. Further

evidence demonstrated that when the reefer was loaded by the shipper's agents at the cold storage warehouse onto a truck for on-carriage to the load port, the loading supervisor had signed a declaration that the reefer temperature was set correctly. As a result, the carrier was able to achieve a nuisance level settlement with the cargo underwriters.

This example demonstrates the importance of contractual terms in managing the risks inherent in cold chain logistics. Drafting a contract or standard terms and conditions that clearly apportion liability for damage allows a logistics operator to more accurately assess its risk and in turn, price in that risk to its contract and / or obtain adequate insurance to mitigate that risk.

Some of the key contractual mechanisms that can help achieve this are as follows:

1. FORM OF CONTRACT

- Consider using a form of contract which is not automatically subject to liability regimes giving you more freedom to incorporate limits or exclusions of liability.

- Enter into back-to-back contracts with the customer and service provider where possible. If not wholly possible at least seek to include back-to-back limits and exclusions of liability. Seek to include indemnity provisions in both contracts to assist with pursuing recourse claims.

2. INCLUDE CLAUSES THAT CLEARLY DEFINE THE PERIODS AND LIMITS OF RESPONSIBILITY, E.G.:

- State which party is responsible for setting the temperature of a reefer container and liable for any damage occurring as a result of incorrect temperature setting.
- State what level of responsibility you are accepting as regards shipper-packed containers.
- State when your period of responsibility for caring for the goods begins and ends.
- State which party is responsible for pre-cooling the container and cargo to avoid “hot stuffing”.
- Expressly exclude liability for consequential losses.
- Include list of defences / exceptions to liability in contracts not compulsorily subject to the Hague / Hague Visby Rules.

- Exclude liability for inherent vice / inevitability of damage. To assist in proving the existence of inherent vice, consider including a clause entitling you to inspection of the cargo and, if possible, a clause regarding a right to copies of certain key documents such as templates data / the data logger records / any pre-shipment surveys.

3. EVIDENCE OF CONDITION ON LOADING

- State that as regards shipper-packed and / or refrigerated goods, the bill of lading shall be a receipt only and the remarks “in apparent good order and condition” on the face of the bill do not constitute prima facie evidence that the cargo was loaded in good condition / at the required temperature.
- Consider including an express warranty from the shipper that cargo is, upon handover into your custody, in a condition so as to withstand the ordinary incidents of the intended voyage.

Whilst it is not possible to exclude the risk of liability completely, it is possible to narrow the scope of liability or increase the scope for defences to a claim using contractual terms.

(This article first appeared in The Chartered Institute of Logistics and Transport Hong Kong (CILTHK) newsletter, May 2018 http://www.cilt.org.hk/webadmin/adminnews/view_news_public.jsp)

*(Joanne Waters : Registered Foreign Lawyer,
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Notice of Correction

There is one article in Law Column (“Act” Does Not Require “Fault” Under Clause 8(d) Of ICA 1996) of Seaview 121 printed in wrong name of author, it shall be “Simon Cheng, Managing Associate of Ince & Co. International Law Firm” and “Vincent Zhang, paralegal of Ince & Co. International Law Firm ”. The corrected authors’ name.

Please accept apology from Editorial Board.

更正啟事

Seaview 121 期有一篇文章 (Law Column - “Act” Does Not Require “Fault” Under Clause 8(d) Of ICA 1996) 正確作者姓名為 < 鄭端霖，資深律師，英士律師行 > 及 < 張辰舟，法律助理，英士律師行 >，編輯委員會向讀者道歉。

什麼是安全速度？

「一九七二年國際海上避碰規則」第六條說明並將之定義為：

“每艘船舶在任何時間應以安全速度航行，因而她能採取適當和有效行動去避碰，並能在當前環境和條件下於一適當距離範圍內停船。”

這是「規則」所述的安全速度之定義。在此要注意的是：

“適當距離” -- 根據你自己船舶的特性。船長要知道船舶特性，如轉左或轉右所需的車速和水深，在海上要有多大迴轉直徑。一般停止機器至船舶在海上完全停止前進時所需的衝距和時間，緊急煞停船舶（即緊急開倒車）時所需的衝距和時間等。

“停船” -- 是船舶停止前進，而不是停止機器。很多人誤以為停車就是等於停船。其實不然，船是浮在水上的，機器停止而船仍是繼續向前衝的，直至她的前衝能量完全消失時，才能完全停下來。

「規則」第六條規定安全速度的因素如下：-

(a) 所有船舶要考慮（無論有沒有雷達裝置）：-

I) 視野程度；

II) 交通密度包括漁船或其他船舶結集；

III) 船舶依據當前條件的操縱能力，特別注意停船距離和迴轉能力；

IV) 晚間背景燈光之出現例如岸上照明燈光或自己船舶燈光之分散；

V) 風、浪和水流的狀況和航行障礙之範圍；

VI) 吃水與可航行之水深的關係。

(b) 除上述外，開動雷達的船舶更要注意：-

i) 雷達的性能、效率和限制；

ii) 使用雷達探測距離量程尺的任何限制；

iii) 雷達探測海浪、天氣和其他干擾的效果；

iv) 小船、浮冰和其他浮在水面的物體很可能在足夠距離範圍內雷達也無法測到；

v) 雷達所探測到船舶的數量、位置及其運動；

vi) 使用雷達去決定船舶或其他附近的物體的距離時，也可能更準確地測知視野情況。

上述決定安全速度的因素，所有船長都不可疏忽。試以一些例子說明何種速度是安全速度。

我曾以 15 節航速在大西洋上航行，海上交通情況是多天也見不到一艘船，天氣很不錯，在夏季海區航行，以當時的環境和條件來看，15 節航速是安全的。

另，我曾以 25 節航速在台灣海峽航行，當時天氣良好，海上寥寥可數的只有兩三艘船舶，距離 5-6 浬，25 節航速是安全的。過了十分鐘，開始看見水平線上有很多漁船聚集在一處捕魚，如果從漁船群中穿過，25 節航速此時可考慮為不安全速度，於是轉航遠避離開漁船群至 3 浬外，此刻 25 節航速可認為是安全速度。

事實上，以我的航海經驗來說，我得出結論：「無論以多少節航速航行，若果把自己的船舶與對方的船舶迫逼於一起而引致碰撞，都不是安全速度。」

碰撞並不單純是和船舶碰撞，也包括與岸上設施如碼頭等碰撞。安全速度是可隨時調節的，純熟運用避碰規例，頭腦清醒，清楚瞭解當前環境，交通情況和天氣的變化，果斷採取行動去避開碰撞危機，才是上上之策。

(林傑：Master Mariner, F.I.S., M.H.)



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## ICSHK Column - Winter Lecture

### “Ship Owning: Changes & Challenges”

*Edward Buttery*

Institute of Chartered Shipbrokers (ICS) Hong Kong Branch invited Mr. Edward Buttery, Founder and Chief Executive Officer of Taylor Maritime Ltd., to deliver a lecture to the ICS members, guests and students on the 9th February 2018. Mr. Edward Buttery's talk on the changing nature of dry bulk shipping and ship owning, over the last ten years, gave insight into what has been a challenging period in the history of shipping.

Mr. Buttery, shared his experience about establishing his company in 2013 and the unwillingness of banks to provide loans at that point of time. The challenges faced by the shipping industry in raising finance, especially when the traditional bank sources were drying up, were highlighted and discussed by him.

Mr. Buttery provided a highly thought-provoking and relatable speech, which covered the technical and logistical challenges that have characterized the shipping industry as a whole and continue to do so. He shared his experiences as to what it takes to own and run a shipping company. This was a particularly compelling part of the talk and the major takeaways from this were:

- ✓ the importance of building a team of strong, supportive and knowledgeable people
- ✓ knowing your strengths as well as your weaknesses, and
- ✓ having fundamental and clearly defined objectives, that keep the team striving towards a realizable yet challenging target.

Further, commenting on the global financial crisis within the last 10 years, Mr. Buttery expressed his thoughts about the evolution of the ship owning companies under the pressure of cost control and optimization and quality of maintenance. He also mentioned constant changes that challenge the shipping industry nowadays. These included cyber security, ballast water management system, scrubber technology, amongst others. Finally, he expanded on the strategies that a shipping firm should employ to survive and succeed. To the prospective entrepreneurs he implied that this is a good time to invest in the dry bulk sector.

Mr. Buttery's speech was followed by a 15-minute question and answer session. Varied viewpoints were expressed, such as the nature of the challenges that our industry faces currently, and those that may potentially be faced, going forward. In addition to those mentioned in the foregoing, these include human resources (crewing and training), funding, Emissions regulations (current) and the future challenge for the industry such as the autonomous ships.



Speaker – Mr. Edward Buttery FICS

Branch Hon-Secretary Mr. Rakesh Sethi MICS extended a very hearty vote of thanks to Mr. Edward Buttery for sharing his experience and opinion. The Hon-Secretary also thanked the sponsors for the event “Desan Shipyard Tuzla Bay Turkey” for their gracious and generous support.

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*(Edward Buttery: CEO of Taylor Maritime (HK) Limited)*



Chairman Joseph Chau FICS presenting memento to Mr. Edward Buttery FICS.



From Left - Former Chairman Mr. YK Chan FICS, Hon Secretary Mr. Rakesh Sethi MICS, Ms. Dimitra Kotta Kyriakou, ICS Student & EmCee for the evening, Speaker & Guest of Honour Mr. Edward Buttery FICS, Mr. Tim S Huxley FICS of Mandarin Shipping Limited and Chairman Joseph Chau FICS



Capt. Suresh Prabhakar of Pacific Basin Shipping (HK) Ltd. interacting with speaker.



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自 2016 年 4 月成立至今，海運港口局已經做出了富有成效的成績，特別是在推動政府和航運業界的緊密合作以及業界內部不同持份者的互相協作，以及在宣傳香港航運業群方面取得了無可否認的成果。通過過去兩年舉辦的香港海運周活動，以及到內地和世界其他主要航運和港口城市的訪問，這兩年業界普遍的感受是，政府真的重新重視香港航運業發展，而經過政府和業界攜手，香港航運的聲音在本地、中國內地和世界其他城市和地區得到了比較廣泛的傳播和推廣。

在這個過程中，政府和業界既看到了香港發展高端航運服務業的潛力和優勢，同時也對香港鞏固和提升國際航運中心所面臨的競爭與困難有了更客觀的認識。一個最明顯的問題是，無論是上述政府主辦的海運周活動，還是業界自發的航運類聚會或會議，在場的更多的是所謂「高端航運服務業」的提供者，包括船舶經紀、海事保險人和海事律師等，而這些服務的被提供方，即船東代表，卻少之又少。雖然香港船舶註冊總噸位位居全球第四，但真正在香港管理和運營這些船舶的公司卻呈下降趨勢。這從香港船東會僅有 68 個普通會員（即船東、船舶管理人和經營人）卻擁有 135 個附屬會員（即航運服務提供者）的註冊情況就可見一斑，更何況這 68 個普通會員也並非都在香港擁有實體運營公司。

「皮之不存，毛將焉附」，如果船東、船舶管理人和經營人的數量繼續呈下降趨

勢，勢必會導致「高端航運服務業」的提供者因為沒有足夠的客戶源而選擇離開香港，這不但會給香港擴大航運業集群帶來負面影響，更會嚴重打擊高端航運服務業的發展。因此，隨著海運港口局第一個兩年任期屆滿，有必要在制定海運業發展全方位策略的同時，檢討自身職責和職權範圍，才能更有效地實現推動和促進香港海運業和高增值海運服務發展的目標。

一個行業的可持續發展與人才的吸引和培養息息相關。政府早於 2014 年就推出了總值為 1 億港元的「海運及空運人才培訓基金」，為培訓航海、船舶維修和海事法律方面的人才提供獎學金。事實上，專門為航空行業提供專門培訓的香港國際航空學院已經成立，而與國際航空同等重要的海運業則尚未有一家專門培訓機構。因此，特區政府和海運港口局應該考慮設立專門基金支持海運港口業的人才培訓。

此外，推動發展多元化的海運服務，以吸引企業投資本港海運業務，是海運港口局目前最重要的一項職責。但是，由於缺乏必要的政策支持，海運港口局在履行這一職責的時候往往捉襟見肘，出現「巧婦難為無米之炊」的窘境。眾所周知，吸引企業投資和擴展業務最有效的手段就是提供稅務優惠。但是，簡單低稅率本就是香港便利營商環境的競爭優勢，加之特區政府在去年推出企業「利得稅兩級制」措施，可以預見再讓政府專門為吸引海外航運企業來港投資或擴展業務而採取更多稅務方面的刺激措施無疑是強人所難。



有會計師行預計香港本年度財政盈餘高達 1680 億港元。因此，在「庫房水浸」的情況下，除稅收手段之外，政府可以考慮採取授權海運港口局採取其他財政措施，達到吸引企業來港投資或擴展業務。例如，制定標準和細則，向新來港投資興業，或已經在港經營但需要拓展業務的海運相關企業，針對相應適格費用 (eligible expenses)，比如租賃辦公場所、置辦辦公用品等，提供資助或補貼。此外，海運港口局可以考慮為相關適格企業提供財政獎勵，衡量標準可以包括貢獻的註冊船舶數量和噸位、繳交的利得稅額度、在港經營時長等，從而為這些優質海運企業選擇長期在港發展提供更多動力。

另外，海運港口局還應該採取有效措施，鼓勵更多海運和港口企業積極利用創新科技增進生產效率。例如，如果相關企業為了增進業務和工作流程而採用甚至研發高科技產品，或有企業為與海運類相關產品進行創科研發，可以為這些企業的適格費用，例如在軟件許可、軟件優化（包括系統集成或預測分析等）、專業服務（包括研究和顧問以及終端用戶培訓）、專門化軟件（包括船用聲納、海事自控系統等）、研發團隊員工工資，以及產品認證與鑒定等方面投入的費用，提供資金支持。

對於香港海運和高端航運業可持續發展來說，人才培養、企業發展和產業優化升級這三方面其實相輔相成。只有更多企業選擇來港投資或擴大業務，才能更多集聚航運業群，從而吸引更多海內外航運人才來港工作；只有人力資源在充沛且擁有良好培訓和教育體系，才會使更多海內外企業選擇長期在港興業；也只有海運和港口企業在創新科技浪潮中不斷促進生產效率，才能確保有更多人才願意選擇投身這

個行業。作為扮演「促成者」和「推廣者」角色的特區政府，顯然可以通過海運港口局在這些方面做得更多，最終實現鞏固香港作為多元化國際航運中心地位的目標。

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(劉洋：  
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## AA TALK

### HULL INSURANCE CLAUSES – Constructive Total Loss

**Raymond Wong**

It is an amazing surprise that the Institute Time Clauses – Hulls 1/10/83 (ITC-83) remain widely used after some 34 years in hull and machinery insurance policies!

There were indeed attempts to modernize hull insurance cover, through a 1995 version of the ITC wording and the International Hull Clauses (IHC) 2003, but both failed to attract much market support. In early April this year, it was reported that leading London underwriters would review the ITC-83 to see how they could be improved to meet current ship-owners and underwriters needs.

Understandably, Assureds likely believe the devil they know is better than the devil they do not know. However, it is very common to see hull and machinery policies incorporating ITC-83 but adding on ship-owners' special clauses with favourable wording either tailor-made or extracted from IHC and/or other hull forms.

For the next few issues of Seaview, the Editor of this column will revisit ITC-83 with an emphasis on claims-related clauses, identifying the major differences with the American Hull Form (which is being used by a few large fleets in Hong Kong). There are plenty of analyses of the ITC-83 by English local market experts; the Editor would however comment with the assistance of the one "ITC HULLS 1 10 83"

which was written by Mr. D. John Wilson, a well-respected average adjuster.

The Editor wrote in 1988 the following Forward for the Chinese version of the "ITC HULLS 1 10 83", which was published in Taiwan:

*I knew Mr. D. John Wilson by name in 1969 through the book he wrote on the "One Hundred Year of The Association of Average Adjusters 1869-1969". I met John in London in 1973 when, in conjunction with the present Lord Donaldson, Master of the Rolls, and Lord Justice Staughton, he was editing the current tenth edition of the British Shipping Laws, Vol.7 – the Law of General Average and the York-Antwerp Rules.*

*For years John has enjoyed the somewhat daunting and unending task of helping the juniors of the Richards Hogg Group progress with their studies and average adjusting work. He was indeed the man I had to satisfy before being put forward to sit for the examination of the Association of Average Adjusters (AAA).*

*We had the opportunity of working together in Hong Kong for a couple of years. Apparently, he gained the impression that I was an interested person so that when I was visiting Tokyo where he was resident in August 1984, he granted me the privilege of*

*reading his more or less final draft on the ITC HULLS – 1.10.83. When I had read it from cover to cover, I was fully convinced that it would be the best (and perhaps the first) analysis and comparison of some of the clauses issued by the Institute of London Underwriters covering Hull, Freight, Disbursements and Excess Liabilities etc. plus the American Institute Hull Clauses. I immediately asked John if he would allow the book to be translated into Chinese. He gave his consent without hesitation but in return I had to make him a chop for his Chinese name.*

*Whilst I was deliberating how I should proceed with the translation, my colleague in Taipei, Edmund Chen, completely out of the blue, told me enthusiastically on the phone that he and Ms. Christine Wang would take up this formidable task. Having now read the Chinese version, I believe that the joint vigorous effort of Christine and Edmund is going to be of great value to any Chinese practitioners and students in the field of shipping and/or insurance. My heart-felt congratulations on their success.*

*As the Chairman of the AAA 1987/1988 John wrote an extremely valuable booklet on “The Insurance of Average Disbursements and other Subsidiary Interests following a Marine Casualty” which was published by the Association in May 1988. John, I understand, is now working on the new edition of the British Shipping Laws, Vol.7 – the Law of General Average and the York-Antwerp Rules.*

The Editor understands that John’s Analysis of the 83 Clauses was largely prepared for the Japanese market and the leading insurers there did all the printing, a copy was given to the Editor personally by John who kindly allowed him (the Editor) copy right on this book for any future editions.

It is worth reminding readers that the ITC-83 state that the insurance is subject to English law and practice, meaning that, subject to any overriding provision in the policy, the Marine Insurance Act 1906 and the UK Insurance Act 2015 will apply.

### **CONSTRUCTIVE TOTAL LOSS**

A Constructive Total Loss is defined by section 60 of the Marine Insurance Act 1906, which is subject to any express provision in the policy. In ascertaining whether a ship is a constructive (or commercial) total loss and not worth repairing, a prudent uninsured owner would have regard to three main factors:

- 1) The estimated cost of repairing the ship,
- 2) The estimated value of the “wreck” as scrap, and
- 3) The estimated value of the ship when repaired.

As a general rule, if 1 + 2 is greater than 3, then the vessel is a C.T.L.

It will be noted that each of these three factors depends on an estimate, always a somewhat flexible or “elastic” figure.

An uninsured owner has only himself to consider when evaluating these estimates and making his decision whether to repair or scrap the vessel, but the position is totally different when the vessel is insured. Each estimate will then provide a fruitful source for argument between the parties, more particularly when it is recognized that so much money used to be at stake under the particular conditions of an old fashioned policy of marine insurance subject only to the provisions of the Marine Insurance Act.

If the ship-owner under such a policy was able to demonstrate that the vessel was a constructive total loss and not worth repairing, on an estimated sound value of the ship when repaired of, e.g... 500,000  
he was entitled to recover the full insured value of the vessel – e.g... 1,000,000  
whatever that might be,  
plus his subsidiary insurances, if any, on Freight & Increased Value, say... 250,000  
etc. of a further, 1,250,000

In addition (and although this does not concern the ship-owner himself), many reinsurances of the ship on Total Loss Only conditions would be affected by the decision of the original hull underwriters as to whether or not the vessel was a constructive total loss.

Clause 19 of ITC-83 does contain an express provision, which reads as follows:

19. CONSTRUCTIVE TOTAL LOSS

19.1 In ascertaining whether the Vessel is a constructive total loss, the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

19.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such

cost would exceed the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

To reduce the areas of possible dispute between ship-owners and underwriters in ascertaining whether the vessel is a constructive total loss, this clause provides that:

The insured value shall be taken as the repaired value, and

Nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account.

There is thus only one factor left within the realms of estimate – (the likely cost of repairing the ship) – and, further, that estimated repair cost must be compared with the insured value of



the ship instead of her market value. In practice, most ships tend to be insured for more than their market value and it becomes more difficult, therefore, for the assured to demonstrate a constructive total loss and thereby enable him to recover the insured value of his vessel, plus any sums insured on subsidiary insurances such as Freight & Increased Value.

The first sentence of Clause 19.2 sets out in greater detail and reiterates what is already implied in the first section of the clause, i. e. that

“No claim for constructive total loss based upon the cost of recovery and/or

For example, a vessel insured for 1,000,000 might sustain damage by grounding, repairs to which were deferred, but which would cost..... 400,000

Subsequently, the vessel is involved in a collision or some other accident, repairs to which would cost..... 650,000  
1,050,000

Clearly, the vessel is a constructive total loss within the terms of Clause 19.1, but should the assured be entitled to claim the insured value of the vessel, plus the sums insured on his subsidiary insurances, - and that without the application of any policy deductibles (under Clause 12.1 )? Or should his claim be limited to one for Unrepaired Damage (under Clause 18 ) and be subjected to the application of the policy deductibles?

As already stated, this problem has now been resolved and a claim for constructive total loss can only be based on the costs relating to a single accident.

repair of the Vessel shall be recoverable hereunder unless such cost would exceed the insured value.”

The second sentence of Clause 19.2 was largely borrowed from the American Institute Hull Clauses ( June 2, 1997 ). The clause provides that only the costs relating to a single accident may be taken into account in determining whether the vessel is a constructive total loss. This resolves a problem which had been discussed for many years and which was mentioned in the case of the “Medina Princess” (1965) and also in his address to the Association of Average Adjusters in 1982 by Lord Justice Donaldson, later Master of the Rolls.

Costs of recovery &/or repair of the Vessel which may be included in computing a C.T.L.

1. Repairs to hull and machinery of the vessel, including spare parts
2. (Add) 10% for contingencies – as recommended by the “Renos” 2016
3. Air freight on spares
4. Cost of dry-docking and general services
5. Superintendent’s fees and expenses

6. Towage to repair port (including crew wages and maintenance, bunkers, etc.)
7. Cost of discharging cargo necessary to enable repairs be effected
8. Cost of Class survey
9. Port charges, pilots, towage, etc.
10. General Average contributions payable by ship (cargo sacrifice)
11. Cost of salvage of the vessel
12. SCOPIC liability – as upheld by the Court of Appeal in the “Renos” 2018

Lines 134/139 of the American Institute Hull Clauses (June 2, 1977) reads as follows:

### **TOTAL LOSS**

In ascertaining whether the Vessel is a constructive Total Loss the Agreed Value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

There shall be no recovery for a constructive Total Loss hereunder unless the expense of recovering and repairing the Vessel would exceed the Agreed Value. In making this determination, only expenses

incurred or to be incurred by reason of a single accident or a sequence of damages arising from the same accident shall be taken into account, but expenses incurred prior to tender of notice of abandonment shall not be considered if such are to be claimed separately under the Sue and Labour clause.

The provision is largely of identical effect to their counterparts in the ITC-83, the difference being that the American Hull form specifically state that “expenses incurred prior to tender of notice of abandonment” and “are to be claimed separately under the Sue and Labour clause” cannot be ranked when calculating the cost of recovery and repairs of the vessel.

### **Ship-owners Special Clauses**

The following self-explanatory wording is commonly seen under the Ship-owners Special Clauses incorporated in the hull and machinery policies of insurance (the wording being the same as Clause 21 of the IHC 2003):

#### **21. CONSTRUCTIVE TOTAL LOSS**

21.1 In ascertaining whether the Vessel is a constructive total loss, 80% of the insured value shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

21.2 No claim for constructive total loss based upon the cost of recovery and/or repair of the Vessel shall be recoverable hereunder unless such cost would exceed 80% of the insured value. In making this determination, only the cost relating to a single accident or sequence of damages arising from the same accident shall be taken into account.

Furthermore, there are other clauses amended to the effect that it would be necessary to show costs up to 80% of the Insured Value or Market Value at the Assured's option (or whichever is lower).

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## **BELT AND ROAD INITIATIVE FORUM**

This is a forum of a series of four bimonthly sessions with a theme of “Belt and Road Initiative” (BRI), which is jointly organized by The Hong Kong Logistics Management Staff Association (HKLMSA), C.Y. Tung International Centre for Maritime Studies, PolyU (ICMS) and the Hong Kong Seamen Union (HKSU). It employs the Interdisciplinary Learning/Back-to-Basics (IDL/B2B) methodology and the sessions are conducted in an open forum case study with interactive question and answer (Q&A) discussions. It is a platform for those from all sectors of the Hong Kong economy, businessmen, eminent professionals, academics and even students, to explore what BRI offers them, and to share

their expertise and valuable experience in realizing the opportunities through application of the BRI Triangle Theory of “Politics, Economics & Culture”.

The Inaugural (1st) Session of the BRI Forum was held on 22nd June 2018, with Mr. Wong Cho Ho being the moderator presiding on the topic “BRI - Concept, Objective and Realization”, who used the BRI Triangle to identify how and on what basis BRI was developed, its continuous evolution, what it envisages, and how it could probably be realized, and the possible role of Hong Kong in access to such opportunities. There will be case studies on the many challenges ahead in the process of realization.

The 2nd Session: Development of Logistics in Hong Kong - Challenges and Future under BRI – will be held on Thursday, 23 August 2018 to be moderated by Mr. Sunny Ho Lap Kee. It will trace the historical development of logistics in Hong Kong, Air, Sea & Land, the challenges faced over time since 1950, and that posed by land shortage and ever more stringent will be held on international legislations. It will consider as a case study the impact of the High Speed Rail, the HK/Macau/Zhuhai Bridge, and the Great Bay Area project.

The 3rd Session: The Role of Professional and Educational Services in Hong Kong under BRI – will be held on Thursday 18 October, 2018. It will examine the accumulated expertise and depth of

talent in Hong Kong and how this can contribute to the realization of BRI work or projects through such resources in Hong Kong, including the case of Innovation & Technology development in HK under the BRI. The Lead Moderator will be Mr. Raymond Wong Tak Chiu.

The Forum is held at HK Polytechnic University from 7:00 pm to 9:45 pm being conducted in English (though questions in Cantonese and/or Putonghua are welcomed). For further details please contact Ms. Catherine Chow at Tel: 2771-6180 or [info@hklmsa.org.hk](mailto:info@hklmsa.org.hk)

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*(Raymond T C Wong: Average Adjuster)*



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賴於幾代人的努力，現已成長為一個實力雄厚的綜合性大型企業集團。其交通運輸及相關基礎設施建設、經營與服務，金融資產投資與管理，房地產開發與經營等三大核心產業，在業內居領先地位。

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。





# Let **DATA** help **GUIDE** you **THROUGH** the risks

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